12-18-80
Vol. 45 No. 245
Pages 83189-83464

Federal Register

Thursday
December 18, 1980

Highlights

Briefings on How To Use the Federal Register—For details on briefings in Washington, D.C., see announcement in the Reader Aids section at the end of this issue.

83189 **Census Statistics on Legal Cuban and Haitian Immigrants** Executive order

83244 **Loan Programs** USDA/FmHA proposes to amend, consolidate and redesignate regulations regarding Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts; comments by 2-17-81

83269 **Education** ED proposes to amend regulations governing local educational agency public and advisory committee participation under the Emergency School Aid Act; comments by 2-2-81

83220 **Education** ED publishes regulations regarding Federal-State Relationship Agreements

83206, 83207 **Air Carriers** CAB adopts waiver provision to allow all airlines to apply for permission to experiment with alternative methods of protecting nonsmokers from tobacco smoke; adopted 12-12-80, effective 12-17-80 (3 documents)

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

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Highlights

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83261 **Housing** HUD/Sec'y proposes regulation regarding siting of HUD-assisted projects in designated clear zones and accident potential zones at civil airports and military airfields; comments by 2-17-81

83307 **Grant Programs—Business** Commerce/MBDA announces soliciting applications under General Business Services Program to operate one project for a 12-month period beginning 4-1-81 in Pittsburgh, Pa.; apply by 1-16-81

83307 **Grant Programs—Business** Commerce/MBDA announces it is seeking applications under program to operate General Business Service Center in Northern and Central Florida for a 12-month period beginning 4-1-81; apply by 1-13-81

83213 **Currency** Treasury revises the titles and reporting instructions of certain Treasury International Capital forms to capture international money market instrument statistics which are not currently reported; effective 12-18-80

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Presidential Documents

Title 3—

The President

Executive Order 12256 of December 15, 1980

Census Statistics on Legal Immigrants

By the authority vested in me as President of the United States of America, I hereby determine that States, counties and local units of general purpose government have been significantly affected by major population changes within the meaning of Section 118 of Public Law 96–369 if there reside within such jurisdictions at least fifty legal immigrants from Cuba or Haiti who arrived between April 1, 1980, and September 30, 1980. Pursuant to Section 118 of Public Law 96–369 and other applicable law, it is hereby ordered as follows:

1–101. The Bureau of the Census shall designate, as of September 30, 1980, those affected States, counties, or local units of general purpose government described above and shall supply estimates of the total number of such Cuban and Haitian immigrants to the President and to all departments and agencies of the Executive Branch which administer laws which authorize benefits according to population or population characteristics. The Bureau of the Census and the Department of Commerce shall designate the estimates so supplied as official statistics.

1–102. Beginning with fiscal year 1981, all departments and agencies of the Executive Branch shall utilize the estimates furnished under Sec. 1–101 for all formulas affecting the allocation of funds in the administration of laws distributing benefits according to population or other population characteristics, unless such utilization would be contrary to law.

1–103. The Bureau of the Census shall supply the estimates required by Sec. 1–101 for States within 30 days of the issuance of this Order and shall supply all other estimates as soon as is practicable.

1–104. To the extent permitted by law, all departments and agencies of the Executive Branch shall cooperate with the Bureau of the Census in discharging the functions under this Order.

1–105. This Order shall expire when the Bureau of the Census issues 1981 population estimates.

Jimmy Carter

THE WHITE HOUSE,
December 15, 1980.

[FR Doc. 80–39466
Filed 12–16–80; 2:07 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 45, No. 245
Thursday, December 18, 1980

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.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 20

[Amdt. 6]

Export Sales Reporting of Peanuts

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Interim rule.

SUMMARY: This rule amends the Export Sales Reporting regulations (7 CFR Part 20) to add certain peanuts to the list of the commodities subject to reporting. The current peanut supply situation necessitates the collection and dissemination of timely and accurate information concerning export transactions of peanuts and this need could best be met through the mandatory reporting and publication requirements of this program.

DATES: Effective Date: January 9, 1981. Comment date: Comments by February 17, 1981.

FOR FURTHER INFORMATION CONTACT: Richard J. Finkbeiner, Director, Export Sales Reporting Division, FAS, Room 4919-South Agriculture Building, Washington, D.C. 20250, telephone (202) 447-5651. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant".

I have determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this final action because of the rapid decline in production estimates for the U.S. 1980 peanut crop from 1.7 million metric tons as of August 1 to 1.0 million tons as of November 1, 1980. In view of this large shortfall in peanut production, the immediate collection and publication of export sales data with respect to peanuts is necessary in order for informed decision making by the peanut economy sector in the United States.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim final action are impracticable and contrary to the public interest, and good cause is found for making this interim final action effective less than 30 days after publication of this document in the Federal Register. Comments are requested for 60 days after publication of this document, and this interim final action will be scheduled for review so that a final document discussing comments received and any amendment required can be published in the Federal Register as soon as possible.

Section 812 of the Agricultural Act of 1970, as amended, (7 U.S.C. 612c-3), requires exporters of certain named commodities, and other commodities the Secretary of Agriculture may designate, to report on a weekly basis specified information with such other information requested to the Secretary. The Foreign Agricultural Service, USDA has been delegated responsibilty to administer this statute.

This rule amends the appendix to the program regulations (7 CFR Part 20) to add peanuts, as described therein, to the list of commodities subject to reporting. Peanuts, will, therefore, be fully subject to the current requirements of 7 CFR Part 20. All individuals and firms engaged in the export of peanuts will be responsible for reporting all information required by the Export Sales Reporting Regulations. Any individual or firm with reporting obligations should contact the Export Sales Reporting Division to obtain complete program information, a supply of reporting forms and a reporting "firm number".

Generally, the Export Sales Reporting regulations require exporters to file weekly reports concerning export sales activity of U.S. origin and optional origin (if option includes the United States) commodities. The information to be reported includes, but is not limited to, export sale quantity buy-backs or cancellation of an export sale, destination and marketing year of export. Weekly reports cover transactions for the period beginning Friday through midnight Thursday. Reports must be submitted to USDA by close of business the following Monday. Pursuant to Section 812, the Department publishes a compilation of the Weekly reports each Thursday following the end of the reporting period.

In addition to weekly reports, the regulations require reporting of contract terms when requested. This report shall include, but is not limited to, information concerning the date of the transaction, the name of the foreign buyer, delivery terms, delivery period, and destination.

As required by the statute, all individual reports received are kept strictly confidential.

Exporters are cautioned to familiarize themselves with the requirements of 7 CFR Part 20. Section 812 provides a criminal penalty for any individual or corporation who knowingly fails to report export sales pursuant to the requirements of this section.

This amendment is made effective January 9, 1981, which is the beginning of a reporting period. Hence, the first required report applicable to peanuts would have to be submitted January 19, 1981, covering that reporting period.

Interim Final Rule

Accordingly, Part 20 of Subtitle A of Title 7 of the Code of Federal Regulations is amended by adding in Appendix 1, under the indicated column headings, the following:

Appendix 1.—*Commodities Subject to Reports, Units To Be Used in Reporting, and Beginning and Ending Dates of Marketing Years*

Commodity to be reported	Unit of measure to be used in reporting	Beginning of marketing year	End of marketing year
* * * *	*	*	*
Peanuts, Shelled (not blanched, roasted, or otherwise prepared or preserved).			
For use as oil stock	Metric tons	Aug. 1	July 31.
Other	do	do	Do.

(Sec. 812, Pub. L. 91-524, as added by Pub. L. 93-86, § 1(27)(B), 87 Stat. 238 (7 U.S.C. 612c-3))

Issued at Washington, D.C., this 15th day of December 1980.

Thomas R. Hughes,

Administrator.

[FR Doc. 80-39346 Filed 12-17-80; 8:45 am]

BILLING CODE 3410-10-M

Agricultural Marketing Service

7 CFR Part 905

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limitation of Shipments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment establishes a total limitation of shipment regulation for fresh Florida oranges, grapefruit, tangerines, and tangelos during the period beginning at 6:00 p.m., e.s.t., December 23, 1980, and ending 12:01 a.m., e.s.t., December 29, 1980. The regulation is needed to assist in preventing the accumulation of excessive market supplies of the specified fruits during the Christmas Holiday period specified, in which it is anticipated there will be a greatly reduced market demand..

EFFECTIVE TIME: 6:00 e.s.t. December 23, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975. The Final Impact Statement relative to this rule is available upon request from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures in Secretary's Memorandum 1955 to implement Executive Order 10244 and has been classified "not significant." This rule is issued under the marketing agreement, as amended, and marketing Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines and tangelos grown in Florida, hereinafter referred to collectively as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendations and information submitted by the Citrus Administrative Committee established under the order and other available information. It is found that this action will tend to effectuate the declared policy of the act.

This amendment reflects the Department's appraisal of the marketing situation during the period immediately prior to the week in which Christmas Day occurs and for the period immediately following. It is anticipated that shipments of fresh oranges, grapefruits, tangerines, and tangelos prior to Christmas Day will result in market supplies in excess of market needs. An accumulation of excessive quantities of any variety of citrus fruit in the markets during the period immediately prior to and following Christmas contributes to unstable marketing conditions. It is reported that, absent the shipping holiday, excessive shipments of the specified fruits would occur, causing an accumulation of these varieties of fruit in the market prior to and during the post-holiday period, a period in which there is a drop in consumer demand. Hence the curtailment of orange, grapefruit, tangerine and tangelo shipments, as hereinafter specified, would contribute to a better-managed supply situation and in turn to the establishment of orderly marketing.

It is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the act. A reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions of this amendment effective at the time specified. Shipments of Florida oranges, grapefruit, tangerines, and tangelos are currently regulated through October 18, 1981. Determination as to the need for, and extent of, regulation under § 905.52(a)(3) must await the development of the crop and the availability of information about market supplies and the demand for such fruits. The recommendation and supporting information for such regulation were promptly submitted to the Department after an open meeting of the committee, after notice to growers, shippers and others, and interested persons were afforded an opportunity to submit information and views. Information regarding specifications of the regulation has been provided to shippers, and the regulation is identical with the recommendations of the committee. Compliance with the regulation will not require any special preparation on the part of persons subject thereto which cannot be completed on or before the effective time.

Accordingly, it is found that the provisions of § 905.304 (Orange, Grapefruit, Tangerine and Tangelo Regulation 4; 45 FR 67047; 76651; 79002; 80269; 81199) should be and are amended by deleting present paragraph (d) and inserting a new paragraph (d) to read as follows:

§ 905.304 Orange, grapefruit, tangerine, and tangelo Regulation 4.

* * * * *

(d) Notwithstanding the provisions of Table I in paragraph (a) of this section during the period beginning at 6:00 p.m. December 23, 1980, and ending at 12:01 e.s.t. December 29, 1980, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico, any oranges, grapefruit, tangerines, or tangelos, of the varieties or types, specified in paragraph (a) Table I of this section, grown in the production area.

* * * * *

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

Dated: December 15, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-39383 Filed 12-17-80; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 907

[Navel Orange Reg. 501]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period December 19–December 25, 1980. Such action is needed to provide for orderly marketing of fresh navel oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: December 19, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980–81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on October 14, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on December 16, 1980 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navels deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is fair.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60-day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

1. Section 907.801 is added as follows:

§ 907.801 Navel Orange Regulation 501.

Order. (a) The quantities of navel oranges grown in Arizona and California which may be handled during the period December 19, 1980, through December 25, 1980, are established as follows:

(1) District 1: 575,000 cartons;
(2) District 2: unlimited cartons;
(3) District 3: unlimited cartons;
(4) District 4: unlimited cartons.

(b) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" mean the same as defined in the marketing order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 17, 1980.

D. S. Kuryloski

Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc. 80-39592 Filed 12-17-80; 11:47 am]

BILLING CODE 3410-02-M

7 CFR Part 907

[Naval Orange Reg. 499]

Naval Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

Correction

In FR Doc. 80–37942, appearing at page 80270 in the issue for Thursday, December 4, 1980, the name of "Charles S. Brader" was published as the person who signed this document. The person that actually signed the document is "D. S. Kuryloski, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service".

BILLING CODE 1505-01-M

7 CFR Part 907

[Navel Orange Regulation 496, Amdt. 3]

Navel Oranges Grown in Arizona and Designated Part of California; Minimum Size Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment extends the current minimum diameter requirement of 2.45 inches for fresh California-Arizona navel oranges from Districts 1, 3, and 4 through January 29, 1981, and prescribes the same size requirement for navel oranges from District 2 during the period December 19, 1980 through January 29, 1981. This action is necessary to promote orderly marketing in the interest of producers and consumers.

EFFECTIVE DATE: December 19, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. The Final Impact Statement relative to this final rule is available upon request from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures in Secretary's Memorandum 1955 to implement Executive Order 12044 and classified as "not significant." This regulation is issued under the marketing agreement and Order No. 907 (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that the action will tend to effectuate the declared policy of the act.

This action was recommended at a public meeting at which all present could state their views. There is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60-day comment period as recommended in E.O. 12044, and it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

The committee met on December 2, 1980, to consider current crop and market conditions and other factors affecting the need for amendment of the current regulation, and recommended extension of the current minimum size requirement for shipment of navel

oranges grown in District 1, 3, or 4 and prescribed the same size requirement for navel oranges grown in District 2. The amendment recognizes the current and prospective marketing situation for California-Arizona navel oranges and the size composition of the crop.

Therefore, § 907.796 (Navel Orange Regulation 496, 45 FR 75163; 76651; 79003) is further amended to read as follows (as so amended, § 907.796 expires January 29, 1981, and will not be published in the annual Code of Federal Regulations):

§ 907.796 Navel Orange Regulation 496.

(a) During the period December 19, 1980, through January 29, 1981, no handler shall handle any navel oranges grown in Districts 1, 2, 3, or 4 which are of a size smaller than 2.45 inches in diameter: *Provided*, That not to exceed 5 percent, by count, of the oranges in any container may measure smaller than 2.45 inches in diameter.

(b) As used in this section, "handler," "handle," "District 1," "District 2," "District 3," and "District 4" mean the same as defined in the marketing order. Diameter shall mean the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 16, 1980, to become effective December 19, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-39478 Filed 12-17-80; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 987

Dates Produced or Packed in Riverside County, California; Expenses of the California Date Administrative Committee for the 1980–81 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses and a rate of assessment for the 1980–81 crop year, to be collected from handlers to support activities of the Committee which locally administers the Federal marketing order covering dates produced or packed in Riverside County, California.

DATES: Effect October 1, 1980 through September 30, 1981.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: Findings: Pursuant to Marketing Order No. 987, as amended (7 CFR Part 987), regulating the handling of dates produced or packed in Riverside County, California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Committee, established under this marketing order, and upon other information, it is found that the expenses and rate of assessment, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking, and that good cause exists for not postponing the effective time until 30 days after publication in the Federal Register (5 U.S.C. 553), as the order requires that the rate of assessment for a particular crop year shall apply to all assessable dates from the beginning of such year which began October 1, 1980. To enable the Committee to meet marketing year obligations, approval of the expenses and assessment rate is necessary without delay. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open meeting of the Committee. To effectuate the declared purposes of the act, it is necessary to make these provisions effective as specified.

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication without opportunity for further comments. The regulation has been classified not significant under USDA criteria for implementing the Executive Order. An Impact Analysis is available from J. S. Miller (202) 447–5053.

§ 987.325 Expenses and rate of assessment.

(a) Expenses that are reasonable and likely to be incurred by the Committee during the 1980–81 crop year will amount to $23,730.

(b) The rate of assessment for said year payable by each handler in accordance with § 987.72 is fixed at 7 cents per hundredweight on all assessable dates.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 15, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-39384 Filed 12-17-80; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1490

Tobacco Export Program; Deletion

AGENCY: Commodity Credit Corporation, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule deletes the regulations issued under 7 CFR Part 1490 (Tobacco Export Program). The program which these regulations implements no longer exists and has not been in effect since 1973.

EFFECTIVE DATE: December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Ben J. Robinson (ASCS) Price Support and Loan Division, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202)447–6733.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedure established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant." In compliance with Secretary's Memorandum 1955 and "Improving USDA Regulations" (43 FR 50988), initiation of review of the regulations contained in 7 CFR Part 1490 for need, currency, clarity, and effectiveness need not be made.

The title and number of the Federal Assistance Program that this Final rule applies to is: title—Commodity Loan and Purchases; Number—10.051. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local Government are informed of this action.

I have determined that compliance with the public rulemaking and 30-day effective date requirements of 5 U.S.C. 533 is not necessary since this action merely deletes provisions which are no longer applicable.

Final Rule

PART 1490 [REMOVED]

Accordingly, 7 CFR Part 1490 (Tobacco Export Program), is hereby deleted from the Code of Federal Regulations.

Signed in Washington, D.C., on December 9, 1980.

Weldon B. Denny,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-39301 Filed 12-17-80; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 335

Preliminary Examination on Petitions for Naturalization; Designation of Examiners

AGENCY: Immigration and Naturalization Service, Justice.

ACTION Final rule.

SUMMARY: This amendment to the regulation of the Immigration and Naturalization Service eliminates the need for a district director to seek the approval of the Assistant Commissioner Naturalization before designating a non-attorney employee to conduct preliminary examinations on petitions for naturalization and to make recommendations to the naturalization court. The amendment contained in this order removes a procedural impediment and will improve service to the public.

EFFECTIVE DATE: January 16, 1981.

FOR FURTHER INFORMATION CONTACT:

For General Information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536, telephone: (202) 633-3048

For Specific Information: Keith C. Williams, Acting Assistant Commissioner, Naturalization, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536, telephone: (202) 633-3320

SUPPLEMENTARY INFORMATION: This amendment to 8 CFR 335.11(b) is published pursuant to section 552 of Title 5 of the United States Code [80 Stat. 383], as amended by Pub. L. 93-502 [88 Stat. 1561], and the authority contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103), 28 CFR 0.105(b), and 8 CFR 2.1. Compliance with the provisions of section 553 of Title 5 of the United States Code as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment contained in this order removes a procedural impediment and will improve service to the public.

Accordingly, the following amendment is made to Chapter I of Title 8 of the Code of Federal Regulations:

PART 335—PRELIMINARY EXAMINATION ON PETITIONS FOR NATURALIZATION

In Section 335.11, paragraph (b) is amended by removing the phrase, "after prior approval of the Central Office if the employee is not a General Attorney (Nationality)," in the first sentence. Paragraph (b) as revised, reads as follows:

§ 335.11 Preliminary examination pursuant to section 335(b) of the Immigration and Nationality Act.

* * * * *

(b) *Conduct of examination.* Preliminary examinations shall be held before an employee of the Service designated by the district director to conduct such proceedings and to make findings and recommendations thereon to the naturalization court, who shall be known as the "designated examiner." The petitioner and his witnesses and the witnesses produced on behalf of the Government shall be present. The designated examiner shall, prior to the commencement of the examination, make known to the petitioner his official capacity and that of any other officer of the Service who may participate in the proceeding. The designated examiner shall have before him the entire record of the preliminary interrogation, including the petitioner's application to file a petition for naturalization (Form N-400) and any other evidence or data that may be relevant or material to the inquiry. All testimony taken at the examination shall be under oath or affirmation administered by the designated examiner. The designated examiner may interrogate the petitioner and witnesses produced in behalf of the petitioner or the Government, and present evidence touching upon the petitioner's admissibility to citizenship. He shall regulate the course of the examination, rule upon applications for the issuance of subpenas and issue subpenas in proper cases, grant or deny continuances, and rule on all objections to the introduction of evidence, which rulings shall be entered on the record. Evidence held by the designated examiner to be inadmissible shall nevertheless be received into the record subject to the ruling of the court. The petitioner and the Government shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. If the petitioner is not represented by an attorney or representative, the designated examiner shall assist the petitioner in the introduction of all evidence available in his behalf. All documentary or written evidence shall be properly identified and introduced into the record as exhibits by number, unless read into the record.

* * * * *

(Secs. 103 and 335(b); 8 U.S.C. 1103 and 1446(b))

Dated: December 11, 1980.

David Crosland,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 80-39300 Filed 12-17-80; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

Physical Protection Upgrade Rule; Clarification of Effective Dates

AGENCY: Nuclear Regulatory Commission.

ACTION: Clarification of effective dates.

SUMMARY: The NRC issues this notice to clarify three dates concerning the development and implementation of plans required of nuclear power reactor licensees for the training and qualification of security personnel. Because of ambiguous effective date provisions in amendments to 10 CFR 73.55(b)(4), published November 28, 1979 (44 FR 68184), incorrect dates appeared in the January 1, 1980 revision of 10 CFR Chapter I. The text of § 73.55(b)(4) is published below in its entirety to clarify this ambiguity.

EFFECTIVE DATES: Thursday, December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. L. J. Evans, Jr., Chief, Regulatory Improvements Branch, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301-427-4181, or Mr. F. P. Gillespie, Chief, Safeguards Standards Branch, Division of Siting, Health and Safeguards Standards, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, DC 20555, 301-443-5907.

SUPPLEMENTARY INFORMATION: The text of 10 CFR 73.55(b)(4) as corrected reads as follows:

§ 73.55 [Corrected]

* * * * *

(b) * * *

(4) The licensee shall not permit an individual to act as a guard watchman, armed response person, or other member of the security organization unless such individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with Appendix B, "General Criteria for Security Personnel," of this part. Upon the request of an authorized representative of the Commission the licensee shall demonstrate the ability of the physical security personnel to carry out their assigned duties and responsibilities. Each guard, watchman, armed response person, and other member of the security organization shall requalify in accordance with appendix B of this part at least every 12 months. Such requalification shall be documented. By August 20, 1979 each licensee shall submit a training and qualifications plan outlining the processes by which guards, watchmen, armed response persons, and other members of the security organization will be selected, trained, equipped, tested, and qualified to assure these individuals meet the requirements of this paragraph. The training and qualifications plan shall include a schedule to show how all security personnel will be qualified by October 23, 1980 or within 2 years after the submitted plan is approved, whichever is later. The training and qualifications plan shall be followed by the licensee after March 6, 1980 or 60 days after the submitted plan is approved by the NRC, whichever is later.

* * * * *

Dated at Washington, D.C., this 12th day of December 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-39390 Filed 12-17-80; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 545 and 556

[No. 80-760]

Branching: Policy Statement and Technical Amendment

Dated: December 4, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final regulations.

SUMMARY: The Federal Home Loan Bank Board has adopted a policy statement intended to explain the policies it will follow in reviewing branch applications of Federal savings and loan associations. The new policy statement is necessary because new regulations on branching were adopted on May 5, 1980, that rendered the existing policy statement obsolete. In addition, a minor amendment to the branching regulations has been made, in order to clarify the applicability of agreements between the Board and state regulatory agencies to the branch approval process.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Michael D. Schley (202-377-6444), Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board, by Resolution No. 80-285 of May 5, 1980 (45 FR 31046, May 12, 1980), adopted final amendments to its branching regulations (12 CFR 545.14 *et seq.*). With these amendments, the Board consolidated its regulations governing various types of facilities into one set of branch office regulations with common requirements and procedures. The Board also revised the regulatory criteria for branch approvals to exclude "need" and "probability of success," while maintaining the "undue injury" test, an assessment of the applicant's performance under the Community Reinvestment Act of 1977 (12 U.S.C. 2901) (hereafter "CRA"), and a determination that the association is operating in a safe and sound manner. The new regulations also added procedures for upgrading and closing branch offices, eliminated eligibility requirements for filing branch applications, and codified Board policy for processing branch applications from an association with a pending merger or conversion application.

On May 5, 1980, the Board also proposed a new policy statement on branching to supplement the final branching regulations (Resolution No. 80-286, 45 FR 31121, May 12, 1980). The proposed policy statement reaffirmed the Board's procompetitive branching policy, further explained how the Board will evaluate branching criteria, discussed the Board's concern about implications of the name of a branch, set forth a position on prompt opening of approved branches, and reaffirmed the Board's policy regarding geographic limitations on the location of a branch office. Consideration of policy statement revisions regarding protest and oral argument was temporarily postponed at that time.

Policy Statement on Branching

The public comment period for the proposed policy statement ended on July 9, 1980. Twenty-eight letters were received during the public comment period from the thrift industry, regulatory and other government entities, and others. None of the commenters was opposed to adoption by the Board of a policy statement on branching. The majority of letters contained specific suggestions for altering particular provisions of the proposed regulation, which are summarized in the following analysis of proposed new 12 CFR 556.5.

1. *General* (§ 556.5(a)). The Board has adopted the language of 12 CFR 556.5(a) substantially as proposed. One commenter pointed out that the proposed wording of the third sentence of § 556.5(a)(1) is ambiguous. Accordingly, the word "only" has been added to make it clear that a "full-service branch" is not the only type of branch office encouraged under the policy statement.

The rule of proposed subparagraph (2) that the Board will look to state law regarding the branching powers of state-chartered institutions has been adopted as a result of policy considerations. The Board wishes to clarify that this rule is not dictated by limitations on its authority to regulate Federal associations.

The provision in proposed subparagraph (3) prohibiting interstate branching was criticized by two commenters as overly restrictive, although one writer felt the language was not restrictive enough. The diversity of views reflected by these comments is indicative of the controversial nature of this subject. In light of the comprehensive study of this matter being done for Congress, the Board believes that it would not be appropriate at this time to adopt a new rule on interstate branching.

2. *Supervisory clearance* (§ 556.5(b)). This paragraph of new 12 CFR 556.5 is adopted as proposed, except for a change in designation of items (b)(2)(ii)(a) and (b) to (b)(2)(ii)(*a*) and (*b*) to conform to the designation system currently used for the Board's regulations.

Three commenters requested a provision for "preliminary" approval at an early stage in the application procedure, so that the association can begin the necessary preparations for opening a new branch within the mandatory 12-month period. The new branching regulations, at 12 CFR 545.14(c), already provide for supervisory clearance by the Supervisory Agent prior to publication of notice. It would not be possible, however, to "guarantee" approval of an

application prior to full consideration of the branch application.

One commenter suggested less emphasis on net-worth requirements, while another recommended requiring a five-year history of net worth equal to five percent of withdrawable deposits. The language of subparagraph (b)(2) as proposed adopted the net-worth requirements of Part 563 for purposes of supervisory clearance. This standard is not inflexible, however, since an associaton that does not meet these criteria may nonetheless receive clearance if the Supervisory Agent is convinced that its net worth level is "adequate to support the proposed branch expansion" and certain other supervisory standards are met. The Board believes that these net-worth criteria are necessary to insure financial stability of an association, particularly in volatile economic periods. Requiring a history of net-worth levels, however, would preclude new institutions from qualifying. The Board therefore has retained the current net-worth requirement as proposed. It should be noted that in determining whether the condition of an applicant affords a basis for supervisory objection, the Board will consider whether the applicant's net worth is sufficient to support branches that have been approved but not yet opened, in addition to the branch in question.

One commenter believed that the proposed net-worth requirement would not permit denial of the application of a new association that has a net-worth level that is very low, but in excess of the low minimum net-worth requirements for new associations in Part 563. This is not the case, since under subparagraph (b)(1) objection may be taken on the ground of the applicant's "condition." Furthermore, the net-worth standard of subparagraph (b)(2) is merely a prerequisite to supervisory clearance, not a guarantee of Board approval.

One writer suggested deleting the language of proposed subparagraph (b)(2)(ii)(*b*) on the ground that it is redundant in light of subparagraph (b)(1). The latter provision, however, states that operation of an applicant may be a basis for supervisory objection, while (b)(2)(ii)(*b*) cites a highly capable management as one of two factors that will compensate for deficient net worth.

3. *Community reinvestment* (§ 556.5(c)). Paragraph (c) of new 12 CFR 556.5 has been adopted as proposed. No commenters expressed opposition to denying an application on the basis of a poor CRA record. One commenter was concerned, however, that the present rule might encourage specious and dilatory protests on CRA grounds in order to preclude supervisory clearance by the Supervisbry Agent (under 12 CFR 545.14(c)). The Board sees no real danger of such tactics, however, since the Supervisory Agent will have access to the association's CRA record, and may dismiss protests which have no basis in fact when determining whether as a preliminary matter there is a basis for supervisory objection. Furthermore, the provision in 12 CFR 545.14(f)(4) directing the Principal Supervisory Agent not to consider a CRA-based protest insubstantial merely because of its form does not preclude a determination of insubstantiality based on the merits of the protest.

Some writers, noting that an application may be denied on CRA grounds, suggested that the Board should inform an applying association of its current CRA rating and that the CRA findings from the last examination of that association should be binding. The concern of these writers is that the association should not be subject to surprise, upon application for a new branch, by being confronted with evidence of which it is not aware. After careful consideration of these proposals, the Board has determined that such changes would not be appropriate. While an association does receive a report of all findings from every CRA exam, it is not informed of the CRA "rating" assigned to it by the staff of the Board. The reason for nondisclosure of this information is that the CRA rating is used by the Board only for internal administrative purposes, and these purposes would be hindered by disclosure of this internal standard. If findings from the last CRA exam were deemed binding for purposes of approving a branch application, the Board would be precluded from supervisory objection even though the association is engaging in practices that do not comply with the Board's CRA regulations at the time of application if the last CRA exam findings happened to be favorable. Conversely, no association would desire that an unfavorable CRA exam report be deemed binding for purposes of a future branch application. Furthermore, the "unfair surprise" argument is not persuasive when it is considered that the association will be fully aware of any of its practices that are the basis of protest or supervisory objection on CRA grounds. The Board has therefore determined not to adopt the suggested changes regarding CRA procedures.

4. *Undue injury* (§ 556.5(d)). The final branching regulations adopted on May 5, 1980 made a substantial change in the prior rules by eliminating the "need" and "probability of success" tests for a new branch. One goal of the proposed policy statement was to create a workable definition of the remaining "undue injury" criterion in new 12 CFR 556.5(d).

Several commenters criticized the definition of "undue injury" in the proposed policy statement as using standards that revive the former "need" considerations. The major target of criticism was the last sentence of proposed paragraph (d), which required evaluation of "such factors as substantial decline in population, employment, income, and savings potential of an area, and the performance of other local financial institutions." Upon considering these comments, the Board has determined to delete this language from the section because it is inappropriate in light of elimination of the "need" criterion.

The Board found unpersuasive the argument by one writer that the proposed definition of "undue injury" as "a substantial adverse economic impact" establishes a new criterion. This definition, which is retained in the final policy statement, is not a new standard, but rather clarifies that harm to an existing institution must be *adverse, economic* in nature, and *substantial* in order to be considered "undue injury."

Two commenters pointed out a discrepancy between the "undue injury" test as stated in the final regulations and in the proposed policy statement. The final regulations, in 12 CFR 545.14(h)(1), require that "the branch can be established without undue injury to properly conducted existing local thrift and home-financing institutions." This provision was intended to include consideration of injury to institutions such as commercial banks that are involved in home financing yet are not "thrift institutions." The proposed language of 12 CFR 556.5(d), however, limited consideration to "any properly conducted local home-financing thrift institution." In order to correct this inconsistency, the wording has been changed to "any properly conducted local thrift *or* home-financing institution" (emphasis supplied).

The third and fourth sentences of proposed 12 CFR 556.5(d) required particular consideration to be given to a "newly-chartered or newly-insured institution" that protests on the ground of undue injury. This provision was intended to apply to new institutions, but one commenter pointed out that this provision would be applicable to well-established state chartered and insured

institutions that apply for and receive FSLIC insurance or a federal charter. Accordingly, the language of paragraph (d) has been changed to protect only "newly-organized" institutions.

The five-year "newness" period in proposed 12 CFR 556.5(d) was criticized by one commenter as unnecessarily long. The five-year standard was developed in the interest of protecting new institutions that have not had the time to become profitable. A recent study of a representative group of 173 new savings and loan associations revealed, however, that 71% had a positive net income by the end of 1½ years, and over 90% had a positive net income by the end of three years. (McKenzie, "Initial Capital Requirements and Start-up Losses for Newly Chartered Savings and Loan Associations," Federal Home Loan Bank Board Journal, vol. 11 no. 2 (Feb., 1978), p. 7.) The Board has therefore determined that a three-year standard of "newness" is more appropriate, and has changed 12 CFR 556.5(d) accordingly.

The policy of giving particular consideration to the undue injury protest of a newly-organized institution is based on the Board's experience in handling branch applications. Few applications have been denied on the basis of probability of undue injury, and experience has shown that well-established institutions are the least likely to protest successfully on undue injury grounds. The provision regarding new institutions does not require denial of an application merely because a new institution has protested on undue injury grounds; rather, denial will only follow if the Board makes a determination of substantial adverse economic impact.

5. *Protests and oral argument* (§ 556.5(e)). The subparagraph on protests has been adopted as proposed. A new subparagraph setting forth procedures for oral argument is under consideration by the Board for possible action in the near future, at which time comments received regarding such procedures will be reviewed. The present rules on oral argument (12 CFR 556.5(a)(3)) have been incorporated in new 12 CFR 556.5(e)(3), and will remain in effect until new rules are adopted.

6. *Basis for approval* (§ 556.5(f)). One writer proposed adoption of a formal rule that applications that have received supervisory clearance from the Supervisory Agent will only be denied "in the most unusual of cases," because of "the considerable cost impact of delays or disapproval on leases and purchases for branching sites." While it is expected that Board approval will follow supervisory clearance in most cases, it is possible that grounds for disapproval may arise or be brought to light between the time of supervisory clearance by the Supervisory Agent and a final determination by the Board. For this reason, the Board has chosen not to adopt a rule which might give rise to a false sense of security in the applicant.

7. *Branch openings* (§ 556.5(g)). No suggestions for change were received with regard to this paragraph, which has been adopted as proposed.

8. *Branch closings* (§ 556.5(h)). The purpose of this paragraph is to express the Board's intent not to interfere in an association's sound business decision to close a branch. One commenter suggested that an association should not be permitted to close a branch if the motivation for doing so violates principles underlying the Community Reinvestment Act. The Board however, believes that its current supervisory authority is adequate to address any adverse CRA impact which may result from branch closings.

9. *Name of branch office* (§ 556.5(i)). This paragraph, which allows branches to adopt names which will prevent public confusion or unfair competition, is adopted with one change. The Board will consider whether any FSLIC-insured institution (not just any Federal association) in the market area has a name similar to the applicants.

10. *Drive-in and pedestrian offices* (§ 556(j)). Paragraph 545.14(j) of the new branching regulations embodies the rule on establishing drive-in and pedestrian offices without prior Board approval that formerly appeared at 12 CFR 545.14–1(a). A corresponding interpretive statement has been incorporated at 12 CFR 556.5(j) as part of the new policy statement. The new paragraph (j) contains the definitional provisions regarding such offices that are currently found at 12 CFR 555.12 (which is repealed as of January 1, 1981), with one minor change. The requirement that the part of a pedestrian office which is accessible to the public cannot be any kind of structure has been eliminated. The purpose behind this change was to allow Federal associations to build structures around pedestrian offices that will shelter customers from the environment, a practice that has proven successful in promoting public use of pedestrian offices.

Technical Amendment to Branching Regulations

Many writers who commented on the proposed policy statement requested clarification of the role of so-called "working understandings" between the Board and state regulatory agencies. The branching regulations adopted by the Board on May 5, 1980 (Res. No. 80–285, 45 FR 31046, May 12, 1980) contain a provision entitled "*Eligibility*" at 12 CFR 545.14(b) that allows a Federal association to apply for a branch "unless otherwise currently restricted under an agreement between the Board and a State agency that regulates state-chartered savings and loan associations." The preamble to the branching regulations recognized the importance of these agreements that "provide a framework for maintaining parity between state and Federal savings and loans." Commenters have suggested, however, that it is not clear from the language of the new regulations whether provisions of these agreements on subjects other than "eligibility" will be applicable. As one commenter stated, "The working understanding between the Board and the California Department of Savings and Loan covers many areas including, among others, the limitation of applications, area and time preemptions, priority of decisions, consolidations, facilities in unopened regional shopping centers, and special treatment."

In order to clarify the Board's intent, subparagraph (h)(1) of 12 CFR 545.14 of the branching regulations, rather than the policy statement as suggested by commenters, has been amended by adding a provision to permit denial of an application if authorized by any term of an agreement between the Board and the regulatory agency in the applicant's state. The Board finds that observance of the proposal procedure of 12 CFR 508.12 and 5 U.S.C. § 553 with repect to the amendment of the branching regulations would be impracticable due to the January 1, 1981 effective date of the regulations, and is unnecessary because the amendment is technical and clarifying in nature.

Effective Date

The policy statement on branching and the technical amendment to the branching regulations will take effect on January 1, 1981, along with the branching regulations already adopted. The Board finds that observance of the 30-day delay of effective date of 12 CFR 508.14 and 5 U.S.C. 553(d) would be contrary to public policy because of the confusion that would result if the policy statement and technical amendment were to take effect later than the branching regulations, which they complement.

Accordingly, the Board hereby amends Parts 545 and 556, Subchapter C, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

Subchapter C—Federal Savings and Loan System

PART 545—OPERATIONS

1. Amend § 545.14(h)(1) by adding a new last sentence. As revised § 545.14(h)(1) reads as follows:

§ 545.14 Branch Offices.

* * * * *

(h) *Approval by the Board or the Principal Supervisory Agent.* (1) The Board shall approve an application only if, in its opinion: (i) the branch can be established without undue injury to properly conducted existing local thrift and home-financing institutions; (ii) the policies, condition, and operation of the applicant afford no basis for supervisory objection; and (iii) the proposed branch will open within 12 months of approval unless otherwise allowed by the Board or the Supervisory Agent. In addition, in considering whether to approve an application, the Board will assess and take into account an institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, pursuant to Part 563e of this Chapter; assessment of an institution's record of performance may be the basis for denying an application. An application may also be denied on the basis of restrictions imposed by the Board pursuant to an existing agreement between the Board and a State agency that regulates state-chartered savings and loan associations.

* * * * *

PART 556—STATEMENT OF POLICY

2. Section 556.5 is revised to read as follows:

§ 556.5 Establishment of branch offices.

(a) *General.* (1) The Board encourages a competitive savings and loan system that provides convenient, alternative choices of facilities for improved financial services to the public. The Board believes that branching is a primary means to increase competition and serve the public. The Board recognizes that establishment of a full-service branch is only one means for improving service and competition in an area and, therefore, encourages innovative ideas for branches designed to suit the needs of a particular community.

(2) As a general policy, the Board permits a Federal association to branch if state law or state practice, in absence of statutory prohibition, permits state financial depository institutions to branch or to conduct chain, group, or affiliate operations.

(3) The Board generally will approve the establishment of a branch only in the state in which the home office is located.

(b) *Supervisory clearance.* (1) *General.* The branch regulations recognize that branching decisions are a management prerogative; however, in granting supervisory clearance to an applicant, the Board will consider whether the policies, condition, and operation of the applicant afford a basis for supervisory objection.

(2) *Net worth.* (i) For purposes of supervisory clearance, an association's net worth should equal the minimum requirements of Part 563. (ii) *Exception.* If an applicant fails to meet any of the net-worth criteria, the Supervisory Agent will not grant supervisory clearance unless s/he finds that: (*a*) the existing level of net worth and recent operating results are adequate to support the proposed branch expansion; and (*b*) the association's management is capable of operating the institution in a safe and sound manner, free of significant supervisory concern.

(3) *Supervisory objection.* Supervisory objection may be interposed at any point during the processing of the application.

(c) *Community reinvestment.* The Board, pursuant to the Community Reinvestment Act of 1977 (12 U.S.C. § 2901), encourages FSLIC-insured institutions to help meet in an affirmative and continuing manner the credit needs of all members of the communities in which they do business, including low- and moderate-income neighborhoods, consistent with safe and sound operation. In this regard, the Board will review and evaluate an applicant's record under Part 563e of this Chapter, may deny an application based on the assessment of an association's CRA record, and may, in some instances, only approve a branch application on the condition that the association improve specific aspects of its community investment-related practices and performance.

(d) *Undue injury.* A branch will not be approved if its establishment will have a substantial adverse economic impact on any properly conducted local thrift or home-financing institution. The Board will consider and evaluate undue injury to an institution as a whole, not merely to a branch office. Particular consideration will be given to a protest of undue injury raised by a newly-organized institution because, in the Board's experience, few other institutions are likely to experience economic injury from an established association branching near them. An institution will be considered "newly-organized" if it has been in operation for three years or less.

(e) *Protest and oral argument.* (1) *Protest.* Protests to applications for branches will have to be persuasive and factually documented to influence the Board's decisions on branch applications.

(2) *Oral argument.* In any case in which oral argument is scheduled, the Supervisory Agent may provide for consolidation of the oral argument on applications for permission to organize Federal associations or to establish branch offices, or for insurance of accounts of a new State-chartered association by the Federal Savings and Loan Insurance Corporation to be located in or to serve the same general area. In hearing oral argument, the person presiding may determine the order of presentation by various persons and whether to permit rebuttal or s/he may permit the parties to agree on a division of time. In consolidated arguments, s/he may allow each applicant the full time which would be allowed if there were no consolidated argument. Ordinarily, the arguments should be based only on the facts and information already on file. Occasionally, a party may seek to introduce new matter. If it appears to the person presiding that there is in fact substantive new matter, s/he should permit the parties to argue on the basis of such new matter, and require the party introducing it to submit a memorandum of such new matter at the time of oral argument. If opposing parties wish to file a rebuttal, the person presiding may allow a reasonable time—10 days should suffice in most cases—for the submission of a rebuttal. The Supervisory Agent should include 3 copies of the transcript in the file which is transmitted to the Board.

(f) *Basis for approval.* The Board may approve or deny an application based on any information available to it, not just information presented by either applicant or protestant(s).

(g) *Branch openings.* The Board does not intend to allow associations to accumlate approved branch sites, holding them for eventual opening, and extensions will be granted only on an exceptional basis. If an association does not open a branch within the time specified in the approval, and the Board finds that the association is not making a good faith effort to open the branch promptly, then the approval will be expire and the association will required to reapply if it wants to branch in that location.

(h) *Branch closings.* The Board requires an association to notify the Board when it plans to close a branch.

The Board does not intend to question an association's sound business decision to close a branch; it merely wants an opportunity to maintain competitive levels of service in all areas of a community, if possible.

(i) *Name of branch office.* If an association applies to establish a branch within the market area of another FSLIC-insured association having a similar name, the board may, to minimize public confusion and prevent unfair competition, condition branch approval by prescribing the name of the branch and the type of advertising that may be used in connection with such branch. In a merger or acquisition, the Board will generally allow a branch of the merged or acquired association to preserve its identity with its own name (without the word "association") followed by the words "a Division of [the name of the resulting association]."

(j) *Drive-in and pedestrian offices.* Section 545.14(j) of this Subchapter under certain conditions permits a Federal association, without prior approval of the Board, to establish a drive-in and/or pedestrian office in conjunction with an approved branch or home office of the association. The building or structure in which a teller is located for such a facility may be the association's home or branch office or a separate structure, but it may not be placed in a store or location of some other business so as to constitute joint occupancy of quarters. There is no objection to a pedestrian facility that faces on an enclosed mall and serves pedestrians who remain in the mall while transacting business with the association. The "ordinary" functions that may be performed at a drive-in or pedestrian facility are limited primarily to acceptance of payments on savings accounts, payment of withdrawals from accounts, acceptance of payments on mortgages or other loans, and opening of savings accounts. Although in the case of a particular association the tellers at its regular offices may give out and receive mortgage loan applications, such function is not an "ordinary" function performed at a teller window but is an extraordinary function, and therefore may not be performed at a drive-in or pedestrian facility.

§ 556.6 [Removed]

3. Section 556.6 is removed.

(Sec. 5, 48 Stat. 132, as amended (12 U.S.C. § 1464); Reorg. Plan No. 3 of 1947, 12 FR 4981; 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

Robert D. Linder,

Acting Secretary.

[FR Doc. 80-39398 Filed 12-17-80; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 80-EA-36; Amdt. 39-3993]

Airworthiness Directives; DeHavilland DHC-4 and 4A

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment issues a new airworthiness directive (AD), applicable to DeHavilland DHC-4 and 4A type airplanes, equipped with Pratt & Whitney Aircraft (PWA) Twin Wasp D-5 and R-2000-7M2 engines using left-hand rotation magneto drives. It requires the replacement of the drives with right-hand drives. This AD results from reports of power losses due to failures of the left-hand drives.

EFFECTIVE DATE: December 19, 1980. Compliance is required as set forth in the AD.

ADDRESS: DeHavilland Service Bulletins may be acquired form the manufacturer at Downsview, Ontario, Canada M3K 145.

FOR FURTHER INFORMATION CONTACT: R. O'Neill, Propulsion Section, AEA-214, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2894.

SUPPLEMENTARY INFORMATION: On August 11, 1980, the FAA published a Notice of Proposed Rulemaking on Page 53162 of the Federal Register, 45 FR 53162, and requested interested parties to submit any comments. No objections were received.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 3913 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adopting the amendment as published.

Applies to all DeHavilland DHC-4 and DHC-4A aircraft equipped with Pratt & Whitney Aircraft Twin Wasp D-5 and R-2000-7M2 engines incorporating left-hand magneto drive arrangement.

Compliance required within the next 1400 hours in service after the effective date of this AD unless already accomplished.

To preclude failure of the left hand magneto drive mechanism, incorporate the right-hand magneto drive and associated parts as described in Pratt & Whitney Aircraft Service Bulletin No. 1756 dated September 13, 1963, or approved equivalent instructions and parts.

The Twin Wasp D-5 and R-2000-7M2 engines so modified must be redesignated as noted in Section C of the Pratt & Whitney Aircraft Service Bulletin No. 1756, or an approved equivalent instruction.

All equipment instructions and parts must be approved by the Chief, Engineering & Manufacturing Branch, FAA Eastern Region.

(Pratt & Whitney Aircraft Service Bulletin No. 1756 pertains to this subject.)

Effective date: This amendment is effective December 19, 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 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 Jamaica, New York, on December 5, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

[FR Doc. 80-39107 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-EA-66; Amdt. 39-3994]

Airworthiness Directives; Piper PA-31

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment issues a new airworthiness directive (AD), applicable to Piper PA-31 type airplanes, which requires an inspection or replacement of certain landing gear door hinges and attachment angles. This results from the finding of failed hinges which could have resulted in serious landing problems since the gear door could jam the landing gear.

EFFECTIVE DATE: December 19, 1980. Compliance is requires as set forth in the AD.

ADDRESSES: Piper Service Bulletins may be acquired from the manufacturer at Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745.

FOR FURTHER INFORMATION CONTACT: J. Maher, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building, J.F.K. International

Airport, Jamaica, New York 11430; Tel. 212-995-2875.

SUPPLEMENTARY INFORMATION: 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:

Piper: Applies to Piper Models PA-31, PA-31-300, PA-31-325, Serial Nos. 31-2 thru 31-8012077; PA-31-350, Serial Nos. 31-5001 thru 31-8052168; PA-31P, Serial Nos. 31P3 thru 31P-7730012; PA-31T1, Serial Nos. 31T-7804001 thru 31T-8004040; and PA-31T, Serial Nos. 31T-7400002 thru 31T-8020076 certificated in all categories.

To prevent hazards associated with failed landing gear door attachments interfering with landing gear operation, accomplish the following:

a. Within the next 100 hours in service from the effective date of this AD and thereafter at intervals not to exceed 100 hours in service from the last inspection, inspect the main landing gear inboard door hinges and hinge attachment angles in accordance with the "Instructions" section of Piper Service Bulletin No. 682 dated July 24, 1980, or equivalent.

b. If cracks are observed, repair in accordance with the "Instructions" section of Piper Service Bulletin No. 682 dated July 24, 1980, or equivalent, prior to further flight, except the aircraft may be flown in accordance with FAR 21.197 to a base where a repair can be made.

c. Upon the incorporation of, or the determination that the door hinges are P/N 47529-32, or are an equivalent part, the repetitive inspection of the hinges may be discontinued. Hinges manufactured by Piper from .250 sheet steel have been found to be equivalent to P/N 47529-32.

d. Upon the incorporation of, or the determination that the hinge attachment angles are P/N 42048-02, -03 or are an equivalent part, the repetitive inspection of the angles may be discontinued. Four inch long angles manufactured by Piper have been found to be equivalent to P/N 42048-02, -03.

e. Equivalent inspections, repairs and parts must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

f. Upon the submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region may adjust the inspection interval specified in the AD.

Effective Date: This amendment is effective December 19, 1980.

(Sections 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, 1423, and 131(b); Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c) and 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 Jamaica, New York, on December 5, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

[FR Doc. 80-39108 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-EA-24; Amdt. 39-3992]

Airworthiness Directives; Piper PA-23

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment issues a new airworthiness directive, applicable to Piper PA-23 type airplanes, which requires a repetitive inspection for cracks and misalignment of the rudder cable pulley at the fuselage cross member. It further requires a repair where necessary and incorporation of additional bracketry. This inspection results from reports of cracks in the cross member which supports the cabin entrance step attachment. These cracks in turn can cause misalignment of the rudder cable pulley.

EFFECTIVE DATE: December 19, 1980. Compliance is required as set forth in the AD.

ADDRESSES: Piper Service Bulletins may be acquired from the manufacturer at Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745.

FOR FURTHER INFORMATION CONTACT: C. Kallis, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2875.

SUPPLEMENTARY INFORMATION: The AD essentially requires the inspection of the cross member for cracks and misalignment and then incorporates a reinforcing alteration in the same area. 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:

Piper: Applies to models:
PA-23, PA-23-160, Serial Nos. 23-1 thru 23-2046;
PA-23-235; Serial Nos. 27-505 thru 27-622;
PA-23-250; Serial Nos. 27-1 thru 27-504;
PA-23-250 (6 Place); Serial Nos. 27-2000 and up; certificated in all categories.

To detect cracks and prevent possible misalignment of the rudder cable-pulley at the fuselage crossmember which supports the cabin entrance step, accomplish the following:

a. For airplanes with 500 or more hours in service on the effective date of this AD, within the next 100 hours in service, inspect the cabin entrance step supporting frame structure for cracks, repair as necessary in accordance with paragraph (c), and unless already accomplished incorporate additional bracketry for the footstep attachment at the rudder pulley in accordance with paragraph (c).

b. For airplanes with less than 500 hours in service on the effective date of this AD, before the accumulation of 600 hours in service, inspect the cabin entrance step supporting frame structure for cracks, repair as necessary in accordance with paragraph (c), and unless already accomplished, incorprate additional bracketry for the footstep attachment at the rudder pulley in accordance with paragraph (c).

c. Accomplish steps 1 through 5 under the *"Inspection and Repair Instructions"* Section and steps 1 through 9 under *"Footstep Reinforcement Brackets Installation Instructions"* in Piper Service Bulletin No. 672 dated June 20, 1980, or equivalent.

d. Repeat the inspection described in (a) and (b) at intervals not to exceed 100 hours in service.

e. Equivalent inspections and alternations must be approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region.

f. Upon submittal of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, may adjust the inspection intervals specified in this AD.

Effective Date: This amendment is effective December 19, 1980.

(Sections 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, 1423, and 1431(b); Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c) and 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 Jamaica, New York, on December 5, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

[FR Doc. 80-39110 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-NE-44; Amdt. 39-3995]

Avco Lycoming ALF502L and L2 Turbofan Engines, Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: On October 23, 1980, an Emergency Telegraphic Airworthiness Directive (TAD), No. T80-22-53, was issued requiring:

a. Replacement of number 4 and 5 bearing oil inlet tube and associated hardware.

b. Installation of the oil inlet tube in accordance with an alignment procedure.

In addition, this AD requires repetitive inspection of the replacement number 4 and 5 bearing oil inlet tube for chafing. The AD is now being published in the Federal Register as an amendment to the Federal Aviation Regulations.

DATES: Effective December 31, 1980 as to all persons except those persons to whom it was made immediately effective by the telegram issued on October 23, 1980.

Comments on the rule must be received on or before March 3, 1981.

Compliance Schedule/Applicability Dates—As prescribed in the text of the AD.

ADDRESSES: All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Avco Lycoming, Stratford, Connecticut 06497.

Send comments on the rule to: Federal Aviation Administration, Office of the Regional Counsel, New England Region, Attention: Rules Docket No. 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

Copies of the service bulletins are contained in the Rules Docket, Federal Aviation Administration, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT:

Ralph S. Hawkins, Engine Projects Section, ANE-214E, Engineering and Manufacturing Branch, Flight Standards Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7337.

SUPPLEMENTARY INFORMATION:

Prior Regulatory History

TAD No. T80-22-53 adopted and made effective to all known U.S. operators of Avco Lycoming ALF502L and L2 model turbofan engines on October 23, 1980, was required as a result of three reported instances of number 4 and 5 bearing oil inlet tube failures due to high cycle fatigue. Tube fatigue has caused oil leakage and oil fires. Since this is an unsafe condition, the TAD requires the following be performed on all ALF502L and L2 engines, except those installed in aircraft operated under an experimental airworthiness certificate, prior to further flight:

a. Replacement of number 4 and 5 bearing oil inlet tube and associated hardware.

b. Installation of the oil inlet tube in accordance with an alignment procedure.

In addition, this AD requires repetitive inspection of the replacement number 4 and 5 bearing oil inlet tube for chafing. These conditions still exist, and the AD is now being published in the Federal Register as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations.

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

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule.

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 AD:

Avco Lycoming: Applies to Avco Lycoming ALF502L and L2 engines except those installed in aircraft operated under an experimental airworthiness certificate. Compliance required as indicated, unless already accomplished. Prior to further flight, rework or replace the following parts and reassemble in accordance with Avco Lycoming Service Bulletin No. ALF502-72-0008, Revision No. 1, dated October 14, 1980, "Replacement of No. 4 and 5 Bearing Oil Inlet Tubes," and Service Bulletin No. ALF502-72-0010, dated October 14, 1980, "Introduction of Improved Fourth Turbine Nozzle and Fire Shield," or and FAA approved equivalent:

a. Remove number 4 and 5 oil inlet tube assembly P/N 2-141-380-07/-08/-11/-12 and replace with P/N 2-141-380-13/-14.

b. Remove adapter assembly P/N 2-141-640-01 and replace with P/N 2-141-640-02.

c. If not previously incorporated, install: Bracket P/N 2-143-049-01, spacer P/N 2-143-051-01, two bolts P/N STD 3061-11, Clamp P/N TA1501H05, Bolt P/N MS9565-06, Nut P/N STD3073-3, and Washer P/N STD3035C2.

d. Rework fourth stage turbine nozzle P/N 2-141-150-38 to P/N 2-141-150-42, or P/N 2-141-150-39 to P/N 2-141-150-41 in accordance with Service Bulletin No. ALF502-72-0010.

e. Rework upper half of fire shield P/N 2-163-990-04 to 2-163-990-07, or P/N 2-163-990-05 to 2-163-990-08 in accordance with Service Bulletin No. ALF502-72-0010.

f. Install: Washer P/N 2-163-583-01, and Spring P/N 2-163-586-01, and Retainer P/N 2-163-584-01.

g. Remove oil feed line P/N 2-173-240-02 and replace with P/N 2-303-377-01.

h. Remove jam nut P/N R44118P05W. (The function of the jam nut is accomplished by the parts in "F" and "G" above.)

i. Remove oil inlet support bracket P/N 2-141-335-02 and replace with P/N 2-141-335-03.

After replacement of the number 4 and 5 bearing oil inlet tube and associated hardware in accordance with this AD, inspect the number 4 and 5 bearing oil inlet tube every 100 engine operating hours thereafter for chafing in accordance with Avco Lycoming Service Bulletin No. ALF502-72-0008, Revision No. 1, or an FAA approved equivalent. Oil inlet tubes which exhibit chafing in excess of 0.010 inch deep must be replaced with like servicable parts prior to further flight.

Airplanes may be ferried in accordance with the provisions of FAR 21.197 to a base where the AD can be accomplished. Upon request of the operator, an equivalent means

of compliance with the requirements of this AD may be approved by the Chief, Engineering and Manufacturing Branch, FAA New England Region. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, FAA, New England Region, may adjust the inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator. The manufacturer's procedures identified and described in this directive are incorporated herein and made a part hereof purusant 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 Avco Lycoming, Stratford, Connecticut 06497.

These documents may also be examined at FAA, New England Region, 12, New England Executive Park, Burlington, Massachusetts 01803, and at FAA Headquarters, 800 Independence Avenue, S.W., Washington, D.C. A historical file on this AD which includes the incorporated material in full is maintained by the FAA at its Headquarters in Washington, D.C., and at the FAA, New England Region Headquarters, Burlington, Massachusetts.

This amendment becomes effective December 31, 1980 as to all persons except those persons to whom it was made immediately effective by the telegram of October 23, 1980.

(Secs. 313(a), 601, 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)); 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 amended, on June 27, 1980, by Executive Order 12221, as implemented by DOT 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 indentified above under the caption "For Further Information Contact."

Issued in Burlington, Mass., on December 9, 1980.

Robert E. Whittington,

Director, New England Region.

Note.—The incorporation by reference provision of this document was approved by the Director of the Federal Register on June 19, 1967.

[FR Doc. 80-39230 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-ASW-37]

Designation of Transition Area: Chandler, Oklahoma

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is the designation of a transition area at Chandler, Oklahoma. The intended effect of the action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Chandler Municipal Airport. The circumstance which created the need for this action is the proposed establishment of a nondirectional radio beacon (NDB) on the airport.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101; telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On August 21, 1980, a notice of proposed rule making was published in the Federal Register (45 FR 55758) stating that the Federal Aviation Administration proposed to designate the Chandler, Oklahoma, transition area. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes this amendment is that proposed in the notice.

The Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) designates the Chandler, Oklahoma, transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing a new proposed instrument approach procedure to the Chandler Municipal Airport.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) is amended, effective 0901 G.m.t., February 19, 1981, as follows.

In Subpart G, § 71.181 (45 FR 445), the following transition area is added:

Chandler, Oklahoma

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Chandler Municipal Airport (latitude 35°43'15"N., longitude 96°49'12"W.), and within 3 miles each side of the 352° bearing of the NDB (latitude 35°43'20"N., longitude 96°49'06"W.), extending from the 5-mile radius area to 8.5 miles north of the NDB.

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

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 Fort Worth, Tex., on December 9, 1980.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 80-39233 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-AAL-17]

Alteration of Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION Final rule.

SUMMARY: This amendment alters Control 1234, located in the Aleutian Islands, Alaska, area by extending a portion northward in the Saint Paul Island, Alaska, area. This alteration permits reduced Air Traffic Control (ATC) separation standards and, in addition, lowers area floor to 2,000 feet MSL.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions 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: On October 23, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter Control 1234 located in the Aleutian Islands, Alaska, area. This amendment extends a portion of Control 1234 northward toward Saint Paul Island, Alaska, and the Bering Sea (45 FR 70279). The recent commissioning of a Remote Communications Air Ground Facility and a Distance Measuring Equipment (DME) navigational aid at Saint Paul Island permits the application of standard ATC separation criteria.

Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.163 of Part 71 was republished in the Federal Register on January 2, 1980, (45 FR 349).

The Rule

This amendment to § 71.163 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) alters Control 1234 in the Aleutian Islands, Alaska, area by extending a segment northward to the Saint Paul Island, Alaska, area. This action allows standard air traffic control criteria to be utilized and lowers the floor to 2,000 feet MSL.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.163 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 349) is amended, effective 0901 GMT, February 19, 1981, as follows:

Under § 71.163

Control 1234

"to latitude 53°36'00"N., longitude 176°47'00"W.; to latitude 54°33'00"N., longitude 169°58'00"W.; to latitude 56°39'00"M., longitude 164°25'00"W.; to latitude 57°46'00"N., longitude 161°46'00"W.; thence to point of beginning." is deleted and "to Lat. 53°36'00"N., Long. 176°47'00"W.; to Lat. 54°02'00"N., Long. 174°00'00"W.; to Lat. 60°00'00"N., Long. 174°00'00"W.; to Lat. 60°00'00"N., Long. 168°00'00"W.; to Lat. 57°46'00"N., Long. 161°46'00"W.; thence to point of beginning." is substituted therefor.

(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 December 9, 1980.

Shelomo Wugalter,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-39017 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-SO-19]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Designation of Transition Area, Hinesville, Ga.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule designates the Hinesville, Georgia, 700-foot Transition Area. A standard instrument approach procedure, NDB-A, utilizing the McIntosh NDB (Army), has been developed for Liberty County Airport. Additional controlled airspace is required to protect aircraft executing the approach procedure. The airspace must be designated before the approach procedure can become effective.

EFFECTIVE DATE: 0901, G.m.t., January 8, 1981.

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

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, 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 23, 1980 (45 FR 41968), which proposed the designation of the Hinesville, Georgia, Transition Area.

The Departments of the Air Force and the Navy objected because the airspace associated with instrument operations at Liberty County Airport would conflict with military flight activities in the proposed Townsend Restricted Area. On November 7, 1980, the Departments of the Air Force, the Army, and the Navy agreed to adjustments in the Townsend and Stewart Restricted Areas which would permit instrument operations at the airport.

The Liberty County Airport operating status is hereby changed from VFR to IFR.

Adoption of the Amendment

Accordingly, Subpart G, § 71.181 (45 FR 445) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., January 8, 1981, by adding the following:

Hinesville, Ga.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Liberty County Airport (Lat. 31°47'03"N., Long. 81°38'28"W.); excluding that portion within the Fort Stewart, Georgia, Transition Area and Control Zone.

(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 December 5, 1980.

Louis J. Cardinali,

Director, Southern Region.

[FR Doc. 80-39106 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-ANE-23]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration and Designation of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment extends VOR Federal Airway V-3 from Presque Isle, Maine, to Quebec, Canada, and designates new VOR Federal Airway V-400 from Presque Isle, to Beauce, Quebec, Canada. These alterations improve airspace utilization efficiency by designating airways in areas where aircraft proceed via direct routes in order to save fuel and time.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT: Lewis 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: On July 28, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to extend V-3 from Presque Isle, Maine, to Quebec, Canada, and designate a new VOR Federal Airway V-400 from Presque Isle, to Beauce, Quebec, Canada, (45 FR 49951). Presently, aircraft proceeding to these points via Presque Isle are required to fly a

circuitous route if they desire airways to destinations. This amendment shortens the distance between these points thereby improving flight planning. Also, a significant savings in fuel consumption is realized. Interested persons were invited to participate in the rulemaking proceeding by submitting comments on the proposal to the FAA. No comments objecting to the proposal were received. Subpart C of Part 71 was republished in the Federal Register on January 2, 1980 (45 FR 307).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) extends V-3 from Presque Isle, Maine, to Quebec, Canada, and designates a new VOR Federal Airway V-400 from Presque Isle, to Beauce, Quebec, Canada. This action designates airways in areas where aircraft usually proceed direct thereby improving flight planning and saving fuel due to the shortened route.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) is amended, effective 0901 GMT, February 19, 1981, 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 11.69)

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 December 11, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-39109 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 80-AWE-10]

Alteration of Jet Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters several jet routes in the vicinity of Los Angeles, Calif. These changes improve traffic flow between Los Angeles, and San Francisco, Calif. In addition, these alterations permit greater flexibility for maneuvering traffic in terminal areas thereby reducing congestions and delays.

EFFECTIVE DATE: February 19, 1981.

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: On August 14, 1980, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter Jet Routes J-5, J-6, J-126, and J-501 located in the vicinity of Los Angeles, Calif. After more intensive study of these proposed alterations the FAA concluded, Jet Route J-5 should not be altered at this time. The realignments enhanced and improved traffic flows between Los Angeles and San Francisco, Calif., and permit greater flexibility for maneuvering traffic in terminal areas, thereby reducing congestion and delays, (45 FR 54081). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 75.100 of Part 75, was republished in the Federal Register on January 2, 1980, (45 FR 732).

The Rule

This amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) alters the descriptions of Jet Routes J-6, J-126 and J-501. These alterations improve traffic flow between Los Angeles, Calif., and San Francisco, Calif., area. Also, these changes permit greater flexibility for maneuvering traffic in terminal areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 75.100 of the Federal Aviation Regulations (14 CFR Part 75) as republished (45 FR 732) is amended, effective 0901 G.m.t., February 19, 1981, as follows:

Under Jet Route No. 6—"From the INT of the Salinas, Calif., 145° and the Palmdale, Calif., 291° radials via Palmdale; Hector, Calif.;" is deleted and "From Big Sur, Calif., via INT Big Sur 137° and Palmdale, Calif., 290° radials; Palmdale; Hector, Calif.;" is substituted therefor.

Under Jet Route No. 126—"From Los Angeles, Calif., via the INT of the Los Angeles 319° and the Avenal, Calif., 145° radials; Avenal; Stockton, Calif.; Sacramento, Calif.;" is deleted and "From Los Angeles, Calif., via Santa Barbara, Calif.; Salinas, Calif.; Sacramento, Calif.;" is substituted therefor.

Under Jet Route No. 501—"From Point Reyes, Calif.," is deleted and "From Santa Barbara, Calif., via Big Sur, Calif.; Point Reyes, Calif.;" is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a)); 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 December 11, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-39231 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 80-ASW-40]

Extension of Jet Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters Jet Route J-177 between Humble, Tex., and Tampico, Mexico. this alteration will improve traffic flow in the Houston and Hobby, Tex., terminal areas by

overlying the Standard Terminal Arrival Routes (STARs).

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions 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: On September 15, 1980, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign Jet Route J-177 from Humble, Tex., via Hobby, Tex., to Palacios, Tex., to Tampico, Mexico (45 FR 60921). This action enhances traffic flow in the Houston and Hobby terminal areas by coinciding with the Standard Terminal Arrival Routes (STARs). Also, the realignment avoids a military training area and provides more efficient utilization of W-228. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Two comments objecting to the proposal were received. The Air Transport Association ATA), recommended J-177 not be altered because current traffic is light and should not require a rigid flow to a Standard Terminal Arrival Route (STAR); aircraft could be recleared if the STAR transition was desired. The FAA disagrees because currently most pilots request routing via Palacios, Tex., to Tampico, Mexico, thereby creating unnecessary controller workload. A U.S.A.F. objection was based on the fact J-177 realignment traverses Warning Area W-228, but it would not object if the Air Force had unrestricted utilization below 37,000 feet in W-228. Under the rule change there will be no change from the current operations of the U.S. Air Force. This amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in the Federal Register on January 2, 1980, (45 FR 732).

The Rule

This amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) alters the description of Jet Route J-177 between Humble, Tex., and Tampico, Mexico, via Hobby, Tex., and Palacios, Tex. This action improves air traffic flow in the Houston and Hobby terminal areas by conforming to the Standard Terminal Arrival Routes (STARs).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as republished (45 FR 732) is amended, effective 0901 G.m.t., February 19, 1981, as follows:

Under Jet Route, No. 177—"From Humble, Tex., via Hobby, Tex., to Tampico, Mexico," is deleted and "From Humble, Tex., via Hobby, Tex.; Palacios, Tex.; to Tampico, Mexico," is substituted therefor.

(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 11.69)

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 December 11, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-39232 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 252

[E. R. Amdt. No. 4; Docket: 29044; ER-1203]

Provision of Designated "No-Smoking" Areas Aboard Air Carriers

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB adopts a waiver provision to allow all airlines to apply for permission to experiment with alternative methods of protecting nonsmokers from tobacco smoke. This action is taken after considering a large number of public comments.

DATES: Adopted: December 12, 1980; Effective: December 17, 1980.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION:

Background

The Board's smoking rule, 14 CFR Part 252, is designed to ensure that nonsmoking passengers are not unreasonably burdened by breathing tobacco smoke. Toward that end, it requires scheduled and charter carriers holding a section 401 certificate, and commuter carriers in their operations of 30-seat or larger aircraft, to maintain a no-smoking section in each class of service of at least 2 rows, and to expand that section to accommodate all passengers who wish to be seated there. It also requires carriers to provide special segregation for cigar and pipe smokers and to ban all smoking when the ventilation system is not fully functioning. Each carrier must maintain and file with the Board an employee manual with the company's rules governing smoking aboard its aircraft.

By EDR-377, 44 FR 29486, May 21, 1979, the Board proposed a series of amendments to Part 252. These included a special provision for people who are unusually susceptible to breathing smoke, several options for dealing with cigar and pipe smoking including a total ban, a requirement that airlines have only one smoking area per compartment, a total ban on smoking on short flights and small aircraft, and a waiver provision to allow carriers to experiment with alternative methods for resolving the smoking problem. At this time, we have decided to adopt only the waiver provision. Final decision on the others is being deferred so that oral argument can be held on them.

Waivers

The Aviation Consumer Action Project (ACAP) opposed the waiver provision, preferring instead a ban on in-flight smoking as the only way to protect passengers from tobacco smoke. Action on Smoking and Health (ASH) favored the proposal as long as it and other representatives of nonsmoking passengers would have an opportunity to comment before a waiver was granted by the Board.

We have decided to adopt this proposal with the modification sought by ASH. A waiver mechanism will permit experimentation and encourage innovation by the airlines without compromising the intent of our smoking regulations. It may provide an indication of the effect of lessened government regulation in this area, and thereby aid us in deciding whether administration of this rule needs to be transferred to another government agency after our sunset.

To provide ASH and others with the chance to comment on a waiver

application, we are requiring that these applications be filed in our Docket Section rather than with our Bureau of Consumer Protection (BCP) as originally proposed. The Docket Section will place a waiver application on the weekly list of applications, which is available from the Publications Services Division. Anyone may then file answers or objections according to Board procedures for exemptions contained in 14 CFR Part 302. BCP will have delegated authority to grant or deny waiver applications.

Environmental Issue

In preliminary comments, ASH suggested that the Board had to comply with the requirements of the National Environmental Policy Act (NEPA) in this proceeding. We find that the final rule has no significant effect on the quality of the human environment, and therefore does not require an environmental impact statement. The Board's position regarding ASH's NEPA contentions are in a memorandum of law that has been placed in the docket of this proceeding. That memorandum identifies the potential environmental effects of EDR-377 and finds that none of them appear to be adverse. Our action therefore is not significant within the meaning of NEPA.

Since this rule relieves restrictions, the Board finds that it may take effect immediately.

The Board will continue to evaluate this rule by monitoring consumer complaints.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 252, *Provision of Designated "No-Smoking" Areas Aboard Air Carriers*, as follows:

1. The authority for Part 252 is:

Authority: Secs. 204(a), 404(a), and 407 of Pub. L. 85-726, as amended; 72 Stat. 743, 760, 766; 49 U.S.C. 1324, 1374, 1377.

2. The title of the part is amended to read:

PART 252—SMOKING ABOARD AIRCRAFT

3. The table of contents is amended by adding a new § 252.6, to read:

Sec.

* * * * *

252.6 Waivers.

4. A new § 252.6 is added to read:

§ 252.6 Waivers.

Carriers may file with the Board's Docket Section, applications for waivers of one or more of the requirements of this part in order to experiment with methods of protecting nonsmokers from tobacco smoke to the maximum possible degree.

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-37252 Filed 12-17-80; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 298

[E. R. Amdt. No. 13; Docket: 29044; ER-1204]

Classification and Exemption of Air Taxi Operators

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: CAB modifies the exemption of air taxis to make clear that commuters using 30-seat or larger aircraft must comply with the CAB's smoking rule.

DATES: Adopted: December 12, 1980; Effective: December 17, 1980.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Civil Aerouautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: For the reasons stated in ER-1124, 44 FR 30080, May 24, 1979, the Board finds that it is in the public interest for air taxis providing scheduled service with 30-seat or larger aircraft to comply with the smoking rule in 14 CFR Part 252. We are therefore modifying the exemption of air taxis from section 404(a) of the act to make clear that these carriers must comply with the adequate service provision of that section insofar as it requires them to comply with the Board's smoking rule.

Since this amendment is interpretative in nature and merely conforms one part of our rules to another, the Board finds that notice and public procedure thereon are unnecessary and that it may take effect immediately.

Accordingly, the Board amends 14 CFR Part 298, *Classification and Exemption of Air Taxi Operators*, as follows:

1. The authority for Part 298 is revised to read:

Authority. Secs. 204, 401, 404, and 416 of Pub. L. 85-726, as amended, 72 Stat. 743, 754, 760, 771; 49 U.S.C. 1324, 1371, 1374 and 1386.

2. Paragraph (c) of § 298.11 is amended to read:

§ 298.11 Exemption authority.

* * * * *

(c) Subsection 404(a), except for the requirements that air taxi operators shall provide safe service, equipment, and facilities in connection with air transportation; shall provide adequate service insofar as that requires them to comply with Part 252 of this chapter; shall observe and enforce just and reasonable joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices as provided in tariffs filed jointly by air taxi operators with certificated air carriers or with foreign air carriers; and shall establish just, reasonable, and equitable divisions of such joint rates, fares, and charges as between air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers;

* * * * *

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-37253 Filed 12-17-80; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 385

[O.R. Amdt. No. 107, Docket: 29044, OR-176]

Delegations and Review of Action Under Delegation; Nonhearing Matters

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB delegates to the Director of its Bureau of Consumer Protection the authority to waive its smoking rule in order to allow an airline to experiment with methods of protecting nonsmokers from tobacco smoke to the maximum possible degree.

DATES: Adopted: December 12, 1980; Effective: December 17, 1980.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: By ER-1203, adopted today, the Board added a provision to its smoking rule, 14 CFR Part 252, to allow carriers to request a waiver of one or more requirements of that rule in order to experiment with alternative methods for protecting nonsmokers from tobacco smoke. The Board here delegates to the Director of the Bureau of Consumer Protection the authority to grant or deny waiver requests from carriers.

Since this is a rule of agency procedure or practice, the Board finds that notice and public procedure are unnecessary and that the rule may take effect immediately.

Accordingly, the Board amends 14 CFR Part 385, *Delegations and Review of Action Under Delegation: Nonhearing Matters*, as follows:

1. The authority for Part 385 is:

Authority: Sec. 204(a), 1001, Pub. L. 85-726, as amended, 72 Stat. 743, 788, 49 U.S.C. 1324(a), 1481; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989, 49 U.S.C. 1324 (note), unless otherwise noted)

2. A new paragraph (g) is added to § 385.22 to read:

§ 385.22 Delegation to the Director, Bureau of Consumer Protection.

The Board hereby delegates to the Director, Bureau of Consumer Protection, the authority to:

* * * * *

(g) Grant or deny applications for waivers filed under § 252.6 of this chapter in order to allow a carrier to experiment with methods of protecting nonsmokers from tobacco smoke to the maximum possible degree.

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-39254 Filed 12-17-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[Order No. 919-80]

Production and Disclosure in Federal and State Proceedings

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends Subpart B of Part 16 of Title 28, Code of Federal Regulations, to prescribe procedures with respect to the production or disclosure of material or information in response to subpoenas or demands of courts or other authorities, except Congress, in state and federal proceedings. The purpose of this amendment is to clarify the procedures to be followed by Department of Justice employees in responding to demands for Department information in state and Federal proceedings.

EFFECTIVE DATE: December 4, 1980.

FOR FURTHER INFORMATION CONTACT: John M. Harmon, Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, Washington, D.C. 20530 (202-633-2041).

SUPPLEMENTARY INFORMATION:

Section-by-Section Analysis and Discussion

§ 16.21 Purpose and scope.

This section sets forth the purpose and scope of the regulation that follows. Subsection (a) indicates both the types of information covered and the proceedings in which the regulation applies. The kinds of information identified are the same as in the current regulation. Subsection (a) has been revised, however, to indicate that the regulation applies not only in federal and state proceedings in which the United States is not a party, but also in federal and state proceedings in which the United States is a party.

Subsection (b) retains the same definition for "employee of the Department" that appears in the current regulation. Subsection (c) indicates that the regulation is not intended to impede the appropriate disclosure, in the absence of a demand, of information by Department law enforcement agencies to federal, state, local and foreign law enforcement, prosecutive, or regulatory agencies. Subsection (d) specifies that this regulation does not create any right or benefit, substantive or procedural, enforceable by any party against the United States.

§ 16.22 General prohibition of production or disclosure in Federal and State proceedings in which the United States is not a party.

Subsection (a) specifies the same general rule with respect to federal or state cases or matters in which the United States is not a party that now appears at 28 CFR 16.22. Subsections (a)-(b) indicate where, in the regulation, the applicable procedures for responding to demands for information in these cases are to be found, and subsection (c) retains the requirement that parties seeking oral testimony provide to the U.S. attorney a summary of the testimony sought and its relevance to the proceeding in question, a requirement that now appears at 28 CFR 16.23(c). Subsection (d) authorizes United States attorneys to seek similar summaries with respect to information demanded other than oral testimony.

§ 16.23 General disclosure authority in Federal and State proceedings in which the United States is a party.

Subsection (a) provides that, subject to the general standards set forth in § 16.26 of the new regulation, every attorney in the Department of Justice in charge of any case or matter in which the United States is a party is authorized to disclose information as the attorney deems necessary or desirable to the discharge of the attorney's official duties. Neither this subsection nor § 16.21(a)(1) relates this authority specifically to "demands"; as indicated in subsection (b), attorneys may seek higher level review, prior to a court order, when they forsesee that disclosure will require higher level approval. The only higher level review that § 16.23 itself mandates, however, occurs when, in the attorney's judgment, disclosure can not otherwise be made consistent with these regulations.

It should be noted, in this connection, that the litigating units of this Department are not precluded from issuing instructions or adopting supervisory practices that would require more frequentt higher level consultation with respect to particular demands or classes of demands. On the contrary, § 16.26(d) of the new regulation expressly authorizes Assistant Attorneys General, United States attorneys, the Director of the Executive Office for United States Trustees ("the EOUST"), and their designees, to issue any instructions or to adopt any supervisory practices consistent with the regulation that would help foster consistent application of the standards promulgated and the other requirements of the regulation. In sum, the purpose of these sections read together is to mandate higher level review in a limited class of cases, while at the same time preserving the maximum flexibility for each litigating unit to adopt policies and supervisory practices best tailored to the litigation for which it is responsible in light of each unit's practical experience.

Subsection (c) specifies that the requirement of an affidavit in connection with demands for oral testimony applies also in federal and state proceedings in which the United States is a party.

§ 16.24 Procedure in the event of a demand where disclosure is not otherwise authorized.

This section, together with § 16.25 of the new regulations, almost entirely revises the current § 16.23, indicating the applicable procedure in the case of a demand for testimony or production. The new § 16.24 applies only when Department attorneys do not themselves have authority to disclose demanded information. That is, it applies in cases in which the United States is not a party, and in the limited class of cases in which the United States is a party and trial level-attorneys determine that a higher level of review is required. In cases in which the United States is not a party, the official responding to the demand is a U.S. attorney in the district

where the issuing authority is located. When the United States is a party, higher level review must be sought, when required, from an Assistant Attorney General, the Director of the EOUST, or their designees, depending on which unit is responsible for the case or matter. These persons are collectively referred to in the regulation as "the responsible official." They are required, in the various circumstances presented, to consult with the official in charge of the bureau, division, office, or agency of the Department that was responsible for the preparation of the materials demanded or that, at the time the person whose testimony was demanded acquired the information in question, employed such person, or the designee of such an official. These Department units are collectively referred to in the regulation as the "originating component." This terminology eliminates the need for separate reference in the regulation to every component of the Department that has authority to make decisions with respect to the information in its files. *See* the current § 16.23(b).

When demands are referred to a responsible official, the responsible official is required to advise the originating component. If the originating component does not object to disclosure, and such disclosure is appropriate under the standards set forth in this regulation, then the responsible official may authorize the appearance and testimony of a present or former Department employee or the production of material from Department files without further authorization from other Department officials. It is Department policy, as explained in subsection (c), that such disclosure be authorized, consistent with the standards set forth in this regulation, whenever possible, provided that, with respect to information prepared in connection with litigation or an investigation supervised by a division of the Department or the EOUST, the Assistant Attorney General in charge of such a division or the Director of the EOUST may require the originating component to obtain the division's or the EOUST's approval before agreeing to the disclosure of that information.

If the originating component objects to disclosure, then the procedure to be followed varies with the circumstances presented. In cases in which the United States is not a party, if the originating component objects to disclosure, the responsible U.S. attorney and the originating component must determine if the information in question was collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department or the EOUST. If so, the U.S. attorney must notify the Assistant Attorney General in charge of the division involved or the Director of the EOUST. Whether or not the U.S. attorney and the originating component agree as to the inappropriateness of the disclosure, the Assistant Attorney General and the Director of the EOUST are permitted to authorize disclosure, to authorize that steps be taken to limit the scope of or to obtain the withdrawal of, a demand or, after all appropriate steps have been taken to limit the scope or obtain the withdrawal of a demand, to refer the matter for final resolution to the Deputy or Associate Attorney General, as appropriate.

Under subsection (d), it should be noted that, when the originating component and the U.S. attorney either disagree concerning a disclosure or agree that disclosure should not be made, the Director of the EOUST or the appropriate Assistant Attorney General may designate a subordinate official who may authorize that disclosure be resisted. However, in cases in which the United States is not a party, the decision to disclose information in the face of either a disagreement between the U.S. attorney and an originating component or their agreement that a disclosure would not be appropriate must be made by the Director of the EOUST or, with respect to the divisions, at least at the Deputy Assistant Attorney General level, as must a decision that the matter should be referred to the Deputy or Associate Attorney General.

In cases in which the United States is not a party, and the information demanded was not collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department, the originating component may determine whether disclosure is appropriate, and this decision shall ordinarily be the final decision. When especially significant issues are raised, the responsible U.S. attorney may, however, refer the matter for review to the Deputy or Associate Attorney General. The U.S. attorney is authorized by the regulation to proceed in accordance with the decision by an originating component that disclosure should be resisted.

Under subsection (e), in cases in which the United States is a party, the Assistant Attorney General or Director of the EOUST responsible for the case or matter, and their designees are ordinarily authorized to make all decisions concerning a proper response to the disclosure of Department information. The only limitation is that, if the information in question was originally collected, assembled, or prepared in connection with litigation or an investigation supervised by another division of the Department or by the EOUST, the official handling the current litigation is required to consult the other division or the EOUST, and the Assistant Attorneys General in charge of the two divisions or the Director of the EOUST and the appropriate Assistant Attorney General are authorized to refer any irreconcilable disagreements concerning disclosure to the Deputy or Associate Attorney General, depending upon which of those officials supervises the originating component.

Subsection (f) provides that, in any case or matter in which the responsible official and the originating component agree that it would not be appropriate to disclose the information demanded, even if a court were so to require, no Department attorney responding to the demand should make any representation that implies that the Department would, in fact, comply with the demand if directed to do so by a court. Further, the responsible official shall refer such cases to the Deputy or Associate Attorney General, but only after taking all appropriate steps in such cases to limit the scope or obtain the withdrawal of a demand.

Finally, subsection (g) provides that, in cases or matters in which the Attorney General is personally involved in claiming privilege, the responsible official may consult with the Attorney General and proceed in accord with the Attorney General's instructions without subsequent review by the Deputy or Associate Attorney General.

It should be noted that § 16.24 applies to demands either for the production of documents or for testimony. Thus, for example, a demand for testimony by an employee of one Department component concerning information that was prepared in connection with an investigation that a different Department component supervised should be treated in the same way as a demand for documents in one component's files that were prepared in connection with another unit's supervised investigation.

§ 16.25 Final Action by the Deputy or Associate Attorney General.

This section specifies when final Department decisions should be made by the Deputy Attorney General and when they should be made by the Associate Attorney General. Except when this regulation expressly states

otherwise, all matters referred by the Assistant Attorney General or the designee of an Assistant Attorney General for higher level review ought to be referred to the person, *i.e.*, the Deputy or Associate Attorney General, who generally supervises the Assistant Attorney General, and the Director of the EOUST and the Director's designees shall refer matters to the Associate Attorney General. An independent agency that is within the Department for administrative purposes shall refer matters to the Deputy Attorney General. All other matters are to be referred to the persons, *i.e.*, the Deputy or Associate Attorney General, who generally supervises the originating component.

§ 16.26 Considerations in determining whether production or disclosure should be made pursuant to a demand.

Subsection (a) of this new section identifies generally the areas of law that Department officials and attorneys should consider in deciding whether to make disclosures. Because the factors relevant to a particular demand vary widely with the nature of the demand, and to avoid any suggestion that, through this procedural regulation, the Department might be seeking to impose legal standards different from the ordinary rules of procedure and the substantive law concerning privilege, the regulation adopts a highly general approach in subsection (a), instead of attempting a detailed list of considerations.

Subsection (b) does, however, specifically identify certain circumstances in which disclosure ordinarily will not be made be any Department official. These standards, in essence, identify several widely acknowledged areas of privilege or legally prohibited disclosure that are most relevant to Department of Justice operations. They are intended to be compatible with the exemptions from mandatory disclosure provided by the Freedom of Information Act, 5 U.S.C. 552(b). These subsections are not intended to preclude disclosure in compliance with court orders except in cases in which, under these standards, disclosure would be inappropriate even if required by a court.

Subsection (c) describes the standards to be followed by the Deputy or Associate Attorney General in making final decisions concerning disclosure in those matters that are referred to them. Subsection (d) authorizes Assistant Attorneys General, the Director of the EOUST, and United States attorneys and trustees responsible for litigation to issue instructions and adopt supervisory practices consistent with this regulation to help foster consistent application of the standards identified in this section and the requirements of the regulations.

§ 16.27 Procedure in the event the department's decision concerning the demand is not made prior to the time the response to the demand is required.

This section recodifies the procedure currently required by 28 CFR 16.25.

§ 16.28 Procedure in the event of adverse ruling.

This section recodifies the procedure currently required by 28 CFR 16.26.

§ 16.29 Delegation by Assistant Attorneys General.

This section provides that, with respect to any action that this regulation permits a designee of an Assistant Attorney General to perform, the Assistant Attorneys General are authorized to delegate the relevant authority to any appropriate subordinate division official or U.S. attorney. Thus, for example, in those cases in which Assistant Attorneys General have otherwise delegated litigation authority to U.S. attorneys, the Assistant Attorneys General have the option of delegating their functions under this regulation also to the U.S. attorneys, if they so choose.

By virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301, there are hereby established the following procedures governing the production or disclosure of material or information in response to subpoenas or demands of courts or other authorities, except Congress. Accordingly Subpart B of Part 16, of Chapter I of Title 28, Code of Federal Regulations is as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

* * * * *

Subpart B—Production or Disclosure in Federal and State Proceedings

Sec.

16.21 Purpose and scope.
16.22 General prohibition of production or disclosure in Federal and State proceedings in which the United States is not a party.
16.23 General disclosure authority in Federal and State proceedings in which the United States is a party.
16.24 Procedure in the event of a demand where disclosure is not otherwise authorized.
16.25 Final action by the Deputy or Associate Attorney General.
16.26 Considerations in determining whether production or disclosure should be made pursuant to a demand.
16.27 Procedure in the event a department decision concerning a demand is not made prior to the time a response to the demand is required.
16.28 Procedure in the event of an adverse ruling.
16.29 Delegation by Assistant Attorneys General.

Authority: 28 U.S.C. 509, 510, and 5 U.S.C. 301.

* * * * *

Subpart B—Production or Disclosure in Federal and State Proceedings

§ 16.21 Purpose and Scope.

(a) This subpart sets forth procedures to be followed with respect to the production or disclosure of any material contained in the files of the Department, any information relating to material contained in the files of the Department, or any information acquired by any person while such person was an employee of the Department as a part of the performance of that person's official duties or because of that person's official status:

(1) In all federal and state proceedings in which the United States is a party; and

(2) In all federal and state proceedings in which the United States is not a party, including any proceedings in which the Department is representing a government employee solely in that employee's individual capacity, when a subpoena, order, or other demand (hereinafter collectively referred to as a "demand") of a court or other authority is issued for such material or information.

(b) For purposes of this subpart, the term "employee of the Department" includes all officers and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of the Attorney General of the United States, including U.S. attorneys, U.S. marshals, U.S. trustees and members of the staffs of those officials.

(c) Nothing in this subpart is intended to impede the appropriate disclosure, in the absence of a demand, of information by Department law enforcement agencies to federal, state, local and foreign law enforcement, prospective, or regulatory agencies.

(d) This subpart is intended only to provide guidance for the internal operations of the Department of Justice, and is not intended to, and does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States.

§ 16.22 General prohibition of production or disclosure in Federal and State proceedings in which the United States is not a party.

(a) In any federal or state case or matter in which the United States is not a party, no employee or former employee of the Department of Justice shall, in response to a demand, produce any material contained in the files of the Department, or disclose any information relating to or based upon material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of that person's official duties or because of that person's official status without prior approval of the proper Department official in accordance with §§ 16.24 and 16.25 of this part.

(b) Whenever a demand is made upon an employee or former employee as described in paragraph (a) of this section, the employee shall immediately notify the United States Attorney for the district where the issuing authority is located. The responsible United States attorney shall follow procedures set forth in § 16.24 of this part.

(c) If oral testimony is sought by a demand in any case or matter in which the United States is not a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by his attorney, setting forth a summary of the testimony sought and its relevance to the proceeding, must be furnished to the responsible United States attorney. Any authorization for testimony by a present or former employee of the Department shall be limited to the scope of the demand as summarized in such statement.

(d) When information other than oral testimony is sought by a demand, the responsible United States attorney shall request a summary of the information sought and its relevance to the proceeding.

§ 16.23 General disclosure authority in Federal and State proceedings in which the United States is a party.

(a) Every attorney in the Department of Justice in charge of any case or matter in which the United States is a party is authorized, after consultation with the "originating component" as defined in § 16.24(a) of this part, to reveal and furnish to any person, including an actual or prospective witness, a grand jury, counsel, or a court, either during or preparatory to a proceeding, such testimony, and relevant unclassified material, documents, or information secured by any attorney, or investigator of the Department of Justice, as such attorney shall deem necessary or desirable to the discharge of the attorney's offical duties: *Provided*, Such an attorney shall consider, with respect to any disclosure, the factors set forth in § 16.26(a) of this part: *And further provided*, An attorney shall not reveal or furnish any material, documents, testimony or information when, in the attorney's judgment, any of the factors specified in § 16.26(b) exists, without the express prior approval by the Assistant Attorney General in charge of the division responsible for the case or proceeding, the Director of the Executive Office for United States Trustees (hereinafter referred to as "the EOUST"), or such persons' designees.

(b) An attorney may seek higher level review at any stage of a proceeding, including prior to the issuance of a court order, when the attorney determines that a factor specified in § 16.26(b) exists or foresees that higher level approval will be required before disclosure of the information or testimony in question. Upon referral of a matter under this subsection, the responsible Assistant Attorney General, the Director of EOUST, or their designees shall follow procedures set forth in § 16.24 of this part.

(c) If oral testimony is sought by a demand in a case or matter in which the United States is a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by the party's attorney setting forth a summary of the testimony sought must be furnished to the Department attorney handling the case or matter.

§ 16.24 Procedure in the event of a demand where disclosure is not otherwise authorized.

(a) Whenever a matter is referred under § 16.22 of this part to a United States Attorney or, under § 16.23 of this part, to an Assistant Attorney General, the Director of the EOUST, or their designees (hereinafter collectively referred to as the "responsible official"), the responsible official shall immediately advise the official in charge of the bureau, division, office, or agency of the Department that was responsible for the collection, assembly, or other preparation of the material demanded or that, at the time the person whose testimony was demanded acquired the information in question, employed such person (hereinafter collectively referred to as the "originating component"), or that official's designee. In any instance in which the responsible official is also the official in charge of the originating component, the responsible official may perform all functions and make all determinations that this regulation vests in the originating component.

(b) The responsible official, subject to the terms of paragraph (c) of this section, may authorize the appearance and testimony of a present or former Department employee, or the production of material from Department files if:

(1) There is no objection after inquiry of the originating component;

(2) The demanded disclosure, in the judgment of the responsible official, is appropriate under the factors specified in § 16.26(a) of this part; and

(3) None of the factors specified in § 16.26(b) of this part exists with respect to the demanded disclosure.

(c) It is Department policy that the responsible official shall, following any necessary consultation with the originating component, authorize testimony by a present or former employee of the Department or the production of material from Department files without further authorization from Department officials whenever possible: *Provided*, That, when information is collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of the Department or by the EOUST, the Assistant Attorney General in charge of such a division or the Director of the EOUST may require that the originating component obtain the division's or the EOUST's approval before authorizing a responsible official to disclose such information. Prior to authorizing such testimony or production, however, the responsible official shall, through negotiation and, if necessary, appropriate motions, seek to limit the demand to information, the disclosure of which would not be inconsistent with the considerations specified in § 16.26 of this part.

(d)(1) In a case in which the United States is not a party, if the responsible U.S. attorney and the originating component disagree with respect to the appropriateness of demanded testimony or of a particular disclosure, or if they agree that such testimony or such a disclosure should not be made, they shall determine if the demand involves information that was collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department or the EOUST. If so, the U.S. attorney shall notify the Director of the EOUST or the Assistant Attorney General in charge of the division responsible for such litigation or investigation, who may:

(i) Authorize personally or through a Deputy Assistant Attorney General, the demanded testimony or other disclosure of the information if such testimony or

other disclosure, in the Assistant or Deputy Assistant Attorney General's judgment or in the judgment of the Director of the EOUST, is consistent with the factors specified in § 16.26(a) of this part, and none of the factors specified in § 16.26(b) of this part exists with respect to the demanded disclosure;

(ii) Authorize, personally or by a designee, the responsible official, through negotiations and, if necessary, appropriate motions, to seek to limit the demand to matters, the disclosure of which, through testimony or documents, considerations specified in § 16.26 of this part, and otherwise to take all appropriate steps to limit the scope or obtain the withdrawal of a demand; or

(iii) If, after all appropriate steps have been taken to limit the scope or obtain the withdrawal of a demand, the Director of the EOUST or the Assistant or Deputy Assistant Attorney General does not authorize the demanded testimony or other disclosure, refer the matter, personally or through a Deputy Assistant Attorney General, for final resolution to the Deputy or Associate Attorney General, as indicated in § 16.25 of this part.

(2) If the demand for testimony or other disclosure in such a case does not involve information that was collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department, the originating component shall decide whether disclosure is appropriate, except that, when especially significant issues are raised, the responsible official may refer the matter to the Deputy or Associate Attorney General, as indicated in § 16.25 of this part. If the originating component determines that disclosure would not be appropriate and the responsible official does not refer the matter for higher level review, the responsible official shall take all appropriate steps to limit the scope or obtain the withdrawal of a demand.

(e) In a case in which the United States is a party, the Assistant General or the Director of the EOUST responsible for the case or matter, or such persons' designees, are authorized, after consultation with the originating component, to exercise the authorities specified in § 16.24(d)(1)(i)-(iii) of this part: *Provided,* That if a demand involves information that was collected, assembled, or prepared originally in connection with litigation or an investigation supervised by another unit of the Department, the responsible official shall notify the other division or the EOUST concerning the demand and the anticipated response. If two litigating units of the Department are unable to resolve a disagreement concerning disclosure, the Assistant Attorneys General in charge of the two divisions in disagreement, or the Director of the EOUST and the appropriate Assistant Attorney General, may refer the matter to the Deputy or Associate Attorney General, as indicated in § 16.25(b) of this part.

(f) In any case or matter in which the responsible official and the originating component agree that it would not be appropriate to authorize testimony or otherwise to disclose the information demanded, even if a court were so to require, no Department attorney responding to the demand should make any representation that implies that the Department would, in fact, comply with the demand if directed to do so by a court. After taking all appropriate steps in such cases to limit the scope or obtain the withdrawal of a demand, the responsible official shall refer the matter to the Deputy or Associate Attorney General, as indicated in § 16.25 of this part.

(g) In any case or matter in which the Attorney General is personally involved in the claim of privilege, the responsible official may consult with the Attorney General and proceed in accord with the Attorney General's instructions without subsequent review by the Deputy or Associate Attorney General.

§ 16.25 Final action by the Deputy or Associate Attorney General.

(a) Unless otherwise indicated, all matters to be referred under § 16.24 by an Assistant Attorney General, the Director of the EOUST, or such person's designees to the Deputy or Associate Attorney General shall be referred (1) to the Deputy Attorney General, if the matter is referred personally by or through the designee of an Assistant Attorney General who is within the general supervision of the Deputy Attorney General, or (2) to the Associate Attorney General, in all other cases.

(b) All other matters to be referred under § 16.24 to the Deputy or Associate Attorney General shall be referred (1) to the Deputy Attorney General, if the originating component is within the supervision of the Deputy Attorney General or is an independent agency that, for administrative purposes, is within the Department of Justice, or (2) to the Associate Attorney General, if the originating component is within the supervision of the Associate Attorney General.

(c) Upon referral, the Deputy or Associate Attorney General shall make the final decision and give notice thereof to the responsible official and such other persons as circumstances may warrant.

§ 16.26 Considerations in determining whether production or disclosure should be made pursuant to a demand.

(a) In deciding whether to make disclosures pursuant to a demand, Department officials and attorneys should consider:

(1) Whether such disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose, and

(2) Whether disclosure is appropriate under the relevant substantive law concerning privilege.

(b) Among the demands in response to which disclosure will not be made by any Department official are those demands with respect to which any of the following factors exist:

(1) Disclosure would violate a statute, such as the income tax laws, 26 U.S.C. 6103 and 7213, or a rule of procedure, such as the grand jury secrecy rule, F.R.Cr.P., Rule 6(e),

(2) Disclosure would violate a specific regulation;

(3) Disclosure would reveal classified information, unless appropriately declassified by the originating agency,

(4) Disclosure would reveal a confidential source or informant, unless the investigative agency and the source or informant have no objection,

(5) Disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired,

(6) Disclosure would improperly reveal trade secrets without the owner's consent.

(c) In all cases not involving considerations specified in paragraphs (b)(1)-(6) of this section, the Deputy or Associate Attorney General will authorize disclosure unless, in that person's judgment, after considering paragraph (a) of this section, disclosure is unwarranted. The Deputy or Associate Attorney General will not approve disclosure if the circumstances specified in paragraphs (b)(1)-(3) of this section exist. The Deputy or Associate Attorney General will not approve disclosure if any of the conditions in paragraphs (b)(4)-(6) of this section exist, unless the Deputy or Associate Attorney General determines that the administration of justice requires disclosure. In this regard, if disclosure is necessary to pursue a civil or criminal prosecution or affirmative relief, such as an injunction, consideration shall be given to:

(1) The seriousness of the violation or crime involved,

(2) The past history or criminal record of the violator or accused,

(3) The importance of the relief sought,

(4) The importance of the legal issues presented,

(5) Other matters brought to the attention of the Deputy or Associate Attorney General.

(d) Assistant Attorneys General, United States attorneys, the Director of the EOUST, United States trustees, and their designees, are authorized to issue instructions to attorneys and to adopt supervisory practices, consistent with this subpart, in order to help foster consistent application of the foregoing standards and the requirements of this subpart.

§ 16.27 Procedure in the event a department decision concerning a demand is not made prior to the time a response to the demand is required.

If response to a demand is required before the instructions from the appropriate Department official are received, the responsible official or other Department attorney designated for the purpose shall appear and furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate Department official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

§ 16.28 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 16.27 of this chapter pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions rendered in accordance with §§ 16.24 and 16.25 of this part not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall, if so directed by the responsible Department official, respectfully decline to comply with the demand. *See* United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

§ 16.29 Delegation by Assistant Attorneys General.

With respect to any function that this subpart permits the designee of an Assistant Attorney General to perform, the Assistant Attorneys General are authorized to delegate their authority, in any case or matter or any category of cases or matters, to subordinate division officials or U.S. attorneys, as appropriate.

Dated: December 4, 1980.

Benjamin R. Civiletti,

Attorney General.

[FR Doc. 80-39241 Filed 12-17-80; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 128

Transactions in Foreign Exchange, Transfers of Credit and Export of Coin and Currency; Form Revisions

AGENCY: Department of the Treasury.

ACTION: Form revisions (final rule).

SUMMARY: The Department of the Treasury is revising the titles and reporting instructions of certain Treasury International Capital (TIC) forms to capture international money market instrument statistics which are not currently reported. The amendments would require certain heretofore uncovered brokers and commercial banks to report holdings of foreign commercial paper, negotiable certificates of deposit and other foreign short-term instruments. Reporting of these data is necessary to reduce errors and omissions in U.S. balance of payments statistics.

EFFECTIVE DATE: These revisions shall become effective December 18, 1980. The revisions shall apply to all reports filed as of March 31, 1981 or for any period ending after March 31, 1981.

FOR FURTHER INFORMATION CONTACT: Gary A. Lee (202) 376-0692

SUPPLEMENTARY INFORMATION:

On July 29, 1980, there was published in the Federal Register (45 FR 50368) a notice of proposed rulemaking setting forth revisions in the titles and reporting instructions of certain Treasury International Capital (TIC) forms to capture international money market instrument statistics which are not currently reported. Interested parties were given the opportunity to submit, no later than September 29, 1980, comments on the proposed revisions. No unfavorable comments on the proposed amendments were received; however, it was suggested that the titles to specific related TIC reports be revised accordingly and that the alternative "short forms" BC(A), BQ-1(A) and BQ-2(A) were superfluous, in that they duplicated the material contained in Forms BC, BQ-1 and BQ-2, respectively. The "short forms" actually increased rather than decreased the reporting burden on the public because they required reporters to enter manually the names of individual countries, rather than use the printed list of countries in the standard forms. For this reason, the above "short forms", together with "short forms" BL-1(A) "Reporting bank's own liabilities to 'foreigners', payable in dollars"; BL-2(A) "Custody liabilities of reporting banks, brokers and dealers to 'foreigners', payable in dollars"; CQ-1(A) "Part 1—Financial liabilities to unaffiliated 'foreigners'; Part 2—Financial claims on unaffiliated 'foreigners' "; and CQ-2(A) "Part 1—Commercial liabilities to unaffiliated 'foreigners'; Part 2—Commercial claims on unaffiliated 'foreigners' ", which are alternative forms for Forms BL-1, BL-2, CQ-1 and CQ-2, respectively, are hereby revoked.

Accordingly, 31 CFR Part 128 is amended as set forth below:

1. Section 128.11 is revised to read as follows:

§ 128.11 International Capital Form BL-1: Reporting bank's own liabilities and selected liabilities of broker or dealer to "foreigners", payable in dollars.

On this form banks, banking institutions, brokers and dealers in the United States are required to report monthly to a Federal Reserve bank their own liabilities to "foreigners", payable in dollars, as of the last day of business of the month.

2. Section 128.11b is revised to read as follows:

§ 128.11b International capital form BC: Reporting bank's own claims and selected claims of broker or dealer on "foreigners", payable in dollars.

On this form banks, banking institutions, brokers and dealers in the United States are required to report monthly to a Federal Reserve bank their own claims on "foreigners", payable in dollars, as of the last day of business of each month.

3. Section 128.12 is revised to read as follows:

§ 128.12 International Capital Form BQ-1: Part 1—Reporting bank's own claims and selected claims of broker or dealer on "foreigners", Part 2—Domestic customers' claims on "foreigners" held by reporting bank, broker or dealer, payable in dollars.

On this form banks, banking institutions, brokers and dealers in the United States are required to report quarterly, as of the last business day of each March, June, September and December, to a Federal Reserve bank

their own claims on "foreigners", payable in dollars, and assets held for the account of domestic customers which represent claims on "foreigners", payable in dollars.

4. Section 128.12a is revised to read as follows:

§ 128.12a International Capital Form BQ-2: Part 1—Liabilities to, and claims on, "foreigners" of reporting bank, broker or dealer; Part 2—Domestic customers' claims on "foreigners" held by reporting bank, broker or dealer, payable in foreign currencies.

On this form banks, banking institutions, brokers and dealers in the United States are required to report quarterly as of the last business day of each March, June, September and December to a Federal Reserve bank their own liabilities to, and claims on, "foreigners", payable in foreign currencies, and assets held for the account of domestic customers which represent claims on "foreigners", payable in foreign currencies.

§ 128.13 [Removed]

5. Section 128.13 is removed.

§ 128.13a [Removed]

6. Section 128.13a is removed.

§ 128.13b [Removed]

7. Section 128.13b is removed.

§ 128.13c [Removed]

8. Section 128.13c is removed.

§ 128.13d [Removed]

9. Section 128.13d is removed.

10. Section 128.14 is revised to read as follows:

§ 128.14 International Capital Form BL-1(SA): Reporting bank's own liabilities and selected liabilities of broker or dealer to "foreigners," payable in dollars, in countries not listed separately on Form BL-1.

On this form banks, banking institutions, brokers and dealers in the United States are required to report twice a year, as of June 30 and December 31, to a Federal Reserve bank their own liabilities to "foreigners", payable in dollars, in countries not listed separately on Form BL-1.

11. Section 128.14b is revised to read as follows:

§ 128.14b International Capital Form BC(SA): Reporting bank's own claims and selected claims of broker or dealer on "foreigners", payable in dollars, in countries not listed separately on Form BC.

On this form banks, banking institutions, brokers and dealers in the United States are required to report twice a year, as of June 30 and December 31, to a Federal Reserve bank their own claims on "foreigners" payable in dollars in countries not listed separately on Form BC.

§ 128.16b [Removed]

12. Section 128.16b is removed.

§ 128.16c [Removed]

13. Section 128.16c is removed.

(Sec. 5 Pub. L. 65-91, 40 Stat. 415, 12 U.S.C. 95a, 50 U.S.C. App. 5 as amended; Sec. 8, Pub. L. 79-171, 59 Stat. 515, 22 U.S.C. 286f; Sec. 4 Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3103; E.O. 10033, 14 FR 561, 3 CFR, 1949-1953 Comp; E.O. 11961, January 9, 1977, 42 FR 4321, as amended)

C. Fred Bergsten,

Assistant Secretary (International Affairs).

[FR Doc. 80-39434 Filed 12-17-80; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Reg. 340-21]

Personal Privacy and Rights of Individuals Regarding Personal Records; Exemptions

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This final rule establishes exemptions for 16 Army systems of records subject to the Privacy Act of 1975 (Pub. L. 93-579). These new rules eliminate redundant exemptions claimed. Additionally these exemption rules are reidentified to conform to system notices to which they apply.

EFFECTIVE DATE: This final rule is effective January 19, 1981.

SUPPLEMENTARY INFORMATION: Specific exemptions for fifteen systems of records were proposed for deletion in 45 FR 71373, October 28, 1980, subsequently, one of these—A0508.09 DAPE, FBI Criminal Type Reporting Files—was deleted by 45 FR 78727 on November 26, 1980 as the system to which it applied had been deleted.

In 45 FR 73103, November 4, 1980, the general exemption for system of records A0201.08aDACS, Central Files, Office of the Chief of Staff was proposed for deletion.

As no public comments were received concerning these proposed amendments, the rules as amended are adopted as proposed.

Accordingly, § 505.9(b) of 32 CFR is amended by revising the following exemptions: A0201.08aDACS, A0225.01aDAPE, A0239.01DAAG, A0240.01DAAG, A0401.08DAJA; A0501.08e USACIDC, A0508.11a USACIDC; A0508.11b USACIDC, A0508.16DAPE, A0508.17DAPE, A0508.24aDAPE, A0506.25a USACIDC, A0509.09aDAPE, A0509.18bDAPE and A0509.21DAPE.

It is further amended by removing the following exemptions: A0201.08bDAAG, A0202.08DAAG, A0401.108DAJA and A0508.09DAPE.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington, Headquarters Services, Department of Defense.

December 15, 1980.

EXEMPTED RECORD SYSTEMS

(Specific Exemptions)

ID—A0201.08aDACS.

SYSNAME—Central Files, Office of the Chief of Staff (DACS-DAS).

EXEMPTION—Portions of this system of records which fall within 5 U.S.C. 552a(k) are exempted from the following provisions of Title 5 U.S.C. Section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

AUTHORITY—5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6), (7).

REASONS—This system contains documents pertaining to any function or subject which may require involvement of the Department of the Army. Documents are generated by other elements of the Army or are received from other agencies and individuals. Because of the broad scope of the contents of this file and, since the introduction of documents included are largely unregulatable, the specific portions or documents in the system which may require an exemption cannot be predetermined. Therefore, and to the extent that such material is necessary to be maintained, selected individual documents may be exempted from disclosure under any of the provisions of subsection (k) (1) through (7), Title 5 U.S.C. 552a.

* * * * *

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0225.01aDAPE.

SYSNAME—Military Police Management Information System (MPMIS)—Correctional Reporting System (CRS).

EXEMPTION—All portions of this system which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. Section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(3) because the release of accounting of disclosures would place the subject of

an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations. From subsection (d) because granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with the orderly administration of justice. Disclosure of this information could jeopardize the safety and well being of information sources, correctional supervisors and other confinement facility administrators. Disclosure of the information could also result in the invasion of privacy of persons who provide information used in developing individual correctional treatment programs. Further, disclosure could result in a determination of a prisoner's self-image and adversely affect meaningful relationships between a prisoner and his counseler or supervisor. These factors are essential to the rehabilitation process.

Exemption from the remaining provisions is predicated upon the exemption from disclosure or upon the need for proper functioning of correctional programs.

* * * * *

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID–A0239.01DAAG.

SYSNAME—Request for Information Files.

EXEMPTION—Portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., Section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g). Portions of the system maintained by Offices of Initial Denying Authorities which do not have a law enforcement mission and which fall within 5 U.S.C. 552a (k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C., Section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

AUTHORITY—5 U.S.C. 552a (j)(2) and (k)(1) through (k)(7).

REASONS—This system of records is maintained solely for the purpose of administering the Freedom of Information Act and processing routine requests for information. To insure an accurate and complete file on each case, it is sometimes necessary to include copies of records which have been the subject of a Freedom of Information Act request. This situation applies principally to cases in which an individual has been denied access and/or amendment of personal records under an exemption authorized by Title 5 U.S.C., Section 552. The same justification for the original denial would apply to a denial of access to copies maintained in the Freedom of Information Act file. It should be emphasized that the majority of records in this system are available on request to the individual and that all records are used solely to process requests. This file is not used to make any other determinations on the rights, benefits or privileges of individuals.

* * * * *

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0240.01DAAG

SYSNAME—Privacy Act Case Files.

EXEMPTIONS—Portions of this system which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., Section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g). Portions of this system maintained by the DA Privacy Review Board and by those Access and Amendment Refusal Authorities which do not have a law enforcement mission and which fall within 5 U.S.C. 552a (k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C., Section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

AUTHORITY—5 U.S.C. 552a (j)(2) and (k)(1) through (k)(7).

REASONS—This system of records is maintained solely for the purposes of administering the Privacy Act of 1974. To insure an accurate and complete file on each case, it is sometimes necessary to include copies of records which have been the subject of a Privacy Act request. This situation applies principally to cases in which an individual has been denied access and/or amendment of personal records under an exemption authorized by Title 5 U.S.C., Section 552a. The same justification for the original denial would apply to a denial of access and/or amendment of copies maintained in the Privacy Act Case File. It should be emphasized that the majority of records in this system are available on request to the individual and that all records are used solely to administer Privacy Act requests. This file is not used to make any other determinations on the rights, benefits or privileges of individuals.

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EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0401.08DAJA.

SYSNAME—Prosecutorial Files.

EXEMPTION—Portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., Section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from other requirements.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or supoenas and by revealing investigative techniques, procedures or evidence.

* * * * *

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0501.08eUSACIDC.

SYSNAME—Informant Register.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., Section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(3) because release of accounting of disclosures would provide the informant with significant information concerning the nature of a particular investigation, the internal methods and techniques involved in criminal investigation, and the investigative agencies (state, local or foreign national) involved in a particular case resulting in a serious compromise of the criminal law enforcement processes.

From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because disclosure of portions of the information in this system of records would seriously impair the prudent and efficient handling of these uniquely functioning individuals; hamper the inclusion of comments and evaluations concerning the performance qualification, character, identity, and propensities of the informant; and prematurely compromise criminal investigations which either concern the conduct of the informant himself or investigations wherein he/she is integrally or only peripherally involved. Additionally, the exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records and civil liability predicated upon agency compliance with specific provisions of the Privacy Act.

Subsection (d), (e)(4)(G), (e)(4)(H), and (f) are also necessary to protect the security of information properly classified in the interest of national defense and foreign policy.

From subsection (e)(1) because the nature of the criminal investigative function creates unique problems in prescribing what information concerning informants is relevant or necessary. Due to close liaison and existing relationships with other Federal, state, local and foreign national law enforcement agencies, information about informants may be received which may relate to a case then under the investigative jurisdiction of another Government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the USACIDC and other agencies. Additionally, the failure to maintain all known information about informants could affect the effective utilization of the individual and substantially increase the operational hazards incumbent in the employment of an informant in very compromising and sensitive situations.

From subsection (e)(2) because collecting information from the informant would potentially thwart both the criminal investigative process and the required management control over these individuals by appraising the informant of investigations or management actions concerning his involvement in criminal activity or with USACIDC personnel.

From subsection (e)(3) because supplying an informant with a form containing the information specified could result in the compromise of an investigation, tend to inhibit the cooperation of the informant, and render ineffectual investigative techniques and methods utilized by USACIDC in the performance of its criminal law enforcement duties.

From subsection (e)(5) because this requirement would unduly hamper the criminal investigative process due to type of records maintained and necessity for rapid information retrieval and dissemination. Also, in the collection of information about informants, it is impossible to determine what information is then accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation or contact brings new details to light. In the criminal investigative process, accuracy and relevance of information concerning informants can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting information relating to informant's actions and would impede the development of criminal intelligence necessary for effective law enforcement.

From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

* * * * *

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID–A0508.11aUSACIDC

SYSNAME—Criminal Investigation and Crime Laboratory Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5, U.S.C., Section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(3) because the release of accounting of disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning coordinated investigative effort and techniques and the nature of the investigation, resulting in a serious impediment to criminal law enforcement activities or the compromise of properly classified material.

From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because access might compromise ongoing investigations, reveal classified information, investigatory techniques or the identity of confidential informants, or invade the privacy of persons who provide information in connection with a particular investigation. The exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records, and civil liability predicated upon agency compliance with those specific provisions of the Privacy Act. The exemption from access necessarily includes exemptions from other requirements.

From subsection (e)(1) because the nature of the investigative function creates unique problems in prescribed specific perimeters in a particular case as to what information is relevant or necessary. Also due to close liaison and working relationships with other Federal, State, local and foreign national law enforcement agencies, information may be received which may relate to a case then under the investigative jurisdiction of another Government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the USACIDC and other agencies.

From subsection (e)(2) because collecting information from the subject of criminal investigations would thwart the investigative process by placing the subject of the investigation on notice thereof.

From subsection (e)(3) because supplying an invdividual with a form containing the information specified

could result in the compromise of an investigation, tend to inhibit the cooperation of the individual queried, and render ineffectual investigation techniques and methods utilized by USACIDC in the performance of their criminal law enforcement duties.

From subsection (e)(5) because this requirement would unduly hamper the criminal investigative process due to the great volume of records maintained and the necessity for rapid information retrieval and dissemination. Also, in the collection of information for law enforcement purposes, it is impossible to determine what information is then accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. In the criminal investigative process, accuracy and relevance of information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

Exempted Record Systems

(General Exemptions)

ID—A0508.11bUSACIDC.

SYSNAME—Criminal Information Reports and Cross Index Card Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a; (c)(3), (c)(4), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(3) because the release of accounting of disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning coordinated investigative effort and techniques and the nature of the investigation, resulting in a serious impediment to criminal law enforcement activities or the compromise of properly classified material.

From subsection (e)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because access might compromise ongoing investigations, reveal investigatory techniques and the identity of confidential informants, and invade the privacy of persons who provide information in connection with a particular investigation. The exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records, and civil liability predicated upon agency compliance with those specific provisions of the Privacy Act. In addition, subsections (d), (e)(4)(G), (e)(4)(H), and (f) are necessary to protect the security of information properly classified in the interest of national and foreign policy.

From subsection (e)(1) because the nature of the criminal investigative function creates unique problems in prescribing specific perimeters in a particular case what information is relevant or necessary. Also, due to close liaison and working relationships with other Federal, state, local and foreign national law enforcement agencies, information may be received which may relate to a case then under the investigative jurisdiction of another Government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the USACIDC and other agencies.

From subsection (e)(2) because collecting information from the subject of criminal investigation would thwart the investigative process by placing the subject of the investigation on notice thereof.

From subsection (e)(3) because supplying an individual with a form containing the information specified could result in the compromise of an investigation, tend to inhibit the cooperation of the individuals queried, and render ineffectual investigative techniques and methods utilized by USACIDC in the performance of their criminal law enforcement duties.

From subsection (e)(5) because this requirement would unduly hamper the criminal investigative process due to the great volume of records maintained and the necessity for rapid information retrieval and dissemination. Also, in the collection of information for law enforcement purposes, it is impossible to determine what information is then accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. In the criminal investigative process, accuracy and relevance of information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0508.16DAPE.

SYSNAME—Absentee Case Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., Section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a

serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0508.17DAPE.

SYSNAME—Military Police Reporting Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C, Section 552a: (c)(3), (c)(4) (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges, and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it would compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures, or evidence.

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0508.24aDAPE.

SYSNAME—Serious Incident Reporting Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., Section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0508.25aUSACIDC.

SYSNAME— Index to Criminal Investigative Case Files.

Exemption—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(3) because the release of accounting of disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning coordinated investigative effort and techniques and the nature of the investigation, resulting in a serious impediment to criminal law enforcement activities or the compromise of properly classified material.

From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because access might compromise ongoing investigations, reveal investigatory techniques and the identity of confidential informants, and invade the privacy of persons who provide information in connection with a particular investigation. The exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records, and civil liability predicated upon agency compliance with those specific provisions of the Privacy Act. In addition, subsections (d), (e)(4)(G), (e)(4)(H), and (f) are necessary to protect

the security of information properly classified in the interest of national and foreign policy.

From subsection (e)(1) because the nature of the criminal investigative function creates unique problems in prescribing specific perimeters in a particular case what information is relevant or necessary. Also, due to close liaison and working relationships with other Federal, state, local and foreign national law enforcement agencies, information may be received which may relate to a case then under the investigative jurisdiction of another government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the USACIDC and other agencies.

From subsection (e)(2) because collecting information from the subject of criminal investigations would thwart the investigative process by placing the subject of the investigation on notice thereof.

From subsection (e)(3) because supplying an individual with a form containing the information specified could result in the compromise of an investigation, tend to inhibit the cooperation of the individuals queried, and render ineffectual investigative techniques and methods utilized by USACIDC in the performance of their criminal law enforcement duties.

From subsection (e)(5) because this requirement would unduly hamper the criminal investigative process due to the great volume of records maintained and the necessity for rapid information retrieval and dissemination. Also, in the collection of information for law enforcement purposes, it is impossible to determine what information is then accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. In the criminal investigative process, accuracy and relevance of information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement of revealing investigative techniques, procedures, and the existence of confidential investigations.

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EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0509.09aDAPE.

SYSNAME—Traffic Law Enforcement Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., Section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsections (c)(4), (d), (e)(4)(G), (e((4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0509.18bDAPE.

SYSNAME—Expelled or Barred Person Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., Section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations and the orderly administrative of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, and the nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation.

From subsection (c)(3) because of the release of accounting would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a

confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

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EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0509.21DAPE

SYSNAME—Local Criminal Information Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., Section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

From subsection (c)(3) because of the release of accounting of disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because, in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment of law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

[FR Doc. 80-39345 Filed 12-17-80; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

34 CFR Part 604

Federal-State Relationship Agreements

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues final regulations for Federal-State Relationship Agreements. The final regulations implement statutory requirements established by Pub. L. 96-374 relating to State administration of the Continuing Education Outreach program, State Student Incentive Grants, and the Undergraduate Academic Facilities Grant program.

DATES: These regulations are expected to take effect 45 days after they are transmitted to the Congress. Regulations are usually transmitted to the Congress several days before they are published in the Federal Register. The effective date is changed by statute if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

ADDRESSES: Any questions concerning these regulations should be addressed to Mr. Charles I. Griffith, U.S. Department of Education, (Room 3717, ROB 3), 400 Maryland Avenue, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Charles I. Griffith. Telephone: (202) 245-9868.

SUPPLEMENTARY INFORMATION:

Waiver of Proposed Rulemaking Procedures

It has been the practice of the Department of Education to offer interested parties the opportunity to comment on proposed regulations. The Department of Education then reviews these comments and makes appropriate changes before republishing the regulations in final form. However, that practice is unnecessary for these regulations because they are essentially a restatement of the statute in a form more readily accessible to the States. They are also impracticable in the light of the legislatively required deadline on issuing regulations to implement statutory changes (20 U.S.C. 1232). Therefore, proposed rulemaking procedures are inappropriate under 5 U.S.C. 553(b)(3)(B).

Information Requirements

On November 14, 1980, (45 FR 75564) the Secretary published a notice in the Federal Register of the Department's intent to publish regulations necessary to implement the Education Amendments of 1980. In that notice, the Department listed the existing regulations affected by the new law and requested comments on whether those regulations required information that is already being gathered by or is available from any other agency or authority of the United States. The regulations in this document are based on regulations listed in the November 14 notice. Based on any comments received and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

Summary of Provisions

Section 1203 of the Higher Education Act, as amended by the Education Amendments of 1980, establishes a new procedure for State participation in three Department of Education programs. They are the continuing Education Outreach program, the State Student Incentive Grant program, the Undergraduate Academic Facilities program. The new procedure requires that States wishing to participate in these programs enter into a Federal-State Relationship Agreement with the Secretary. The agreement will contain assurances, and the means by which they will be met, that relate to administration, financial management, treatment of applicants, supplement, not supplant requirements, and planning. The provisions of the agreement will not supersede any reporting requirements established by the applicable programs.

This section replaces the previous sections 1202 and 1203 of the Act which required States to establish or designate a State commission with a specified structure in order to be eligible for

Federal assistance for comprehensive statewide planning. The new law replaces this structural requirement with functional requirements. Each State will have complete discretion in determining the organizational pattern that will most effectively and efficiently perform the required functions.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: December 12, 1980.

Shirley M. Hufstedler,

Secretary of Education.

(A Catalog of Federal Domestic Assistance Number has not been assigned)

Title 34 of the Code of Federal Regulations is amended by adding a new Part 604 to read as follows:

PART 604—FEDERAL-STATE RELATIONSHIP AGREEMENTS

Subpart A—General

Sec.
604.1 Federal-State relationship agreements.
604.2 Regulations that apply to Federal-State relationship agreements.
604.3 Definitions that apply to Federal-State relationship agreements.

Subpart B—Federal-State Relationship Agreements

604.10 Administrative requirements.
604.11 Planning requirements.
604.12 Changes in the agreement.
604.13 Denial of eligibility.

Authority: Section 1203 of the Higher Education Act of 1965, as amended by Pub. L. 96-374 (20 U.S.C. 1143).

Subpart A—General

§ 604.1 Federal-State relationship agreements.

(a) A State shall enter into an agreement with the Secretary if it wishes to participate in the following programs authorized by the Higher Education Act of 1965, as amended: The Continuing Education Outreach program, Title I-B, with the exception of sections 116 and 117 of the Act; the State Student Incentive Grant program, subpart 3 of Title IV-A of the Act; and the Undergraduate Academic Facilities Grant program, Title VII-A of the Act. The agreement must contain assurances relating to administration, financial management, treatment of applicants for subgrants and contracts, supplement, not supplant requirements, and planning. These assurances are listed in subpart B of this part. The means by which these assurances will be met must also be described.

(b) The provisions of the agreement replace comparable provisions in annual plans previously required by each applicable program.

(20 U.S.C. 1143)

§ 604.2 Regulations that apply to Federal-State relationship agreements.

The following regulations apply to Federal-State relationship agreements:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State Administered Programs) and 34 CFR Part 77 (General).

(b) The regulations in this part 604.

(20 U.S.C. 1232(a))

§ 604.3 Definitions that apply to Federal-State relationship agreements.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Contract
Private
Public
Secretary
State
Subgrant

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

"Applicable programs" means the Continuing Education Outreach program, the State Student Incentive Grant program, and the Undergraduate Academic Facilities Grant program.

(20 U.S.C. 1143)

Subpart B—Federal-State Relationship Agreements

§ 604.10 Administrative requirements.

The agreement shall contain the following assurances and a description of the means by which they will be met:

(a) Management practices and procedures will assure proper and efficient administration of each applicable program. The description of these methods shall include the identification of the State entity or entities designated to administer each applicable program as well as the name of the responsible official.

(b) Appropriate fiscal control and fund accounting procedures will be provided for Federal funds received under all titles of the Act.

(c) Federal funds under the applicable programs will not supplant non-Federal funds.

(d) Equitable and appropriate criteria will be used in evaluating applications for subgrants or proposals for contracts under each applicable program.

(20 U.S.C. 1143)

§ 604.11 Planning requirements.

(a) The agreement shall contain an assurance by the State that it has a comprehensive planning or policy formulation process which:

(1) Considers the relationship between State administration of each applicable program and administration of similar State programs or processes;

(2) Encourages State policies that consider the effects of declining enrollments on all sectors of postsecondary education within the State;

(3) Considers the postsecondary educational needs of unserved and underserved individuals within the State, including individuals beyond traditional college age;

(4) Considers the resources of public and private institutions, organizations, and agencies within the State that are capable of providing postsecondary educational opportunities; and

(5) Provides for direct, equitable, and active participation in the comprehensive planning or policy formulation processes by representatives of institutions of higher education—including community colleges, proprietary institutions, and independent colleges and universities—other providers of postsecondary education services, students, and the general public in the State.

(i) Participation shall be achieved through membership on State planning commissions, State advisory councils, or other State entities established by the State to conduct federally assisted comprehensive planning or policy formulation.

(ii) Participation shall be consistent with State law.

(b) The agreement shall include a description of the planning or policy formulation process through which these assurances will be fulfilled.

(20 U.S.C. 1143)

§ 604.12 Changes in the agreement.

(a) The agreement shall remain in effect until substantial changes in administrative practices or planning processes would require its modification.

(b) Routine organizational or personnel changes are not subject to prior modification of the agreement, but information concerning these changes shall be promptly communicated to the Secretary.

(20 U.S.C. 1143)

§ 604.13 Denial of eligibility.

(a) If the Secretary finds that there is a failure to comply substantially with the assurances of § 604.10 then the Secretary, after giving a State reasonable notice and the opportunity for a hearing, shall notify the State that it is ineligible to participate in any applicable program.

(b) To regain eligibility, a State must satisfy the Secretary that the failure to comply has been remedied.

(20 U.S.C. 1143)

[FR Doc. 80-39216 Filed 12-17-80; 8:45 am]

BILLING CODE 4000-01-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM80-2; Order No. 363]

Final Rules Adopting Expedited Procedures for Experimental Classification Requests

December 12, 1980.

AGENCY: Postal Rate Commission.

ACTION: Final rules.

SUMMARY: The additions to our rules that we adopt here follow a Notice of Conference (44 FR 53545, September 14, 1979) and a Notice of Proposed Rulemaking (45 FR 48663, July 21, 1980), in which we solicited public comment on new rules for experimental classifications. The rules establish expedited procedures for classification cases denominated by the Postal Service as experiments.

EFFECTIVE DATE: January 11, 1981.

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, Postal Rate Commission, Suite 500, 2000 L Street NW., Washington, D.C. 20268; (202) 254-3824.

SUPPLEMENTARY INFORMATION: On September 14, 1979, the Commission published a Notice of Conference (44 FR 53545) that solicited suggestions from the public for streamlining procedures for classification cases proposed by the Postal Service as experiments under section 3623 of the Postal Reorganization Act (39 U.S.C. 3623). The conference was held on September 26, 1979 and notice of parties that submitted written comments subsequent to the conference was published on October 22, 1979 (44 FR 60757).

Following the conference the Commission published a Notice of Proposed Rulemaking (44 FR 48663, July 21, 1980). In it we proposed rules outlining specific expedited procedures for these types of cases. The Postal Service, the Officer of the Commission, the American Bankers Association, Fingerhut Corporation and United Parcel Service submitted responsive comments. We hereby adopt the additions to 39 CFR Part 3001 proposed in our Notice of Proposed Rulemaking, published July 21, 1980, along with a new provision that requires the Postal Service to designate its desired termination date for the experiment.

Requests Denominated by the Postal Service as Experiments

We hereby add the following new paragraph to the new subsection 67(b) of Subpart C of Part 3001, 39 CFR:

(4) The desired duration of the experiment as indicated by the Postal Service in its request and, specifically, in its proposed Domestic Mail Classification Schedule language.

New section 67 is adopted as it appeared in our Notice of Proposed Rulemaking published July 21, 1980, except that new subsection 67(b) is changed by deleting the word "and" after the phrase "service offerings of the Postal Service;" and by deleting the period after the phrase "data with respect to the proposed change" and adding, in lieu thereof, a semicolon and the word "and". To clarify the text for the reader, the new rules as adopted herein appear in their entirety following the discussion on the supplementary information.

The addition of this new paragraph is in response to suggestions by a number of parties that the rules provide for a termination date for the experiment. As indicated by the language of this new provision, it permits the Postal Service to define the duration of the experiment in its request and in the DMCS. We believe this addition is consistent with the overall scheme of the proposed rules which is to provide maximum flexibility to the Postal Service while at the same time ensuring appropriate regulatory review as required by the Act and as set forth in *United Parcel Service v. U.S. Postal Service* 604 F.2d 1370 (3d Cir. 1979).

The Officer of the Commission and the American Bankers Association suggested that parties be permitted to comment on the duration of the experiment. ABA apparently found the opportunity for public comment on this issue implicit in the proposed rules. The OOC proposed the addition of a provision, akin to the one adopted here, to ensure that public comment is permitted on this issue as it is on other issues of material fact under new subsection 67a(b).

We have inserted the new provision in subsection 67(b), as the OOC suggests, so that it is included as one of the criteria the Commission is to consider in determining whether the procedures for experimental cases may be used. We feel that including the provision in this subsection will accomplish a number of objectives. Specifically, the subsection immediately following 67(b) permits the parties to present a case against the use of experimental procedures. They may include, in that presentation, comments on the proposed duration of the experiment in the same fashion that they would comment on any other aspect of the proposal. Parties may also comment on the time period for experiments under new section 67a. That section, which we address more fully below, provides the opportunity for parties to file statements on those issues which they perceive as genuine issues of material fact and which may, as a result, require a trial-type hearing. We agree with the OOC that this opportunity is significant. It allows the parties to submit their views on the procedures the Commission should use for specific issues—such as duration—in experimental cases.

Since we have included a new provision requiring a proposed termination date, we also feel it appropriate to address the hypothetical situation wherein the Postal Service requests an extension for the experiment either because it finds the recommended duration period unsatisfactory or because it finds additional time is needed to conduct an adequate experiment. Several parties have suggested that we specifically provide in our rules for such a possibility.

The Commission, however, could provide, in its order, the opportunity for the Postal Service to submit a request for an extension. Even if it did not, the Service would be free to request a recommended decision changing the time span expressed in the DMCS. This, in all probability, could be rendered expeditiously. *See* PRC Recommended Decision on Postponement of the Effectiveness of Section 002.1 of the Domestic Mail Classification Schedule, Docket No. MC77-2 (August 25, 1977). Consequently, we do not feel an additional provision specifically addressed to this hypothetical situation is necessary.

The OOC contends that the Postal Service should be obligated to give the Commission and the parties advance notice of the intended disposition of the experiment. It states that since the hearing process may be abbreviated in these cases, time is important and it is

reasonable for the parties to be informed of the Postal Service's plans with respect to the data it has collected. Specifically, the OOC suggests that the Postal Service identify whether it intends to request a recommended decision for permanent authority and whether it intends to request an extension for the experiment. The OOC also proposes that the Postal Service be required to give advance notice if it intends to terminate the experiment early.

While it is true that the procedural process is expedited in these cases the new rules still provide, as noted above, ample opportunity for public participation. Consequently, the parties should be adequately informed of the nature of the case to prepare for participation in an extended experiment or in a proceeding involving a request for permanent authority, if the Service makes such a request.

With respect to the specific issue of whether the Service should give advance notice of early termination of the experiment, our new provision 67(b)(4), set forth above, requires the Postal Service to include the desired duration of the experiment in its proposed DMCS language. As a result, the Postal Service would have to request this Commission to issue a recommended decision on any change in the time period. As noted above, we believe that this would be an expedited decisional process and therefore we reject the OOC's proposal.

Turning next to a discussion of new section 67 in general, that section delimits the cases to which the new procedures apply. It states, explicitly, that the new sections are applicable only to classification cases denominated by the Postal Service as experiments. New subsection 67(b) permits the Commission to require that the normal procedures for experiments be used, and sets out specific guidelines to aid the Commission in its determination as to whether the procedures for experimental cases should be used. In addition to these guidelines, new subsection 67(c) provides for the submission of comments, by the public, in support of a determination that the normal procedures for classification cases should be used, despite a Postal Service request for an experimental classification change.

All of the parties that submitted comments responded to the general framework of the rules as set out in new section 67. With the exception of the Postal Service, these comments favored the proposed rules. Some of the parties submitted detailed suggestions for modifying the rules, which will be discussed subsequently. Others made brief comments directed mainly at policy considerations. However, all of these suggestions were coupled with statements like those of Fingerhut Corp. which favored "the spirit of the proposal."

The Postal Service was most critical of new section 67. Initially, we are constrained to point out what appears to be a misinterpretation of subsection (b) of that section. The Service seems to be of the view that subsection (b) authorizes the Commission to "transmute" a request for an experimental classification change to one for a recommended decision on a permanent classification change. However, that subsection merely reserves, to the Commission, the right to require that the normal procedures under section 3623 be used. This does not imply that the Commission automatically will proceed with the procedures for a permanent classification change request. It simply means that the Postal Service, itself, must submit a request under the normal procedures outlined in section 3623, if the Commission denies its request for experimental authority and it still wants to implement the proposed classification change.

The Service also states that the criteria listed in new subsection 67(b) are inappropriate for a Commission determination on whether the procedures for experiments should be used. In general, the Service's criticisms stem from a view that these criteria may be irrelevant from a business or management perspective.

While other or additional factors may be pertinent to management, the criteria we have chosen are ones which would indicate that the classification proposal is unique in the sense that a Commission decision to expedite the procedural process is warranted. We stated in our Notice of Proposed Rulemaking that the rules are designed to balance the Postal Service's statutory mandate to plan and develop efficient postal services, with the Commission's statutory obligation, as confirmed by the courts, to review all classification requests—including experimental proposals. In this respect, the criteria we have listed, such as the effect of the proposal on postal costs and competitive services, as well as the ability of the Service to collect data, are all relevant in determining whether the proposal presents a significant departure from one the Service would normally file under section 3623. As we stated in our Notice, we are, of necessity, guided by the requirements of section 3623.

The Postal Service also argues that section 67 will cause undue delay in the proceedings and will result in "prejudgment" by the Commission. With respect to the issue of prejudgment, we are compelled to point out that the basic principle is that the judicial or quasi-judicial tribunal will approach each issue with an open mind. Several court decisions have addressed this issue and have emphasized the necessity for objectivity in the judicial system. Two cases are particularly noteworthy on this point.

In both *United States* v. *Jeffers*, 532 F.2d 1101 (7th Cir. 1976), and *Wolfson* v. *Palmieri*, 396 F.2d 121 (2nd Cir. 1968), the issue was raised in the context of whether the trial judge should have recused himself. In *Jeffers*, the defendant claimed that the judge was required to recuse himself from a trial on a charge of continuing criminal enterprise, because the judge had presided over the defendant's prior conspiracy trial. The trial judge denied the motion for recusal and the Court of Appeals upheld that ruling. The court referred to Judge Sirica's opinion in *United States* v. *Mitchell*, 337 F. Supp. 1312, 1320 (D.D.C. 1974) in which he distinguished between "personal" and "judicial" bias. The court proceeded to explain that knowledge from prior judicial proceedings is insufficient for recusal. Specifically, the court stated:

> All the defendant alleged in this case was prior judicial actions on the part of Judge Sharp. If from these we infer that Judge Sharp developed personal bias towards the defendant, we are overlooking the basic presumption that a judge approaches each new case with impartiality and conducts the case on its own merits from the evidence there presented quite apart from any other case he might have heard.
> (532 F.2d at 11112.)

In the *Wolfson* case, the defendants objected to a judge presiding at two separate trials; one in which the defendants were charged with fraud in the purchase of certain stock as well as filing false statements with the Securities and Exchange Commission, and the other involving violations of the Securities Act with respect to different stock. As in the *Jeffers* case, the court spoke of the presumption in favor of impartiality on the part of the judge and reiterated the standard that only personal bias will suffice for disqualification:

> The alleged bias and prejudice to be disqualifying must stem from an extra-judicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.

(390 F.2d at 121 (quoting *United States* v. *Grinnell*, 394 U.S. 563, 583 (1968)).)

We believe these principles are equally applicable to the Commission when it acts in a quasi-judicial capacity. Commission proceedings carry the same presumption of impartiality—not prejudgment.

With respect to the time element, the Service contends that subsection 67(c) allowing parties to comment on whether the proposal should be considered an experiment, coupled with the normal time for intervention, will unduly delay the proceedings. We reiterate that these rules provide an opportunity for expedited procedures for requests denominated by the Postal Service as experiments. The Postal Service is always free to proceed under the normal procedures outlined in §§ 3623–3624.

In addition, we stated in our Notice of Proposed Rulemaking that our decisional schedule of 150 days is designed to avoid delays in the institution of the experiment. We do not anticipate the problems that the Service expressed, in meeting that deadline. The hypothetical pleading schedule that the Service posed is one of several possible such scenarios. Even assuming a 60-day schedule—as the Service suggests—for an initial decision on whether to proceed under the new rules, we do not foresee any problems in meeting our final decisional deadline.

Procedures for Limitation of Issues

The Postal Service made the most critical comments on the specifics of new section 67a. The Postal Service claims that the issue-limiting device is a "step in the right direction" but that it does not go far enough. Specifically, it states there is no constitutional or statutory requirement for discovery and that the "unlimited" discovery and hearings permitted by the rules would seriously handicap the Service's competitive status. It proposes that no discovery be permitted and that hearings be limited to cost estimates and rate suggestions.

At the outset, we note that the Service is correct in stating that discovery is not absolutely required under the statute. However, as noted in new section 67a, any procedures we adopt must meet the needs of expedition and procedural fairness in compliance with section 3624(a) of the Act.

New subsection 67a(c) provides an outline of the procedures that may be used for those issues not found to be genuine issues of material fact and therefore not requiring a hearing. These include written comments, conference procedures, briefing and argument. We feel these procedures provide an appropriate balance between expedition and procedural fairness—to accommodate the Postal Service and the public, and to comply with the above-cited standard in section 3624(a).

With respect to those issues which require a hearing, we cannot accept the Service's statement that it is within the Commission's authority to limit hearings to cost estimates. Section 3622 on changes in rates and section 3623 on classification changes enumerate a number of criteria the Commission must consider in passing on Postal Service requests. Section 3624(d) requires us to make specific findings keyed to those criteria. We cannot ignore the statutory mandate to review these criteria and to provide a hearing for those issues found to be genuine issues of material fact. Consequently, we reject the Service's proposed modifications on the procedures for the limitation of issues.

Unavailability of Data

As we explained in our Notice of Proposed Rulemaking, new section 67b is designed to permit most experiments to proceed despite the lack of data required by existing rule 64 of our rules of practice. Most of the comments on our new data requirements for experimental classifications consisted of suggestions for flexibility in the collection of data, and data reporting, which will be discussed below. However, Fingerhut Corp. and the Postal Service made several comments addressed to the new procedures concerning rule 64 data that we think are relevant in the present discussion.

Fingerhut states that the Commission should consider the possibility that the Postal Service may not have enough data before the experiment proceeds to justify a particular rate, classification, or service. We stated in our Notice that new section 67b is a recognition of the experimental nature of the proposal in the sense that the absence of rule 64 data will not, except in extraordinary circumstances, support a contention that the proposal should be rejected. We believe that by virtually eliminating the normal data filing requirements as an issue in these cases, we have taken proper cognizance of the difficulties the Postal Service may encounter in presenting a request for an experimental classification change.

The same analysis applies to the Service's arguments that the new rules place too much emphasis on rule 64 data. If we have focused to that rule, it is by way of reducing its significance in these cases. We therefore reject any contentions that we reduce, even further, the procedures that must be followed with respect to presentations of rule 64 data.

Plans for Data Collection

The rule that prompted the most comments is new section 67c. That section permits the Commission to order the collection of rule 64 data when its omission has not been adequately explained, and also requires the Postal Service to provide a detailed description of data it plans to collect that is not required under rule 64.

All the parties that submitted responsive comments indicated a need for more flexibility during the experiment. The American Bankers Association, the Officer of the Commission and the Postal Service made fairly detailed proposals that would provide for this flexibility and that would also modify several other aspects of the data collection procedures.

Both ABA and the OOC suggested it would be reasonable to allow the Postal Service to vary certain aspects of the service during the course of the experiment if the following additional provisions were incorporated in the rules: that the Postal Service be required to submit reports on its data collection efforts so that the Commission can monitor the experiment, that parties be permitted to comment on changes the Service proposes during the course of the experiment, and that the Commission issue an order on the propriety of any such changes. While the parties differed slightly in the means they proposed to accomplish these goals, the basic thrust of the proposals was the same.

We agree with the OOC and ABA to the extent that it may, in some instances, be desirable to allow the Service to vary some aspects of its data collection efforts. A change in the service itself, if it involved a change in the actual mail classification, would as the law now stands require new classification proceedings. In this respect, the opportunity for data collection variation can be provided consistently with subsection (a) of new rule 67c. That section permits the Commission to order the collection of rule 64 data, if the Service does not plan to collect this data and has not provided adequate justification for omitting it.

But, the rule does not forbid changes during the experiment. We believe the cited language in the rule permits, and we contemplate permitting the Postal Service to request such changes. Since data collection changes would not amount to classification changes, we think the Commission could issue an

order providing for them by the notice and comment procedure.

It is important to distinguish, however, the circumstances under which these procedures would be used. In particular, we do not anticipate that changes by the Postal Service—during the course of an experiment—in the collection of data that is not required under rule 64, would warrant the procedures outlined above. Data collected pursuant to rule 64 is geared toward the requirements of requests for permanent classification changes. We believe that data collection that is not directed to such a request need not be subject to regulatory review.

The OOC and ABA also suggest that the Postal Service be required to submit reports at specified intervals on the data collected. ABA states this provision is necessary if the Commission accepts its proposal for variations during the service, as opposed to requiring the Service to submit a new request with each change in the experiment. It thus appears to be concerned that we retain appropriate regulatory oversight. The OCC's proposal proceeds from the assumption that a major purpose of experimentation is to make an early determination on the effects of the service on competition. It concludes that data reporting will allow the Commission to monitor those effects.

With respect to ABA's position, we believe that the use of the notice and comment procedure for proposed changes during the experiment provides adequate regulatory review. We conclude further that the OOC's concerns are misplaced in light of the scope and purpose of these rules.

We agree that the effect of the service on competition—along with the other factors enumerated in section 3623 and section 3622—is an important consideration during the experimental stage. However, we do not agree with the OOC's statement that "[c]onfronting an adverse competitive issue in a regular classification request after the competitive injury occurs defeats the purpose of conducting the experiment." We reiterate that the main purpose of these rules is to provide streamlined procedures to accommodate Postal Service requests for experimental classification authority. Given this purpose, we have provided for a modicum of regulatory oversight—including public participation—to comply with the *UPS* decision that mandated this regulatory review. Accordingly, under our new rules, the OOC has the opportunity to analyze the Service's request and to submit its views on the issue of competition or any other aspect of the experiment. It will have an additional opportunity to do so if the Service decides, at the conclusion of an experiment, to file a request for permanent authority.

In our view, this latter opportunity is significantly broader than the one presented in the normal situation where a request for permanent authority is not preceded by an experiment recommended by the Commission. In particular, in a proceeding following an experiment, the OOC can evaluate the results of the experiment, as presented by the Service in its new request, and can refer to any issues raised in the experimental case that have a bearing on the new proceeding. The same would be true for any other party as well as the Commission.

We also point out that the issue of the effect of the Service's experiment on competition, with which the OOC is most concerned, is particularly susceptible to review that is based on information provided by parties adversely affected by the experiment. Consequently, presentations by such parties in a proceeding following the experiment would be far more useful on this issue than data reporting by the Service during the experiment.

In conclusion, we feel our rules provide adequate protections in terms of Commission review of data collected during an experiment and, as a result, we reject the proposals of ABA and the OOC.

The Postal Service challenges the legality of new rule 67c as well as the practicalities of the rule. It states, at the beginning of its comments, that it feels the *UPS* case was wrongly decided but that it will treat it as controlling for the purposes of this rulemaking. It proceeds with specific arguments most of which center around the need for Postal Service flexibility in experiments.

The Postal Service emphasizes that the *UPS* case held that only proposed experimental rate and classification changes must be submitted to the Commission. It goes on to outline the parameters of experimentation, including the need for changes in marketing, operations, and pricing, in order to determine the viability of a service.

The Service also contends that the Commission's rules would hamper any Postal Service attempts to experiment.

It states that the new sections on rule 64 data would bind the Service to a fixed data scheme that would not serve any purpose in an experiment. In this regard, it also states that the rules require detailed inquiries into Postal Service planning that would be useless because "either the evolution of the service being tested will quickly leave behind the matters being considered in hearings, or the experiment will fail of its own rigidity."

In commenting on the Commission's legal authority with respect to experiments, in general, and the new rules, in particular, the Service states the Commission has no authority to order the Service to collect data or to specify the manner in which data should be collected unless it limits itself to suggestions. It also contends that the Commission's only role in experiments is to recommend "an appropriate new classification for the experiment."

With respect to the Service's comments on the validity of the *UPS* decision, we note that the Commission is bound by that decision and it must be considered controlling. Consequently, the Service's implication that it needs latitude to vary the price of the experiment before seeking a recommended decision from the Commission cannot be accommodated given the present state of the law.

As noted above, the Service also states that the *UPS* decision is limited to experiments involving rate and classification changes and it therefore appears concerned that the Commission's rules govern experiments other than those involving these types of changes. We would like to point out that the Commission's new rules do not affect Postal Service experiments involving operational changes. Such changes are not jurisdictional under the statute and therefore would not require Commission review under the *UPS* decision or any rules promulgated pursuant to that decision.

However, for those experiments that are subject to the Commission's jurisdiction we must provide appropriate regulatory safeguards. We stated previously that we are guided, in this endeavor, by the requirements of the statute. In this regard, while new section 67c is predicated on an understanding that the Postal Service may not have rule 64 data available to it when it requests experimental authority, it also is based on the assumption that one of the purposes of experimentation is to collect such data to prepare for some future request for a permanent classification change.

The Postal Service claims, in some portions of its comments, that this is not necessarily the purpose of experimentation, but at other points implies that it is. We hope that our statements clarifying the rules with respect to Postal Service experiments involving operational changes will alleviate some of its concerns that experiments of that nature, which may not be ripe for a recommended decision,

need not be subject to Commission review.

We believe that additional clarification on the requirements for describing and collecting data, outlined in new section 67c, is necessary to address the Service's claims that the Commission lacks authority to institute these provisions.

At the outset, we reiterate that new subsection 67c(a), which permits the Commission to order data to be collected, applies only to rule 64 data. We stated this was the case in reference to orders that might be issued in response to requests for changes in data collection during the course of the experiment. The same is true with respect to orders issued pursuant to an initial decision on the experiment. New subsection 67c(b), regarding data not required under rule 64, does not direct that this data be collected but requires the Postal Service, if the Service itself plans to collect such data, to describe how the data will be collected and the uses to which it would be put. The purpose of these subsections, as we stated in our Notice, is to determine whether the experiment is adequately designed to measure the necessary variables, and also to determine whether there will be appropriate data for a decision on a future request for permanent authority.

Given this analysis, we cannot countenance the Service's arguments that the Commission lacks the legal authority to issue these provisions. We do not purport to direct the Service to collect data other than that required under rule 64. Furthermore, new subsection 67c(a) provides that the Commission may order the collection of rule 64 data only if it finds the Service has not adequately explained its reasons for believing that such data is unnecessary.

If the Service's comments extend to an argument against our authority to order the collection of rule 64 data, we are compelled to note that this claim also is without merit. The data specified under that rule is required in any Postal Service request under section 3623, for permanent authority. Bearing in mind that the rules are geared toward the section 3623 requirements and that the Service may proceed under that section, if it is so inclined, we conclude there are no legal obstacles to requiring the collection of rule 64 data in an experiment if the Commission deems such data necessary under the procedures described in new section 67c.

Finally, with respect to the Service's contention that the Commission's role in experiments does not include oversight of items such as data collection, but is limited to recommending an appropriate classification for the experiment, we conclude that this is a rather spurious argument even when viewed in the context of the Service's own comments. The Service, itself, proposes that the Commission limit hearings to cost estimates and that it limit its recommendations to a proposed range of rates. Consequently, the Service appears to be aware that the Commission can and often must do more than simply recommend a classification. We have discussed, previously, our reasons for rejecting the Service's specific proposals. We reject, categorically, the above-cited comments on the Commission's limitations regarding experiments. We are required, under the statute, to take due account of a number of factors in reviewing proposals for classification changes. In these new rules we have provided the opportunity for parties to raise issues related to those factors. The fact that we also have provided the opportunity to streamline our procedures does not remove these statutory criteria from Commission consideration.

Accordingly, under the authority of 39 U.S.C. 3603, we hereby amend Title 39 of the Code of Federal Regulations, Part 3001, by adding the following new sections:

§ 3001.67 Requests involving experimental changes.

(a) This section and §§ 3001.67a–3001.67d apply in cases where the Postal Service requests a recommended decision pursuant to section 3623 of the Postal Reorganization Act and denominates the new service or change in an existing service as experimental in character. These sections do not apply to the situation in which a request not denominated as experimental by the Postal Service, either at the time of its filing or subsequently, is found to be justified by the Commission only on an experimental basis, following analysis of the record made in the proceedings on such a request.

(b) This section and §§ 3001.67a–3001.67d are not intended to substitute for the rules generally governing requests for changes in the Domestic Mail Classification Schedule in cases where the treatment of the proposed changes as experimental is not justified by the character of those changes. The Commission reserves the right, in appropriate cases, to require that the normal procedures prescribed for nonexperimental cases under section 3623 be used. In determining whether the procedures for experimental cases may be used in a particular case, the Commission will consider:

(1) The novelty of the proposed change;

(2) The magnitude of the proposed change, including its effect on postal costs, postal revenues, mailing costs and practices of users of the mails, and persons or firms offering services competitive with or alternative to the service offerings of the Postal Service;

(3) The ease or difficulty of generating or gathering data with respect to the proposed change; and

(4) The desired duration of the experiment as indicated by the Postal Service in its request and, specifically, in its proposed Domestic Mail Classification Schedule language.

(c) In the case of a proposal denominated as an experiment by the Postal Service, the Commission will entertain representations by parties to the case that the proposal should not be considered as an experiment and should follow the normal mail classification change procedures. The Commission does not contemplate entertaining representations by parties to a case filed under the normal procedures that the matter should be treated as an experiment under this section and §§ 3001.67a–3001.67d.

§ 3001.67a Requests involving experimental changes—procedures for limitation of issues.

(a) The purpose of this section is to provide a mechanism for the limiting of issues on which a trial-type hearing is required. It recognizes that in a proceeding properly designated as experimental under § 3001.67, some issues will be appropriate for determination on the basis of a less formal type of presentation and counterpresentation. It is the policy of this section to identify these issues at the earliest possible time and to employ less formal procedures to resolve them where the interests of expedition will be served thereby.

(b) At the earliest possible time following the filing of a request designated as experimental, or following the determination of any question as to whether such designation is proper, holding that such designation is proper, the parties will be required to file statements of the issues they perceive in the case. Each such statement shall designate with particularity those issues the party believes to be or involve

genuine issues of material fact. Any party designating an issue as a genuine issue of material fact wholly or in part because of the Postal Service's statement that data called for by § 3001.64 are unavailable shall comply with the requirements of § 3001.67b. Responsive statements will be permitted within 10 days of the filing of initial statements.

(c) Following the exchange of statements of issues called for by paragraph (b) of this section, the Commission will determine which issues constitute genuine issues of material fact and concomitantly order the limitation of trial-type hearing procedures to those issues. The order issued for this purpose will also set forth to the greatest extent feasible the procedures to be followed in disposing of issues not found to be genuine issues of material fact. According to the nature of the individual issue, these procedures may include.

(1) Filing of written comments and reply comments;

(2) Conference procedures, followed or accompanied by the filing of written comments and reply comments; and

(3) Briefing and argument.

In determining the procedures to be followed with respect to issues not requiring a trial-type hearing, the Commission will seek to accommodate the needs of expedition and procedural fairness in accordance with section 3624(b) of the Act.

§ 3001.67b Requests involving experimental changes—unavailability of data.

If the Postal Service believes that data required to be filed under § 3001.64 are unavailable, it shall explain their unavailability as required by § 3001.64(a)(2)(i), (ii), and (iv). In particular, if the experimental character of the request bears on the unavailability of the data in question, the Postal Service shall explain in detail the nexus between these circumstances. A satisfactory explanation of the unavailability of data will be grounds for excluding from the proceeding a contention that the absence of the data should form a basis for rejection of the request, unless the party desiring to make such contention (a) demonstrates that, having regard to all the facts and circumstances of the case, it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the data which are unavailable, or (b) demonstrates other compelling and exceptional circumstances requiring that the absence of the data in question be treated as bearing on the merits of the proposal.

§ 3001.67c Requests involving experimental changes—plans for data collection.

(a) In any instance in which the Postal Service designates as unavailable data called for by § 3001.64, it shall, as part of its initial filing under that rule, either

(1) Describe with particularity the means it proposes to employ to collect those data, or

(2) State with particularity the reasons it believes establish that such data are unnecessary.

The Commission may by order require data to be collected during the course of the experiment which the Postal Service has not planned to collect, if it finds that a statement under paragraph (a)(2) of this section does not justify the omission to collect the particular data in issue.

(b) In the case of data which are not required to be filed under § 3001.64, but which the Postal Service intends to collect during and for the purposes of the proposed experimental change, the Postal Service shall include in its initial filing a detailed description of the data involved, the uses to which they would be put, and the methods to be employed in collecting them.

§ 3001.67d Requests involving experimental changes—time limit.

The Commission will treat cases falling under §§ 3001.67–3001.67d as subject to the maximum expedition consistent with procedural fairness. The schedule for adoption of a recommended decision will therefore be established, in each such case, to allow for issuance of such decision not more than 150 days from the determination of any issue as to the propriety of experimental treatment under § 3001.67 (b) and (c) in a sense favorable to such treatment, or from the date of the filing of the request, whichever occurs later. Nothing in this section shall be construed to affect the rights of the Postal Service or of other parties with respect to the temporary implementation of changes pursuant to section 3641 of the Act.

By the Commission.

David F. Harris,

Secretary.

[FR Doc. 80-39251 Filed 12-17-80; 8:45 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL 1694-5]

Revision to the State Implementation Plan (SIP) for the State of New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Revisions to the State Implementation Plan (SIP) for the State of New Hampshire were submitted to EPA on January 30, 1979 by the Air Resource Agency Director. Those revisions included a comprehensive air quality monitoring plan intended to meet requirements of 40 CFR Part 58.

On June 26, 1980 the Regional Administrator published in the Federal Register (45 FR 43230) a Notice of Proposed Rulemaking for this Revision to the New Hampshire SIP, to approve the comprehensive air quality monitoring plan. No comments were received during the 30-day comment period. EPA is taking final action approving the revision.

EFFECTIVE DATE: These regulations take effect January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Donald P. Porteous, Air Section, EPA, Region I, 60 Westview Street, Lexington, Massachusetts 02173. (617) 861-6700.

SUPPLEMENTARY INFORMATION: On May 10, 1979 (44 FR 27558) pursuant to the requirements of Sections 110(a)(2)(C), 319, 313, and 127 of the Clean Air Act, EPA promulgated ambient air quality monitoring, data reporting, and surveillance provisions, establishing a new Part 58 in 40 CFR, entitled Ambient Air Quality Surveillance.

New Hampshire has submitted a Comprehensive Air Quality Monitoring Plan designed to meet the requirements of Part 58. EPA has found that the New Hampshire submittal meets the applicable regulations. EPA proposed approval of the Comprehensive Air Quality Monitoring Plan in a notice of proposed rulemaking (45 FR 43230). No comments were received during the 30-day comment period. EPA is now granting final approval of the New Hampshire plan.

After evaluation of the state's submittal, the Administrator has determined that the New Hampshire revision meets the requirements of the Clean Air Act and 40 CFR Part 58. Accordingly, this revision is approved as a revision to the new Hampshire State Implementation Plan.

(Sec. 110(a), 301, Clean Air Act, as amended, (42 U.S.C. 7401 and 7601))

Dated: December 12, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart EE—New Hampshire

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

§ 52.1527 [Amended]

In § 52.1527, Rules and Regulations, in paragraph (b) Non-Part D—No Action, delete: subparagraph (1) comprehensive air quality monitoring network, and renumber paragraph (b)(2)-(6) as paragraph (b)(1)-(5).

§ 52.1520 [Amended]

Under § 52.1520, Identification of Plan, add paragraph (c)(16) as shown below:

* * * * *

(c) * * *

(16) A comprehensive air quality monitoring plan, intended to meet requirements of 40 CFR Part 58, was submitted by the New Hampshire Air Resource Agency Director on January 30, 1980.

[FR Doc. 80-39329 Filed 12-17-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 60

[AD-FRL 1690-3]

Standards of Performance for New Stationary Sources; Petroleum Liquid Storage Vessels: Correction

AGENCY: Environmental Protection Agency.

ACTION: Correction of final rule.

SUMMARY: This action amends the standards of performance for petroleum liquid storage vessels by adding gap criteria for secondary seals used in combination with primary vapor-mounted seals on external floating roofs. This amendment is necessary because these criteria were inadvertently omitted from the standards promulgated on April 4, 1980 (45 FR 23373). The intent of this amendment is to correct the standards to reflect the original intent as expressed in the proposed standards and in the preamble to the final standards.

EFFECTIVE DATE: December 18, 1980.

ADDRESSES: Docket No. OAQPS-78-2, containing all supporting information used by EPA in developing the standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Smith, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5421.

SUPPLEMENTARY INFORMATION: Standards of performance for new petroleum liquid storage vessels were promulgated on April 4, 1980 (45 FR 23373). The standards are in terms of equipment specifications and maintenance requirements. One of the requirements is for storage vessels with external floating roofs to be equipped with two seals, a primary and a secondary, for which minimum allowable gaps are specified. The gap requirements in the final standards were intended to be approximately equivalent to those in the proposed standards. The preamble states, "Since the seal gap surface area allowed in the final standards is approximately equal to that allowed in the proposed standards, about the same VOC emission reduction . . . will result."

The proposed standards specified gaps for two types of primary seals, a metallic shoe seal and a non-metallic resilient seal (vapor-mounted seal), and for the secondary seals used with them. For secondary seals used with metallic shoe primary seals, the proposed standards would have allowed gaps as wide as 0.32 cm (⅛ inch) for 95 percent of the tank circumference and gaps as wide as 1.3 cm (½ inch) for the remaining 5 percent of the tank circumference. For secondary seals used with vapor-mounted primary seals, the proposed standards were more restrictive, requiring that gaps be no wider than 0.32 cm (⅛ inch) for 100 percent of the tank circumference.

In the final standards, the gap requirements were expressed in terms of total gap area rather than as maximum allowable gap widths to provide a more effective and uniform compliance procedure. The final standards specify that only gaps greater than 0.32 cm (⅛ inch) are to be measured for purposes of determining total gap area [40 CFR 60.113a(a)(1)(ii)(B)]. This, in effect, allows a 0.32 cm (⅛ inch) gap around the entire circumference of the tank for each seal. Therefore, in converting the proposed gap requirements to the final total gap area, only gaps greater than 0.32 cm (⅛ inch) were included in the calculations. The proposed allowance of gaps 1.3 cm (½ inch) wide for 5 percent of the tank circumference for secondary seals used with metallic shoe seals was correctly expressed as a total gap area of 21.2 cm^2 per meter of tank diameter (1.0 in^2 per ft. of tank diameter) in the final standards. The proposed requirement that there be no gaps wider than 0.32 cm (⅛ inch) for 100 percent of the tank circumference for secondary seals used with vapor-mounted primary seals should have been expressed as a requirement for no gaps. However, this requirement was inadvertently omitted from the final standards, thus unintentionally allowing these seals to have the larger gaps specified for secondary seals used with metallic shoe seals. The standards are, therefore, being corrected to reflect the original intent of allowing no gaps for secondary seals used with vapor-mounted primary seals. As provided by Section 111(a)(2) of the Clean Air Act, the standards as corrected by today's action apply to storage vessels for which construction began after May 18, 1978, the date on which the standards were proposed.

The Administrator believes that this correction to the standards of performance will not have any adverse impacts on owners or operators of petroleum liquid storage vessels. Since secondary seals are designed to fit very tightly against the tank wall, any new seal installed on a new storage vessel since the April 4, 1980, promulgation date would easily be able to meet the intended no gap criterion. Therefore, this correction is applicable to any storage vessel for which construction or modification began after May 18, 1978.

The Administrator finds that good cause exists under 5 U.S.C. 553(b)(B) for omitting prior notice and public comment on this amendment because it simply corrects a technical error in the promulgated standards so that the standards reflect the intent expressed in the preamble and in the proposed standards.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for revisions determined by the Administrator to be substantial. Since the costs associated with the amendment would have a negligible impact on consumer costs, the Administrator has determined that the amendment is not substantial and does

not require preparation of an economic impact assessment.

Dated: December 12, 1980.

Douglas M. Costle,

Administrator.

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended by revising § 60.112(a)(1)(ii)(B) to read as follows:

§ 60.112a Standard for volatile organic compounds (VOC).

(a) * * *

(1) * * *

(ii) * * *

(B) The accumulated area of gaps between the tank wall and the secondary seal used in combination with a metallic shoe or liquid-mounted primary seal shall not exceed 21.2 cm^2 per meter of tank diameter (1.0 in^2 per ft. of tank diameter) and the width of any portion of any gap shall not exceed 1.27 cm (½ in.). There shall be no gaps between the tank wall and the secondary seal used in combination with a vapor-mounted primary seal.

* * * * *

(Sec. 111, 301(a) of the Clean Air Act as amended [42 U.S.C. 7411, 7601(a)])

[FR Doc. 80-39328 filed 12-17-80; 8:45 am]

BILLING CODE 6560-26-M

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40 CFR Part 123

[SW 4 FRL 1708-5]

North Carolina's Application for Phase I Interim Authorization of a State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency, Region IV.

ACTION: Notice of final determination.

SUMMARY: The purpose of this notice is to announce the final determination that has been made in regard to an application for Phase I Interim Authorization submitted by the State of North Carolina.

The Environmental Protection Agency has reviewed North Carolina's Application for Interim Authrorization and has determined that North Carolina's Hazardous Waste Program is substantially equivalent to the Federal program as defined by regulations promulgated under the Resource Conservation and Recovery Act of 1976 (RCRA). The State of North Carolina is hereby granted Interim Authorization to operate the RCRA Subtitle C hazardous waste management program (Phase I) in accordance with Section 3006(c) of RCRA and implementing regulations found in 40 CFR 123 Supart F.

EFFECTIVE DATE: Interim Authorization. Phase I, for North Carolina shall become effective on Thursday, December 18, 1980.

FOR FURTHER INFORMATION CONTACT: John Herrmann, Residuals Management Branch, U.S. EPA, Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30365, Telephone (404) 881-3016.

SUPPLEMENTARY INFORMATION: In the May 19, 1980, Federal Register (45 FR 33063), the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), to protect human health and the environment from the improper management of hazardous wastes. The Act (RCRA) includes provisions whereby a State agency may be authorized by EPA to administer the hazardous waste program in that State in lieu of a Federally administered program. For a State program to receive final authorization, its hazardous waste program must be fully equivalent to and consistent with the Federal program under RCRA. In order to expedite the authorization of State programs, RCRA allows EPA to grant a State agency Interim Authorization if its program is substantially equivalent to the Federal program. During Interim Authorization, a State can make whatever legislative or regulatory changes that may be needed for the State's hazardous waste program to become fully equivalent to the Federal program. The Interim Authorization program will be implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect.

The State of North Carolina submitted its draft application for Phase I Interim Authorization on August 4, 1980. After detailed review, EPA identified several areas of major concern and transmitted comments to the State for its consideration. The State subsequently made revisions to its Application for Phase I Interim Authorization in order to clarify those aspects of its program which had been questioned during the EPA review.

On September 17, 1980, North Carolina submitted to EPA a Final Application for Phase I Interim Authorization under RCRA. An EPA review team consisting of both Headquarters and Regional Office personnel made a detailed analysis of North Carolina's hazardous waste management program. The following issues were raised by the review team:

(a) Does North Carolina provide adequate public participation in the enforcement process?

(b) Since the North Carolina statute excludes from the definition of solid waste "wastewater discharges and sludges incidental thereto" generated by point sources which are subject to NPDES permits, are waste water treatment sludges regulated in compliance with RCRA?

To resolve these issues the State provided the following documentation:

(a) The State amended the Program Description, Memorandum of Agreement, and Authorization Plan on October 9, 1980. These Amendments assured that the State program does comply with 40 CFR 123.128(f)(2)(ii) in regard to providing public participation in the enforcement process. In particular the State gave assurances that it will (i) investigate and provide written response to all citizen complaints, (ii) not oppose intervention by any citizen where permissive intervention may be authorized by statute, rule, or regulation, and (iii) publish and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

(b) The State's regulation of sludges was clarified by the following documentation: A Memorandum of Understanding between the North Carolina Department of Human Resources and the Department of Natural Resources and Community Development, dated September 11, 1980; amendments to the Memorandum of Agreement and Authorization Plan dated October 9, 1980; an amendment to the Attorney General's Statement dated October 27, 1980; and, a letter from the Department of Human Resources to EPA dated November 13, 1980. This documentation indicates that sludges generated in an NPDES system will be regulated as follows (i) while they are in the NPDES treatment system, the State hazardous waste provisions apply; the statutory exclusion applies only when the sludges leave the treatment system; (ii) The disposal of these sludges requires an NPDES permit, and "disposal" as used in the State NPDES statute includes acts leading up to disposal, e.g., transportation and storage. The Department which issues NPDES permits has agreed to issue sludge disposal permits consistent with the requirements of RCRA.

These sludges are therefore subject to regulation from their generation through their ultimate disposal. The State is committed to make the statutory changes necessary to bring these sludges fully within the State hazardous waste system.

RESPONSIVENESS SUMMARY

As noticed in the Federal Register on September 26, 1980 (45 FR 63888), EPA gave the public until November 4, 1980, to comment on the State's application. EPA also held a public hearing in Raleigh, North Carolina, on October 29, 1980. The oral comments received at the public hearing and written comments submitted directly to EPA are summarized below along with EPA's responses.

Six individuals spoke at the public hearing. Their comments and EPA's responses are presented below:

Comment: Three of the speakers made statement supporting North Carolina's request for Interim Authorization.

EPA Response: No response needed.

Comment: Three speakers gave statements supporting the State's request for Interim Authorization, but they also expressed a desire to see an adequate and effective public participation program that would involve local government agencies in the implementation of the hazardous waste management program in the State and that would more adequately inform and educate the general public about hazardous waste problems and solutions.

EPA Response: The North Carolina Hazardous Waste Management Program satisfies EPA's public participation requirements for Interim Authorization as contained in 40 CFR Part 123 (Subpart F). In particular the State has provided EPA assurance that it will (a) investigate and provide written response to all citizen complaints, (b) not oppose intervention by any citizen where permissive intervention may be authorized by statute, rule, or regulation, and (c) publish and provide at least 30 days for pubic comment on any proposed settelement of a State enforcement action. EPA agrees with the commenters that a broader program of public education and involvement in hazardous waste issues is desirable and, although not required by regulation, EPA feels that such public participation will come about as a necessary part of successful program implementation.

Comment: One commenter suggested that the State program should require spill contingency plans for facilities which store or handle hazardous waste and are currently exempted from such requirements.

EPA Response: North Carolina's regulations on hazardous waste treatment, storage, and disposal facilities require facilities to have appropriate contingency plans for spills. The State's program in this area is in compliance with EPA's requirements for interim authorization.

In addition to the comments received at the public hearing, written comments were received from five individuals or organizations during the review period. The written comments and EPA's responses are summarized as follows:

Comments: Three of the commenters supported the State's request for interim authorization and expressed the feeling that a State agency could implement and manage the program more effectively than a Federal agency.

EPA Response: No response needed.

Comment: One commenter raised a question about whether or not the extraction procedure (E.P.) toxicity test was a suitable test for determining whether or not certain sludges are hazardous wastes. The commenter also proposed that North Carolina amend its regulatins to limit the pounds of heavy metals per acre that can be disposed of in a land treatment system. The commenter also proposed that carriers of sludges containing excess heavy metals comply with EPA "Standards for Transporters of Hazardous Wastes."

EPA Rsponse: North Carolina's regulations on determining which wastes are hazardous are substantially equivalent to the Federal program under RCRA. The comment concerning the E.P. toxicity test will be considered by EPA in any future revisions of EPA regulations. The comment concerning a limitation on heavy metals per acre in land treatment systems relates to standards for treatment, storage, and disposal facilities which are not a part of Phase I Interim Authorization and therefore are not considered in granting Phase I Interim Authorization. This comment will be taken into consideration by EPA and the State when standards for disposal facilities are written or amended.

In regard to the last comment, carriers of sludges must comply with EPA's "Standards for Transportation of Hazardous Waste" if the sludges being transported are hazardous wastes according to EPA regulations promulgated under RCRA and the sludges are not specifically excluded by the State statute. Carriers of hazardous sludges excluded under the State statute (see explanation in SUPPLEMENTARY INFORMATION) must comply with RCRA transporter requirements that are incorporated into the sludge disposal permit of the NPDES facility.

Comment: One commenter questioned whether North Carolina is legally entitled to Interim Authorization based on the criteria that a State has to have an effective State hazardous waste program in existence as of August 17, 1980.

EPA's Response: EPA interprets the word "program" as used above to mean enabling legislation only. (From Federal Register dated May 19, 1980, page 33387). Although EPA will not require States to have more than legislative authority in place, it will require all aspects of the State program to be "substantially equivalent" to the Federal Program by the time interim authorization is actually granted. North Carolina is in compliance with these requirements in that it had enacted legislation before August 17, 1980, and its program will be substantially equivalent to the Federal program on November 19, 1980 when EPA's rgulations become effective.

Comment: One commenter expressed concern over the regulations governing the transportation of hazardous wastes. In particular, the commenter was concerned that the EPA, Department of Transportation, and State regulations be uniform so as to minimize the difficulties that interstate transporters would face. The commenter requested that states which receive interim authorization be required to comply with a general provision which would allow that a carrier who was in compliance with the Federal requirements would be deemed to be in compliance with State requirements as well. Finally, with regard to any subsequent changes in the rules affecting rail carriers, the commenter requested that the State be required to amend its regulations accordingly.

EPA's Response: EPA shares the commenter's concerns regarding the interstate movement of hazardous wastes. North Carolina regulations (10 NCAC 10 F.0031) require transporters in any mode to comply with standards identical to the Federal standards, since these standards have been adopted by reference.

Since the State program is expected to operate "in lieu of" the Federal program, EPA cannot require the State to set aside its rules without due process. However, the State is required to modify its regulations within one year of the date of promulgation (see § 123.13 (e)), unless a statutory change is required.

Decision

For the foregoing reasons I have determined that North Carolina qualifies for Phase I Interim Authorization. I hereby issue the State of North Carolina Interim Authorization to operate its Hazardous Waste Management Program in lieu of Phase I of the Federal RCRA Subtitle C Hazardous Waste Management Program. This issuance of

Interim Authorization is in accordance with Section 3006(c) of RCRA, implementing regulations found in 40 CFR Part 123, Subpart F, and EPA Delegation 8-7.

Dated: December 15, 1980.

Rebecca W. Hanmer,

Regional Administrator.

[FR Doc. 80-39485 Filed 12-17-80; 8:45 am]

BILLING CODE 6560-30-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[Gen. Docket No. 80-135; RM-3378; FCC 80-631]

Continued Assignment of Frequencies in the 420-450 MHz Band for Non-Government Radiolocation

AGENCY: Federal Communications Commission.

ACTION: Report and order adopting final rule.

SUMMARY: The Federal Communications Commission has revised its regulations to permit non-government radiolocation licensees operating in the 420-450 MHz band to continue usage of the band after the January 1, 1981, cut-off date. The need for oil exploration at greater distances offshore warrants continued assignment of frequencies in the band for non-government radiolocation users. The revision deletes the cut-off date and permits operation to continue along the shorelines of Alaska and the contiguous 48 states without cessation.

EFFECTIVE DATE: December 19, 1980.

ADDRESS: Federal Communications Commission, 2025 "M" Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Tropea/Mr. George Sarver, Office of Science and Technology, 2025 "M" Street, NW., Washington, D.C. 20554 (202) 653-8167.

In the matter of revision of Parts 2 and 90 of the Commission's rules and regulations to permit the continued assignment of frequencies in the 420-450 MHz band for non-Government radiolocation, Gen. Docket No. 80-135, RM-3378.

Report and Order

Adopted: November 6, 1980.

Released: November 21, 1980.

Summary

1. This action amends the Commission's rules to allow non-Government radiolocation operations in the 420-450 MHz band to continue along the shorelines of Alaska and the contiguous 48 states after January 1, 1981 on a secondary basis to Government radiolocation and the Amateur Radio Service.

Background

2. On March 31, 1980 the Commission adopted a Notice of Proposed Rule Making (FCC 80-178) in the above captioned matter in response to a petition filed on May 10, 1979, by Del Norte Technology, Inc. (hereinafter "Del Norte").[1] The Notice proposed that § 2.106, Footnote U.S. 217 and § 90.103(c)(21) of the rules be amended to delete the January 1, 1981 cut-off date for assignment of frequencies in the 420-450 MHz band for non-Government radiolocation along the shorelines of Alaska and the contiguous 48 states on a secondary basis to Government radiolocation and Amateur Radio Services operating in the band. The Notice was duly published in the Federal Register on April 15, 1980 (45 FR 25412). Comments were due by May 16, 1980, and Reply Comments by June 2, 1980. An extension of time until June 2, 1980 for Comments and to June 16, 1980 for Reply Comments was granted. A further extension of time until June 26, 1980, for Reply Comments was also authorized.

3. The cut-off date was established by the proceedings in Docket 20147 adopted on March 10, 1976, to permit use of the 420-450 MHz band for non-Government radiolocation as an alternative to the SHORAN frequencies (220-310 MHz) which were no longer available for usage and to the 2900-3700 MHz band for which suitable equipment had not yet been developed. Usage of the 420-450 MHz band was selected since operation on a waiver basis produced no reported harmful interference and because of its suitablility for highly accurate medium to long range radiolocation capability.

Summary of Comments and Reply Comments

4. Comments and reply comments were received in response to the Notice and a list of the commenters is contained in Appendix A.

5. Except for the American Radio Relay League (ARRL) which objected to the proposed rule change, all other comments and reply comments submitted were supportive of the proposed amendment. Two of the petitioners, Southern California Repeater and Remote Base Association (SCRRBA), and Richard W. Doering were representative of the amateur radio community and concurred with the proposed deletion of the cut-off date provided the resultant operation was on a non-interference basis to other users of the band. SCRRBA did, however, express some concern regarding the identification of interferring signals. Other supportive comments were received from equipment manufacturers and users of radiolocation equipment.

6. The majority of the supportive comments reflected three areas of agreement for permitting continued usage of the 420-450 MHz band. The areas of agreement are summarized as follows:

(a) The propagation difficulties experienced in the higher frequency bands available for non-Government radiolocation do not qualify them as substitutes for the high accuracy and long distance capability of the 420-450 MHz band.

(b) Radiolocation is an essential element in the developmnent of offshore energy resources for the country and it is important that adequate services be available to users.

(c) Operation will be on a non-interference basis with primary users; and that experience has proven non-Government radiolocation feasible and compatible with the other operations in the band.

7. Other comments were provided by the National Ocean Industries Association (NOIA), a trade association representing over 400 member companies involved in offshore and ocean-oriented activities. NOIA expressed its position that cut-off dates set without a clearly demonstrated need serve to stifle technical development and investment. In addition, Offshore Navigation, Inc. (ONI), a user of radiolocation equipment in the 420-450 MHz band, commented on the suitability of using the 420-450 MHz band and pointed out that the International Radio Regulations recognize the Radiolocation Service as the primary service in the band in Regions 2 and 3. ONI also cited a study conducted by the Canadian Department of Communications that reaffirmed the 420-450 MHz band allocation for the Radiolocation Service in view of the requirements presented regarding offshore petroleum exploration and development. Also SERCEL, Inc. (Sercel), a manufacturer of radiolocation equipment commented that equipment using the 420-450 MHz band outside the United States demonstrated the band's desirability because of equipment portability in addition to its ease of operation and reliability.

[1] A company engaged in the development and manufacture of radiolocation equipment.

8. The ARRL which has more than 150,000 amateur radio operator members opposed, in both its comments and reply comments, the continued use of the band by non-Government radiolocation users. The ARRL argued that from its inception, the use of the 420–450 MHz band by non-Government radiolocation users was to be temporary until research and development of equipment using the 2900–3700 MHz band became available. The ARRL also alleged that Del Norte had made no attempt to develop equipment for use in the 2900–3700 MHz band, that its petition contains no propagation data for the 2900–3700 MHz or the 9 GHz bands presently allocated for non-Government use, and that the petition contains no factual support that the higher bands are not suitable. The League further reiterated the possibility of harmful interference to amateur users of the band, particularly amateur television and amateur satellites communications. Moreover, the ARRL contended that there was almost a complete lack of comments in support of the proposal in the NPRM and that deletion of the cut-off date would be contrary to the long-standing Commission intent with regard to this band and would constitute frequency allocation by accident. In its reply comments, the League suggests that the cut-off date not be extended beyond January 1, 1983.

9. Del Norte in its reply comments indicated that it had provided factual support of the superiority of the 420–450 MHz band to achieve longer distance communications as contained in a graphical exhibit showing that 9 GHz signals are limited to line of sight propagation whereas its 435 MHz system can provide usable signals beyond line-of-sight. Del Norte also contended that Sercel in its supporting comments demonstrated the substantial propagation difference beyond line-of-sight achievable by a UHF system versus a system operating in the 3 GHz region. Regarding harmful interference to amateur opertions, Del Norte pointed out that the absence of a history of interference complaints from amateurs does not support this allegation. Further, even with the deletion of the cut-off date, non-Government radiolocation would be authorized only on a noninterference basis to Government radiolocation and amateur radio operations, and accordingly, must afford protection to the primary services. Del Norte further argues that continuation of the cut-off date only serves as a discouragement to the further development of essential radiolocation techniques and their application to the nation's search for additional energy resources.

10. ONI took exception with ARRL's comment that there was almost a complete absence of comments in support of the deletion of the cut-off date. It pointed out that to the contrary, the proposal has the support of radiopositioning service companies, manufacturers of radiopositioning equipment, the national trade association representing the offshore oil industry and even members of the amateur community. ONI also argued that the ARRL had not developed any evidence of incompatability between radiolocation (Government or non-Government) and amateur usage. ONI also commented on the suitability of the 420–550 MHz band over the higher bands based on its experience that shows UHF can provide positive position control at ranges up to 300 miles from shore on an around-the-clock basis and that this range capability is needed as exploration extends farther and farther from shore.

11. Sercel in its reply comments pointed out that when Del Norte filed its petition for rule making on May 10, 1979, all comments submitted were supportive of the petition and the ARRL filed no comments. It also mentioned that the ARRL's failure to reference its request published in QST for amateurs to report interference complaints obviously indicates that no complaints were filed. Further, Sercel states that its written statement of May 15, 1980, in support of the NPRM provided engineering analysis which showed the feasibility of using the 420–450 MHz band versus the higher bands as proposed.

Discussion

12. Prior to the release of the NPRM in Docket 20147 on March 10, 1976, to permit non-Government radiolocation in the 420–450 MHz band, U.S. Government users with primary allocation status in the band conducted interference tests using the HIRAN-type pulse ranging equipment. Based on those tests the Interdepartment Radio Advisory Committee (IRAC) agreed to permit the proposed operation on a secondary basis to the Government radiolocation service. Further, in response to Del Norte's petition to delete the January 1, 1981, cut-off date, IRAC at its July 10, 1979, meeting interposed no objection to the total deletion of the cut-off date and the continued operation for offshore applications. The absence of objection by Government radiolocation users for whom the band is primarily allocated together with the absence of any known interference complaints from Government or Amateur users clearly supports the conclusions of the interference tests and is considered indicative of the compatibility of operation. In addition, there was nothing substantive in any of the comments to amend our view stated in the NPRM that the probability of interference to primary users is considered minimal. This is still considered to be true and, in addition, continuing to make the non-Government radiolocation users secondary to both Government and Amateur Services provides sufficient administrative control over any interference that might occur.

13. Regarding SCRRBA's concern over potential interference to amateur users and the consequent problem of identification, we feel no such problem should arise because of the licensing procedure as well as the nature of the radiolocation operation itself. The basic systems authorized are composed of fixed units along with some mobile units at a specific location and any change of the specified location requires issuance of a modified authorization. Licensing will, of course, continue to be on a case by case basis and complete licensing data on each system authorized will be on file at the Commission and is accessible to any interested party. Also for enforcement purposes, copies of each authorization issued are provided to the Commission's field offices on a routine basis so that they can keep a record of all licensed users in their respective radio districts.

14. Concerning the suitability of the 420–450 MHz band versus the higher radiolocation bands, the showings of Del Norte and Sercel based on their attenuation studies do support the fact that longer distance communications are achievable at 420–450 MHz as stated in our NPRM. On the other hand, the opponents did not attempt to discuss the merits of the engineering showings provided by the supporters nor did they offer any counter showings to dispute the findings. Further, the comments of ONI indicated that their operations at 420–450 MHz demonstrated that ranges of 300 miles are in fact achievable. Accordingly, due to the line of sight constraints which are characteristic of the higher frequency bands it is apparent that suitable equipment capable of achieving the ranges available at 420–450 MHz is not presently available and that no satisfactory alternatives to either the service or frequency band proposed appears feasible within the immediately foreseeable future.

15. Moreover, the Commission is well aware of the importance of our nation's energy development program and the

major role offshore exploration provides in locating additional resources. The necessity to use radiolocation techniques at greater distances offshore has been clearly demonstrated in recent years and this application which contributes to the success of developing additional domestic energy resources is considered to be in the public interest. For this reason we are persuaded that the range advantages available at 420–450 MHz should continue to be utilized to meet the requirements of exploration at greater distances offshore.

16. Although Docket 20147 proposed the use of the 420–450 MHz band until equipment could be developed at 2900–3700 MHz as the ARRL commented, the experience gained regarding compatibility of operation coupled with the increasing range requirements for offshore exploration are considered valid recommendations for continuation of the 420–450 MHz operations. Furthermore, Docket 20147, in prescribing the cut-off date of January 1, 1981 stated that the date would be subject to further review and thereby implied the possibility of operation beyond that time. In addition, the fact that the United States allocates the primary usage of the 420–450 MHz band to radiolocation clearly recognizes its usefulness for that purpose. Thus, to permit continued usage of the band as proposed on the basis of past experience, present need, and domestic planning is not "allocation by accident" but allocation in accordance with the demonstrated public interest. In addition, the sharing of frequencies by compatible users provides increased frequency usage and spectrum efficiency. Therefore, this kind of shared usage of the 420–450 MHz is considered to be in the public interest and in keeping with the Commission's policy of promoting more efficient spectrum utilization.

17. Our final comment addresses Del Norte's request in its original petition for expanded usage of the band inland using spread spectrum techniques. As stated in our NPRM this issue will be the subject of a subsequent proceeding. Although some supporting comments urged inland expansion immediately and the opposing comments expressed concern that deletion of the cut-off date would be the first step toward permitting inland expansion, it is not the intent of this rulemaking to prejudge the issues regarding inland use. Accordingly, this action should not be construed as being for or against such inland usage.

Action

18. In view of the above, we are amending the Commission's rules as proposed in the NPRM, to delete the January 1, 1981 cut-off date and to permit the continued operation of non-Government radiolocation stations in the 420–450 MHz band along the shorelines of Alaska and the contiguous 48 States.

19. In addition, a modification of an editorial nature has been incorporated into § 90.103(c)(21) to bring it into compliance with U.S. 217 by including the statement that non-Government radiolocation "* * * may be authorized for use along the shorelines of Alaska and the contiguous 48 States * * *" Inclusion of this statement in Part 90 will benefit readers of that Part that do not have access to Part 2 by alerting prospective applicants regarding the area authorized for non-Government radiolocation applications.

20. For further information regarding matters covered in this document contact Sam Tropea (202) 653–8167.

21. Accordingly, it is ordered, that, pursuant to the authority contained in Sections 4(i) and 303(c) of the Communications Act of 1934, as amended, the Commission's rules are amended as set forth in the attached Appendix B, effective December 19, 1980.

22. This proceeding terminates the issue regarding deletion of the cut-off date. A subsequent proceeding, as discussed herein, will consider other aspects of RM–3378 to expand non-Government radiolocation inland using spread spectrum techniques.

(Secs. 4, 303, 307, 48 Stat., as amended; 1066, 1082, 1083; (47 U.S.C. 154, 303, 307))

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Parties Filing Comments and Reply Comments in General Docket 80–135

American Radio Relay League (ARRL)
Decca Survey Systems, Inc.
Del Norte Technology, Inc.
Richard W. Doering
National Ocean Industries Association (NOIA)
Offshore Navigation, Inc. (ONI)
Sercel, Inc.
Southern California Repeater & Remote Base Association (SCRRBA)
Weyerhauser, Inc.

Appendix B

Parts 2 and 90 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATION AND RADIO TREATY MATTERS, GENERAL RULES AND REGULATIONS

1. In § 2.106, footnote U.S. 217 is amended to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

U.S. 217 Pulse-ranging radiolocation systems may be authorized for Government and non-Government use in the 420–450 MHz band along the shorelines of Alaska and the contiguous 48 States. Non-Government authorizations will be granted on a case-by-case basis, and all stations operating in accordance with these authorizations will be secondary to stations operating in accordance with the allocation table. All power and antenna height specifications shall be made on a case-by-case basis.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. In § 90.103, paragraph (c)(21) is amended to read as follows:

§ 90.103 Radiolocation Service.

(c) * * *

(21) Non-Government pulse ranging radiolocation stations in this band may be authorized for use along the shorelines of Alaska and the contiguous 48 States and are secondary to the Government Radiolocation Service, the Amateur Radio Service and the Amateur Satellite Service. All power and antenna height specifications shall be made on a case-by-case basis.

* * * * *

[FR Doc. 80-39457 Filed 12-17-80; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 535

Three-Year Carryforward and Carryback of Fuel Economy Credits for Manufacturers of Light Trucks

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice establishes regulations governing the transfer between model years of monetary credits earned by motor vehicle manufacturers for exceeding the average fuel economy standards for light trucks. Manufacturers have previously been able to apply credits to the year immediately preceding and to the year immediately following the year in which they are earned. Section 6(b) of the

Automobile Fuel Efficiency Act of 1980 amended section 502 of the Motor Vehicle Information and Cost Savings Act to extend the number of years over which manufacturers can carry back or forward credits from one to three years. These regulations are promulgated pursuant to the Efficiency Act's direction that implementing regulations be issued not later than 60 days after the date of enactment. The provisions in these regulations are in almost all respects identical to the provisions in the statute for passenger automobile credits.

DATES: These regulations are effective December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Glancy, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2992).

SUPPLEMENTARY INFORMATION: Title V of the Motor Vehicle Information and Cost Savings Act establishes a program to improve automotive efficiency and conserve energy. Under that title, average (i.e., fleet) fuel economy standards are established for passenger automobiles and for light trucks. To discourage noncompliance with the standards and encourage exceeding the standards, the title provides a system of penalties and credits. Penalties are assessed against manufacturers which fail to comply with applicable fuel economy standards. The penalties are assessed at a rate of five dollars per vehicle for each tenth of a mile-per-gallon by which the average fuel economy of a manufacturer's vehicles subject to a standard falls short of that standard. Monetary credits for exceeding the standards are earned at the same rate. This rate may be increased to up to $10 per tenth of a mile-per-gallon if the agency makes certain findings about the existence of substantial energy savings resulting from the change and the absence of any resulting adverse impacts. See section 508(d) of the Act. Under the law as originally enacted, credits earned in one year may be used to offset civil penalties in the immediately prior year, and, if excess credits remain, in the immediately subsequent year.

The Automobile Fuel Efficiency Act of 1980, signed into law on October 12, 1980, amended title V to make several changes relating to the earning and application of credits. One amendment increased the number of years that credits may be carried backward or forward to offset penalties from one to three years. That and another amendment provided that a manufacturer which fails to meet a fuel economy standard in a particular year will not be regarded as having engaged in unlawful conduct or be subject to civil penalties under either of two circumstances. The first circumstance occurs if the manufacturer had previously earned sufficient credits to offset the penalty. Second, a manufacturer could achieve the same result if it submits to the agency an acceptable plan for earning in the subsequent three years sufficient credits to offset the penalty and if the manufacturer actually earns those credits.

While section 502 of the Act, as amended, sets forth detailed provisions for the 3-year carryback and carryforward of credits by passenger automobile manufacturers, that section simply provides with respect to light trucks that credits for light truck manufacturers are to be earned and available to be taken into account "to the same extent and in the same manner" as provided for passenger automobile manufacturers. Section 502(1)(2) requires that regulations governing light truck credits be promulgated not later than 60 days after the enactment of the Efficiency Act. Thus, the regulations must be issued by December 9, 1980.

With one exception discussed below, the provisions in these regulations are essentially identical to the provisions in the statute regarding passenger automobile credits. As in the case of passenger automobile credits, the light truck credits are available first to be applied to the three years immediately preceding the year in which they are earned. Any residual amount of credits is then available to be applied to the three model years immediately following the year in which the credits are earned. In any year in which a manufacturer believes that its average fuel economy will not meet an applicable light truck fuel economy standard, the manufacturer may submit a plan demonstrating that it will earn sufficient credits in the next three years which when taken into account would allow the manufacturer to meet that standard. The NHTSA Administrator will approve any such plan unless the Administrator finds that it is unlikely that the plan will result in the manufacturer's earning sufficient credits to allow the manufacturer to meet the standard for the model year involved.

The difference mentioned above between the provisions for passenger automobile credits and those for light truck credits arises from differences in the way in which the statute treats passenger automobiles and light trucks. Special provision must be made for light truck credits since light truck fuel economy standards may be set for all light trucks together or for classes of light trucks while class standards cannot be set for passenger automobiles. Title V and its history provide that credits may not be applied across classes of light trucks. This is, credits earned for one class of light trucks may not be applied to offset penalties incurred for another class of light trucks. (See Conference Report on the Energy Policy and Conservation Act, H.R. Rep. No. 94-700, 94th Cong., 1st Sess. 159 (1975).) The prohibition against cross-class application of credits was previously discussed in a notice of interpretation published by the agency on November 8, 1979 (44 FR 64943).

This notice also reaffirms the policy set forth in the November 1979 notice of interpretation regarding transfer of credits by a manufacturer between a year in which the manufacturer complies with a single fuel economy standard applicable to all light trucks and a year in which it complies with several standards for different classes of light trucks. After seeking comments on the issue, the agency stated in its November 1979 notice that its policy would be to attempt to assure that credits are applied to offset civil penalties on the same types of light trucks as those which generated the credits. The notice stated that credits would be prorated according to the number of light trucks in the credit-earning class which would fall in the class subject to a civil penalty. The several examples given in that notice to illustrate the application of this procedure are still appropriate. Additional examples are set forth below to illustrate how this procedure will be applied in light of the manufactures' choice in model years 1983-85 to comply with either a single standard for all light trucks or with optional separate standards for two-wheel drive (4x2) and four-wheel drive (4x4) light trucks.

For model years 1980-82, the agency established separate standards for 4x2 and 4x4 light trucks. Manufacturers are required to comply with those separate standards and do not have the choice of complying with a single standard. For model years 1983-85, however, the agency established a single combined standard for 4x2 and 4x4 light trucks, while giving manufacturers the choice of complying with optional separate standards.

If a manufacturer elects to comply with the optional separate standards for model year 1983, no prorating will be

necessary since the classes for model years 1980–82 are identical to those in model years 1983–85 (except for limited product-line manufacturers). Thus, credits earned by exceeding the 4×2 standard for model year 1982 could be fully applied against a failure to comply with the model year 1983 standard for those vehicles.

If a manufacturer elects to comply with the single, combined standard for 1983 and earns credits by exceeding that standard, application of those credits for failure to meet a standard in any of model years 1980–82 would require prorating. The agency would prorate the model year 1983 credits according to the proportion of model year 1983 light trucks that are of the same type as the class whose standard was not met. Thus, if the manufacturer did not comply with the model year 1982 standard for 4×2 light trucks and 70 percent of the model year 1983 light trucks were 4×2, then 70 percent of the credits earned in model year 1983 could be applied against the penalty for that noncompliance.

Finally, if a manufacturer earns credits for exceeding any of the model year 1980–82 class standards and the manufacturer elects to compy with the single, combined standard for 1983, all credits earned by exceeding either or both of the separate standards for model years 1980–82 would be applicable to penalties incurred in model year 1983.

This notice is being issued without notice and comment for a variety of reasons. The requirement that the regulations be issued by December 9 made it impracticable in the agency's judgment to provide notice and opportunity for comment. The agency also finds that making such provision is unnecessary since the regulations are in almost all respects identical to the statute. Finally, this rule is exempted as an interpretative rule from the statutory requirements for notice and comment.

This final rule is being made effective upon publication in the Federal Register. The usual requirement for a 30-day delay in the effective date is not applicable as this is an interpretative rule.

In consideration of the foregoing, Part 535 is added to 49 CFR Chapter V to read as follows:

PART 535—3-YEAR CARRYFORWARD AND CARRYBACK OF CREDITS FOR LIGHT TRUCKS

Sec.
535.1 Scope.
535.2 Applicability.
535.3 Definitions.
535.4 3-year carryforward and carryback of credits.

Authority: Sec. 9, Pub. L. 89–670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2001); sec. 6, Pub. L. 96–425, 94 Stat. 1821 (15 U.S.C. 2002); delegation of authority at 49 CFR 1.50

§ 535.1 Scope.

This part establishes regulations governing 3-year carryforward and carryback of credits for manufacturers of light trucks.

§ 535.2 Applicability.

This part applies to manufacturers of light trucks.

§535.3 Definitions.

(a) *Statutory terms.* The terms "average fuel economy," "average fuel economy standard," "fuel economy," "manufacture," "manufacturer," and "model year" are used as defined in section 501 of the Act.

(b) *Other terms.* (1) "Act" means the Motor Vehicle Information and Cost Savings Act, as amended by Pub. L. 94–163 and 96–425.

(2) "Administrator" means the Administrator of the National Highway Traffic Safety Administration.

(3) The term "light truck" is used in accordance with the determinations in Parts 523 and 533 of this chapter.

(4) The term "class of light trucks" is used in accordance with the determinations in Part 533 of this chapter.

§ 535.4 3-year carryforward and carryback of credits

(a) For purposes of this part, credits under this section shall be considered to be available to any manufacturer upon the completion of the model year in which such credits are earned under paragraph (b) of this section unless under paragraph (c) of this section the credits are made available for use at a time prior to the model year in which earned.

(b) Whenever the average fuel economy for a class of light trucks manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard established in Part 533 of this chapter, such manufacturer shall be entitled to credit, calculated under paragraph (c) of this section, which—

(1) Shall be available to be taken into account with respect to the average fuel economy for the same class of light trucks of that manufacturer for any of the three consecutive model years immediately prior to the model year in which such manufacturer exceeds such applicable average fuel economy standard, and

(2) To the extent that such credit is not so taken into account pursuant to paragraph (b)(1) of this section, shall be available to be taken into account with respect to the average fuel economy for the same class of light trucks of that manufacturer for any of the three consecutive model years immediately following the model year in which such manufacturer exceeds such applicable average fuel economy standard.

(c) (1) At any time prior to the end of any model year, a manufacturer which has reason to believe that its average fuel economy for a class of light trucks will be below such applicable standard for that model year may submit a plan demonstrating that such manufacturer will earn sufficient credits under paragraph (b) of this section within the next 3 model years which when taken into account would allow the manufacturer to meet that standard for the model year involved.

(2) Such credits shall be available for the model year involved subject to—

(i) The Administrator approving such plan; and

(ii) The manufacturer earning credits in accordance with such plan.

(3) The Administrator approves any such plan unless the Administrator finds that it is unlikely that the plan will result in the manufacturer earning sufficient credits to allow the manufacturer to meet the standard for the model year involved.

(4) The Administrator provides notice to any manufacturer in any case in which the average fuel economy of that manufacturer is below the applicable standard under Part 533 of this chapter, after taking into account credits available under paragraph (b)(1) of this section, and affords the manufacturer a reasonable period (of not less than 60 days) in which to submit a plan under this paragraph.

(d) The amount of credit to which a manufacturer is entitled under this section shall be equal to—

(1) The number of tenths of a mile per gallon by which the average fuel economy for a class of light trucks manufactured by such manufacturer in the model year in which the credit is earned pursuant to this section exceeds the applicable average fuel economy standard established in Part 533 of this chapter, multiplied by

(2) The total number of light trucks in that class manufactured by such manufacturer during such model year.

(e) The Administrator takes credits into account for any model year on the basis of the number of tenths of a mile per gallon by which the manufacturer involved was below an applicable average fuel economy standard for a class of light trucks for that model year and the volume of that class of light

trucks manufactured that model year by the manufacturer. Credits may not be applied between class of light trucks, except as determined by the Administrator to account for changes made in the definitions of classes between model years. Credits once taken into account for any model year shall not thereafter be available for any other model year. Prior to taking any credit into account, the Administrator provides the manufacturer involved with written notice and reasonable opportunity to comment thereon.

Issued on December 9, 1980.

Joan Claybrook,

Administrator.

[FR Doc. 80-39034 Filed 12-12-80; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Service Order No. 1474]

Various Railroads Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Fifth revised service order No. 1474.

SUMMARY: Fifth Revised Service Order No. 1474 modifies Appendix A of the previous order by reducing the authority of the Chicago and North Western Transportation Company in item 1.E., of Appendix A, between Albert City and Jefferson, Iowa, and at Mitchell, South Dakota, as requested. Service Order No. 1474 is further revised by extending the expiration date until January 15, 1981.

EFFECTIVE: 11:59 p.m., December 15, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275-7840.

SUPPLEMENTARY INFORMATION:

Decided: December 12, 1980.

Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Pub. L. 96-254, the commission is authorizing various railroads to provide interim service over Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie, Trustee), (MILW) and to use such tracks and facilities as are necessary for that operation.

In view of the urgent need for continued service over MILW's lines pending the implementation of long-range solutions, this order permits carriers, previously providing service under various individual service orders to operate under authority of a single order which appendix describes their operations, and to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

Fifth Revised Service Order No. 1474, is revised by deleting the authority of the Chicago and North Western Transportation Company (CNW) in Appendix A, item 1.E., to operate between Albert City and Jefferson, Iowa, and at Mitchell, South Dakota, as requested. Service Order No. 1474 is further revised by extending the expiration date until January 15, 1981.

The limited period of time for which this order is extended (30 days) is in response to a request from the Trustee of the Milwaukee and is based on the absence of bona fide negotiations for compensation, as required by paragraph (c) of the order, between it and the Chicago and North Western Transportation Company the Des Moines Union Railway Company (DMU), and the Escanaba and Lake Superior Railroad Company (ELS).

The Trustee has advised the Railroad Service Board that he may be unable to concur in future operations of the carriers indicated unless good faith negotiations are commenced immediately. These carriers are hereby admonished that compensation is an integral part of the interim authority and an obligation of the interim operators.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the attached appendix be authorized to conduct operations, also identified in the attachment, using MILW tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

§ 1033.1474 [Amended]

It is ordered, § 1033.1474 *Various Railroads Authorized to use Tracks and/or Facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company Debtor, (Richard B. Ogilvie, Trustee).*

(a) Various railroads are authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW), as listed in Appendix A to this order, in order to provide interim service over the MILW.

(b) The Trustee shall permit the affected carriers to enter upon the property of the MILW to conduct service essential to these interim operations.

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 122(a) Public Law 96-254.

(d) Interim operators, authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced on the expected commencement date of those operations.

(e) Interim operators, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the MILW Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of these operations over the MILW lines, interim operators shall be responsible for preserving the value of the lines, associated with each interim operation, to the MILW estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties or, failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsiblity of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) *Rate applicable.* Inasmuch as this operation by interim operators over tracks previously operated by the MILW is deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via MILW, until tariffs naming rates and routes specifically applicable become effective.

(k) In transporting traffic over these lines, all interim operators involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall

be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(l) *Employees.* In providing service under this order interim operators, to the maximum extent practicable, shall use the employees who normally would have performed work in connection with the traffic moving over the lines subject to this Service Order.

(m) *Effective date.* This order shall become effective at 11:59 p.m., December 15, 1980.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., January 15, 1981, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304–10305 and Section 122, Pub. L. 96–254.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

Appendix A—MILW Lines Authorized To Be Operated by Interim Operators

1. Chicago and North Western Transportation Company (CNW):

A. At DeKalb, Illinois.

B. At Appleton, Wisconsin.

†† C. At Lake Preston and Sioux Falls, South Dakota, and from Wolsey to but not including Aberdeen, South Dakota.

D. At Miloma and Montgomery, Minnesota.

†† E. Between Marathon and Albert City, Iowa, (milepost 127.6); between Jefferson (milepost 68.5) and Waukee, Iowa; and between Manning and Huxley, Iowa.

F. Between Merriam Park and Norwood, Minnesota.

2. Illinois Central Gulf Railroad Company (ICG):

A. Between Cedar Rapids and Louisa, Iowa, including Marion, Iowa.

B. In Sioux City, Iowa, from Pearl Street west approximately 1.5 miles to Tri-View Industrial area, and from Court Street to Virginia Street.

†† Changed.

3. Seattle and North Coast Railroad Company (SNC):

A. Between Port Angeles and Port Townsend, Washington, including Pier 27 and associated track in Seattle, Washington.

4. Cedar Rapids and Iowa City Railway Company (CIC):

A. Between Middle Amana and Cedar Rapids, Iowa.

B. Over the Chicago, Rock Island and Pacific Railroad Company trackage—4th Street Corridor—in Cedar Rapids, Iowa, originally operated by MILW under trackage rights.

C. Over certain terminal and industry tracks in Cedar Rapids, Iowa, between milepost 86 and milepost 87 in order to serve the 6th Street Power Station.

5. Escanaba and Lake Superior Railroad Company (ELS):

A. Between Iron Mountain, Michigan, and Green Bay, Wisconsin.

6. Consolidated Rail Corporation (CR):

A. At Momence, Illinois.

7. Des Moines Union Railway Company (DMU):

A. Between Des Moines (milepost 0) and Clive (milepost 8.5), Iowa; and between Clive (milepost 0) and Grimes, Iowa, (milepost 7), a total of 15.5 miles.

8. The La Salle and Bureau County Railroad Company (LSBC):

A. From Mendota, Illinois, (milepost 69.5) to Ladd, Illinois, (milepost 82.1), a total of 12.6 miles.

9. Chicago, Madison and Northern Railway Company (CMN):

A. Between Sparta, Wisconsin, (milepost 2.5) and Viroqua, Wisconsin, (milepost 34.7), a distance of approximately 32.2 miles.

B. Between Janesville, Wisconsin, (milepost 10.0) and Mineral Point, Wisconsin, (milepost 90.7), a distance of approximately 80.7 miles.

10. Wisconsin Central Railroad Company (WCRC):

A. Between Waukesha, Wisconsin, (milepost 20.5) and Milton Junction, Wisconsin, (milepost 61.5), a distance of approximately 41.0 miles.

11. Pend Oreille Valley Railroad, Inc., (POV):

A. Between Newport, Washington, (milepost 43.6) and Metaline Falls, Washington, (milepost 104.7), a distance of approximately 61.1 miles.

12. St. Maries River Railroad Company (SMRR):

A. Between St. Maries and Bovill, Idaho, the Bovill Branch, a distance of approximately 52 miles; and between St. Maries and Plummer, Idaho, a distance of approximately 19 miles.

13. Chippewa River Railroad Company (CRRC):

A. Between Eau Claire, Wisconsin, and Durand, Wisconsin, a distance of approximately 33 miles.

14. Wisconsin and Southern Railroad Company (WSR):

A. The following lines in the state of Wisconsin:

(1) North Milwaukee (milepost 93.72) to Oshkosh (milepost 187.64).

(2) Horicon (milepost 140.27) to Cambia (milepost 165.7)

(3) Granville (milepost 100.5) to Menomonee Falls (milepost 104).

(4) Iron Ridge (milepost 133) to Mayville (milepost 140).

(5) Beaver Dam Junction (milepost 148.5) to Beaver Dam (milepost 150.5).

(6) Fox Lake Junction (milepost 154.5) to Fox Lake (milepost 156.7).

(7) Brandon (milepost 161.15) to Markesan (milepost 172.7).

15. Burlington Northern Inc. (BN)

A. In Sioux City, Iowa, between milepost 509.77 and milepost 512.62, a distance of approximately 2.85 miles.

B. From Linton, North Dakota (milepost 74.41) to Eureka, South Dakota (milepost 25.67), a distance of approximately 48.74 miles.

C. From Sappington, Montana (milepost 1464) to Three Forks, Montana (milepost 1450), a distance of approximately 14 miles.

[FR Doc. 80-39279 Filed 12-17-80; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 320]

49 CFR Part 1109

Rail Market Dominance and Related Considerations

AGENCY: Interstate Commerce Commission.

ACTION: Removal of existing regulations.

SUMMARY: The Staggers Rail Act of 1980 makes a number of important changes in the market dominance standards the effect of which is to limit the jurisdiction of the Commission to decide whether particular rates are unreasonably high.

Certain existing regulations with regard to market dominance will be removed immediately; and specific rules proposed in Ex Parte No. 320 (Sub-No. 1) will be withdrawn by a separate notice to be issued in that proceeding and published elsewhere in this issue. In a separate decision to be published elsewhere in this issue, the Commission will propose implementation of the provisions of the new Act.

EFFECTIVE DATES: To be effective on December 11, 1980.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall, (202) 275–7656

SUPPLEMENTARY INFORMATION: Under the Staggers Rail Act of 1980, as under Railroad Revitalization and Regulatory Reform Act of 1976, our jurisdiction over the maximum reasonable level of rates is precluded unless the proponent carrier has market dominance over the transportation to which the rate applies. The Commission is now required to find that a carrier does not have market dominance if the rate is below a designated revenue to variable cost ratio. In a separate proceeding in Ex Parte No. 320 (Sub-No. 2) to be published elsewhere in this issue, the

Commission will address the issues involved and propose policy to implement the Act.

Certain existing regulations with regard to market dominance will be removed because they are inconsistent with the Staggers Act. This inconsistency is explained in greater detail in Ex Parte No. 320 (Sub-No. 2) which will be issued at the same time as this document.

Accordingly, Title 49 Part 1109.1 is removed from the CFR.

(5 USC 553, 49 USC 10709, Pub. L. 96-448, Section 205)

Decided: December 4, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Clapp dissenting in part with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Clapp, dissenting in part: The majority has not answered a question that will certainly perplex many carriers and shippers. What standards will be applied now that the market dominance regulations are revoked? At a minimum, guidelines should be set forth indicating what factors we now consider relevent in finding the absence or presence of market dominance.

[FR Doc. 80-39273 Filed 12-17-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Endangered Species Convention; Revision of Implementation Rules

AGENCY: U.S. Fish and Wildlife Service.

ACTION: Final rule.

SUMMARY: The Service amends the rules implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora [hereinafter referred to as the Convention or by the acronym CITES] to provide for procedures for public participation and agency consultation in the development of negotiating positions for such meetings.

EFFECTIVE DATES: December 18, 1980.

ADDRESSES: Correspondence should be sent to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Richard M. Parsons, Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: On May 20, 1980, a proposal regarding the amendment of Part 23 which would add new Subpart D—Public Participation in the Development of Negotiating Positions for Meetings of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Federal Agency Consultation was published in the Federal Register (45 FR 33842). Interested persons were given until July 21, 1980 to submit comments on the proposals.

The Defenders of Wildlife commented to the effect that the regulations as proposed make no provision for public participation with regard to agenda items added to the proposed agenda after publication of the notice of meeting provided for in proposed section 23.32. These new items could result from comments responsive to such notice or from suggestions of foreign party countries. The Service accepts this comment and adds a sentence to 23.32 providing for a Federal Register notice inviting the public to comment and provide information on such additional agenda items, and changes section 23.33 in recognition of the possibility that there may be more than one Federal Register notice containing agenda items.

The Defenders of Wildlife commented to the effect that publication in the Federal Register of a schedule to be compiled by the Service of events preparatory to a meeting of the Conference of the Parties would assist in the effective implementation of the Service's preparations and safeguard the adequacy of the public participation process. The Service has in the past made a schedule of events available to attendees at its public meetings.

The Service accepts the Defenders of Wildlife recommendation as it relates to the public process and believes that publication in the Federal Register of such a schedule would be beneficial for all concerned with the preparation of U.S. positions. However, in order to provide the Service with the degree of flexibility it needs in order to, among other things, integrate the public participation process with the deadlines imposed by the Convention and the Secretariat, it should be recognized that the published schedule would be subject to change and modification. The public would be notified, through additional Federal Register notices, of the changes and modifications.

Comment was made by one other organization which discussed participation at meetings of the Conference of the Parties by nongovernmental organizations. Such comment, although not directly related to the regulations subject to this rulemaking, will be taken into consideration by the Service in its preparations for the New Delhi meeting.

It should be recognized that the Service's participation in projects, studies and committee work commissioned by the Conference of the Parties are not subject to these regulations. Such work if related to agenda items of future meetings of the Conference of the Parties will be subject to public comment as the related negotiating positions are being developed pursuant to these regulations. As in the past, the Service will seek the assistance of interested members of the public with regard to such work either as it develops negotiating positions or otherwise.

In consideration of the comments received and pursuant to authority of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, T.I.A.S. 8249; and the Endangered Species Act of 1973, 87 Stat., 16 U.S.C. 1531-43, 50 CFR Part 23 is amended to read as follows, effective December 18, 1980.

PART 23—ENDANGERED SPECIES CONVENTION

Subpart D—Public Participation in the Development of Negotiating Positions for Meetings of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Federal Agency Consultation

Sec.
23.31 Purpose of regulations.
23.32 Notice of meeting of conference of the Parties to the Convention.
23.33 Notice of proposed negotiating positions.
23.34 Public meetings.
23.35 Notice of negotiating positions.
23.36 Schedule of public meetings and notices.
23.37 Federal Agency consultation.
23.38 Modification of procedures and negotiating positions.
23.39 Notice of availability of official report.

Authority: Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et. seq.; 87 Stat. 684).

Subpart D—Public Participation in the Development of Negotiating Positions for Meetings of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Federal Agency Consultation

§ 23.31 Purpose of regulations.

The regulation contained in this subpart sets out procedures for participation of the public and consultation with appropriate Federal agencies in the Service's process of developing negotiating positions to be used by the representative of the United

States to meetings of the Conference of the Parties to the Convention provided for by Article XI of the Convention.

§ 23.32 Notice of meeting of conference of the parties to the convention.

Upon receipt of a notice of a meeting of the Conference of the Parties to the Convention, the director shall publish in the Federal Register a notice setting forth the time and place of the meeting, and the proposed agenda, and inviting the public to comment and provide information on agenda items including, when appropriate, suggestions for additional agenda items.

Upon receipt from the CITES Secretariat of a notice of additional agenda items, the Director shall publish in the Federal Register a notice inviting the public to comment and provide information on such items.

§ 23.33 Notice of proposed negotiating positions.

Subsequent to the comment period of the notice of meeting of the Conference of the Parties to the Convention, the Director shall publish in the Federal Register a notice of proposed negotiating positions setting forth a summary of the information and comments received in response to any of the notices mentioned in § 23.33, the negotiating positions which the Service proposes to use at the meetings of the Conference of the Parties to the Convention, and the basis thereof, and inviting information and comments on the proposed negotiating positions. The notice will also set forth the time and place of at least one public meeting to provide information and comments on the proposed negotiating positions of the Service.

§ 23.34 Public meetings.

The Service shall hold at least one public meeting to enable interested persons to provide information and comments on the proposed agenda and at least one such public meeting on the proposed negotiating positions of the Service. Written statements may be submitted to the Service before and at the meeting. Appointments to speak at the meetings may be made with the Federal Wildlife Permit Office, Washington, D.C. 20240 (703/235-2418). Participants without prior appointments will be given an opportunity to speak to the extent time allows following speakers with appointments.

§ 23.35 Notice of negotiating positions.

Subsequent to the comment period of the notice of proposed negotiating positions, and after all associated public meetings have been held, the Director shall publish in the Federal Register a notice setting forth (a) a summary of the information and comments received in response to the notice of proposed negotiationg positions, (b) a summary of negotiating positions of the Service to be used by the representative of the United States to the meeting of the Conference of the Parties to the Convention, and (c) the basis of such negotiating positions.

§ 23.36 Schedule of public meetings and notices.

The Director shall publish in the Federal Register a schedule, subject to change and modification, of all public meetings and notices related to preparation of negotiating positions for meetings of the Conference of the Parties to the Convention.

§ 23.37 Federal agency consultation.

The Service shall consult with appropriate Federal agencies in the development of negotiating positions.

§ 23.38 Modifications of procedures and negotiating positions.

(a) Any of the procedures in §§ 23.32 through 23.36 may be modified or suspended by the Director on notice published in the Federal Register where to follow the procedures would interfere with the timely or appropriate development of negotiating positions.

(b) Any of the negotiating positions set forth in a notice of negotiating positions may be modified, reversed or abandoned by the United States representative to a meeting of the Conference of the Parties to the Convention where to do so would be in the best interests of the United States.

§ 23.39 Notice of availability of official report.

After any meeting of the Conference of the Parties to the Convention attended by a United States representative, the Service shall publish a notice of availability of the official report of such representative and set forth how and where copies of such report can be obtained.

The primary author of this rule is Arthur Lazarowitz, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2418).

Note.—The Service has determined that this document does not contain a significant proposal requiring preparation of a regulatory analysis under Executive Order 12044 and 43 CFR 14.

Dated: December 10, 1980.

Harry J. O'Connor,

Acting Director, Fish and Wildlife Service.

[FR Doc. 80-39215 Filed 12-17-80; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 26

Public Entry and Use; Opening of Certain National Wildlife Refuges in Arizona, California and New Mexico

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Special Regulations.

SUMMARY: The Director has determined that the opening to public access, use, and recreation of certain national wildlife refuges in Arizona, California and New Mexico is compatible with the objectives for which the areas were established, and will provide additional recreational opportunity to the public through a nonconsumptive use. This document establishes special regulations effective for the upcoming public entry and use season.

DATES: Effective on date of publication from January 1, 1981 through December 13, 1981.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the address or telephone number listed below:

Albert W. Jackson, Area Manager, U.S. Fish and Wildlife Service, 2953 West Indian School Road, Phoenix, AZ 85017. Telephone: 602-241-2487.

SUPPLEMENTARY INFORMATION:

General

Public access, use, and recreation is permitted on the National Wildlife Refuges indicated below in accordance with 50 CFR 26 and the following Special Regulations. Portions of refuges which are open to public access, use and recreation are designated by signs and/or delineated on maps available from addresses indicated below.

No vehicle travel is permitted except on designated, maintained roads and trails. Special conditions applying to individual refuges are listed on leaflets from the office of the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103.

The Refuge Recreation Act of 1963 (16 U.S.C. 460k) authorized the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and consistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (1) that such recreational use will not interfere with the primary purpose for which the areas were established, and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. The determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Public entry shall be accordance with all applicable Federal and State laws and regulations subject to the following conditions:

§ 26.34 Special regulations; public access, use, and recreation; for individual wildlife refuge areas.

Public access, use, and recreation is permitted on the following areas:

Arizona

Cabeza Prieta National Wildlife Refuge, P.O. Box 418, Ajo, AZ 85321 Contact: James R. Fisher, Refuge Manager at 602-387-6483. Special condition:

The Cabeza Prieta National Wildlife Refuge, Arizona, is open to public access, use, and recreational activities from January 1 through December 31, 1981, subject to the provisions of Title 50, Code of Federal Regulations, and all applicable Federal and State laws and regulations and all official signs posted in the area. Since the refuge is adjacent to the Williams Bombing Range, public access will be restricted to those days when the range is not in use. For purposes of protecting human safety as well as the fragile environment of the 860,000 acre Cabeza Prieta National Wildlife Refuge, all entry into the refuge is subject to the possession of a valid permit issued by the Refuge Manager or his designated assistant. Such permit may be obtained at the offices of the U.S. Fish and Wildlife Service located at 1611 North 2nd Avenue, Ajo, Arizona, or at 356 West 1st Street, Yuma, Arizona, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Fridays (except holidays).

One permit will be required for each vehicle entering the refuge. Vehicles are restricted to designated access road. Each person entering the refuge by means other than motorized vehicles is also required to possess an entry permit, obtainable as required for vehicular entry. Additionally, each person entering the refuge must sign a hold harmless agreement due to military use of the area for overflights to and from the Williams Bombing Range.

The provisions of the special regulation supplement the regulations which govern public access, use and recreation on Wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 26, and are effective through December 31, 1981.

Kofa National Wildlife Refuge, P.O. Box 1032, Yuma, AZ 85364. Contact: Milton K. Haderlie, Refuge Manager at 602-783-7861. Special condition:

For purposes of protecting wildlife habitat and the fragile environment of the 660,000-acre Kofa National Wildlife Refuge, Arizona, camping is limited for each person to 14 days during any 12-month period.

Recreational (non-commercial) rockhounding, including digging with simple hand tools, is permitted only in the designated area known as Crystal Hill.

The areas described aggregate 3,684.39 acres.

On the remainder of the Kofa National Wildlife Refuge outside the designated Crystal Hill area, collecting of rocks or minerals, or both, is restricted to materials that are exposed and collectible without the use of tools.

Pets are permitted only if they are confined or kept on a leash, not to exceed ten (10) feet in length, one end of which is secured so as to restrict the movement of the animal. (Except the use of dogs when hunting with special hunting regulations.)

There is no hunting permitted inside the area designated as Crystal Hill campground.

The provisions of this special regulation supplement the regulations which govern public access, use and recreation on Wildlife Refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 26, and are effective through December 31, 1981.

Arizona and California

Cibola National Wildlife Refuge, Box AP, Blythe, CA 92225. Contact: Wesley V. Martin, Refuge Manager at 714-922-2129. Special condition:

(1) The minimum altitude for aircraft flying over the Cibola National Wildlife Refuge shall be 2,000 feet above ground elevation. This regulation is meant to prevent harassment of wildlife and to promote quality recreational experiences for the visiting public.

(2) Wildlife observation, photography and hiking are permitted except in areas posted closed to public entry.

(3) Open fires are prohibited. Fires, if contained in grills or other suitable equipment, are permitted provided they are used in unvegetated areas. The clearing of vegetation for any purpose is prohibited.

(4) Waterskiing is prohibited in the Old River Channel section of the Colorado River north of Walter's Camp. This closure is for the protection of wildlife values and possible danger to skiers from submerged hazards. The above described waters lie north of the refuge boundary in Section 24, T2S, Arizona and Section 6, T11S, California.

(5) Waterskiing is permitted in the Cibola Dry Cut section of the Colorado River.

(6) Motorized vehicles, including motorcycles, are permitted only on designated developed roads. Motorized vehicles must be licensed and registered and in compliance with state vehicle codes, and vehicle operators must possess a valid state driver's license. Driving off roads, or on roads closed by signs or barriers, or across farmlands is prohibited.

(7) Overnight camping is prohibited on Cibola National Wildlife Refuge.

(8) The period of use on Cibola National Wildlife Refuge is daylight to dark with the following exceptions:

(a) Fishing—permitted at night in areas open to fishing within the season.

(b) Frogging—permitted at night in area opened to frogging.

The degree of public access, use and recreational activities permitted on Cibola National Wildlife Refuge is described below for the three refuge public use zones.

Zone I. This area is designated on the refuge recreation leaflet map and is marked by signs and described as including all lands bordered on the north by Baseline Road, on the east by the refuge boundary, on the south by an unimproved dirt road one-fourth mile above the Bishop Ranch, and on the west by the centerline of the Colorado River. The above-described lands include all refuge lands east of the Cibola Dry Cut section of the Colorado River lying within Sections 1, 2, 11, 12, 13, 14, 23 and 24, T1S, R24W, and Sections 6, 7, 18 and 19, T1S, R23W. Zone I is closed to hunting. Also closed to public entry and use to Zone I is that area within the above-described zone that lies east of the Bureau of Reclamation tie-back levee as marked by signs and as designated on the refuge recreational leaflet map.

Zone II. This area is marked by signs and described as all refuge lands west of the Cibola Dry Cut section of the Colorado River and north of Zone III, and all refuge lands east of the Dry Cut, south of Zone I and north of Zone III. Zone II is open to public recreation throughout the year under provisions

and special conditions listed above in Special Conditions 1 through 8.

Zone III. This area is marked by signs and described as including all lands bordered by the refuge boundary on the east and south, the centerline of the New River Channel and Old River Channel sections of the Colorado River in the west, and the Hartmine Wash Levee which follows the east-west quarter section line that bisects Sections 7, 13, 19, 24, 30 and 31, T2S, R23W. Zone III is closed to hunting. *It is also closed to fishing, boating and hiking from* January 1 through March 14, 1981, and from September 6 through December 31, 1981. Wildlife observation and photography are permitted from vehicles traveling on established levee roads and from boats traveling on the Colorado River Channel during this period. Zone III is open to fishing, boating, hiking, wildlife observation and photography from March 15 through September 5, 1981.

Havasu National Wildlife Refuge, P.O. Box A, Needles, CA 92363 Contact: Tyrus W. Berry, Refuge Manager at 714-326-3853. Special condition:

(1) The minimum altitude for aircraft flying over the Havasu National Wildlife Refuge shall be 2,000 feet above ground elevation. This regulation is meant to prevent harassment of wildlife and to promote quality recreational experiences for the visiting public.

(2) Waterskiing is permitted only on the channelized segment of the Colorado River except for the portion of the river called "Topock Gorge", which is designated by buoys and signs as being "Closed to waterskiing". The north buoy line is located between the I-40 highway bridge and the A.T. & S.F. Railroad bridge. The south buoy line is located on an imaginary line between a point one-fourth mile south of Jops Harbor on the Arizona shoreline and a point one-fourth mile south of the southern entrance to Clear Bay on the California shoreline.

(3) Wildlife observation, photography and hiking are permitted except in those areas posted closed to public entry.

(4) Overnight camping is permitted at the two concessions on Topock Marsh and along the Arizona shoreline below the buoy line designating the southern entrance to Topock Gorge. However, camping is prohibited at Mesquite Bay, located within this stretch of shoreline.

(5) Boating is permitted in all waters of the refuge except in those areas posted closed to public entry. Wakeless speed only is permitted east of the buoys on the Bill Williams River and within the harbors of Five Mile Landing and Catfish Paradise. In these "No Wake" areas the boat speed may not exceed 5 mph and the wake must be held to a low, non-cresting roll.

(6) Motorized vehicles are permitted on designated developed roads and parking areas only. Driving off roads and on roads closed by sign or barrier is prohibited.

(7) Fires may be built only in areas where camping is allowed.

(8) Litter facilities are provided only for recreational users who are swimming, boating, picnicking, fishing, hunting, hiking or camping.

(9) Additional attachments to mobile homes and travel trailers located at refuge concessions must be limited to cabanas, awnings, or similar types of shades that are easily removable, portable and not permanently fixed to the ground. They may be equipped with windbreaks of a similar portable nature that do not completely enclose the sides, but may not be utilized for regular living or sleeping space or to house household equipment other than lounge furniture.

(10) Residents are required to maintain their lots and trailer in a neat, orderly and hazard-free condition. Trailer slabs, porches, and cabanas are not to be used for permanent living space, storage of household goods or other miscellaneous items with the exception of lounge furniture. No storage will be allowed under the mobile home, travel trailer or porch area. The interior of the mobile, travel trailer, storage shed or storage yard are the only authorized storage areas.

(11) Concession operators and tenants will maintain their facilities and residence in accordance with Title 25, Housing and Community Development; Chapter 5, Mobile Home Parks, Special Occupancy Trailer Parks and Campgrounds, California Administration Code; State of California.

(12) All trailers, attachments, and other structures on the lots must be capable of being removed within 24 hours of notice. All tires must remain on the mobile home or travel trailer at all times.

(13) The mooring of unattended boats is allowed *only* at designated boat slips at Five Mile Landing and Catfish Paradise concessions.

(14) Concession residents who repeatedly violate refuge lands and facilities.

Imperial National Wildlife Refuge, P.O. Box 2217, Martinez Lake, Arizona 85304. Contact: Gerald E. Duncan, Refuge Manager at 602-783-3400. Special condition:

(1) An area on the west end of Martinez Lake, consisting of approximately 176 acres and an area of approximately 1,400 acres in the north end of Ferguson Lake, shall be closed to public entry during the periods from January 1 through March 1, 1981, and from October 1 through December 31, 1981.

(2) Waterskiing and towing of any device except boats with a person aboard, for recreational purposes, is permitted only on certain sections of the main stream (channels) of the Colorado River where designated by signs.

(3) Boating is permitted in all waters of the refuge except in those areas posted closed to public entry.

(4) Blocking of boat ramps or routes of public access is prohibited.

(5) Wildlife observation, photography and hiking are permitted except in those areas posted closed to public entry.

(6) The removal or disturbance of sand, gravel, rocks or minerals is prohibited.

(7) Overnight camping is prohibited.

(8) The removal or disturbance of deadwood or live vegetation is prohibited.

(9) Pets are permitted only if they are confined or kept on a leash not to exceed 10 feet in length, one end of which is secured so as to restrict the movement of the animal.

(10) The minimum altitude for aircraft flying over the Imperial National Wildlife Refuge shall be 2,000 feet above ground elevation. This regulation is meant to prevent harassment of wildlife and to promote quality recreational experience for the visiting public.

New Mexico

Bitter Lake National Wildlife Refuge, Box 7, Roswell, New Mexico 88201. Contact: LeMoyne B. Marlatt, Refuge Manager at 505-622-6755. Special conditions:

Public recreational use of Bitter Lake National Wildlife Refuge, New Mexico, is permitted on approximately 15,500 acres of land and water, as designated by signs and by informational leaflets available from both the refuge headquarters, 13 miles northeast of Roswell, New Mexico and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. The following special conditions apply to the Salt Creek Wilderness portion of the refuge:

(1) Entry is limited to foot travel and horseback riding.

(2) Overnight camping is permitted, but only after obtaining written permission from the Refuge Manager.

(3) Camping is limited to three consecutive nights, after which the Refuge Manager must be notified of departure.

(4) Open campfires are permitted, but must be left cold and completely buried

in the ground after use, so as to leave no evidence.

(5) All trash must be hauled out of the wilderness, not buried or otherwise left behind.

The following special conditions apply to non-wilderness portions of the Refuge:

(1) All visitors are required to register before entry into the South Unit public use area.

(2) Sightseeing, nature observation, photography and hiking are permitted year-round with designated areas.

(3) The refuge public use areas are open to use from one hour before sunrise to one hour after sunset only, unless otherwise posted.

(4) Picnicking is permitted in conjunction with above listed recreational activities at designated sites.

(5) Fires are permitted in the picnic grills only. Only dead and fallen brush and trees may be taken for firewood.

(6) Boating is permitted only with designated waterfowl hunting areas and designated seasons.

Bosque del Apache National Wildlife Refuge, P.O. Box 1246, Socorro, New Mexico 87801. Contact: Ronald L. Perry, Refuge Manager at 505-835-1828. Special conditions:

(1) Permitted recreational uses include wildlife/wildland observation, nature study, photography, fishing as regulated, and hunting is regulated. All public access and use not expressly permitted is prohibited.

(2) The refuge is open to public access and use from one-half hour before sunrise to one-half hour after sunset only.

(3) Portions of the refuge which are closed to public access and use are designated by signs and/or delineated on maps available from any of the following addresses upon request: Refuge Manager, P.O. Box 1246, Socorro, New Mexico 87801; Area Manager, U.S. Fish and Wildlife Service, 2953 West Indian School Road, Phoenix, AZ 85017; Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

Maxwell National Wildlife Refuge, P.O. Box 276, Maxwell, New Mexico 87728. Contact: Jon Brock at 505-375-2331. Special conditions:

The following activities are permitted: Wildlife observation and photography are permitted except in those areas posted closed to public entry.

Fishing as regulated.

All public use, access and recreational activity not otherwise expressly permitted is prohibited.

Las Vegas National Wildlife Refuge, P.O. Box 1070, Las Vegas, New Mexico 87701. Contact: Steve Berlinger, Refuge Manager at 505-425-6819.

The following activities are permitted: Wildlife observation and photography are permitted except in those areas posted closed to public entry.

All public use, access and recreational activity not otherwise expressly permitted is prohibited.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally set forth in Title 50, Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

Note.—The Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Albert W. Jackson,

Area Manager, Phoenix, AZ.

December 10, 1980.

[FR Doc. 80-39250 Filed 12-17-80; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 33

Sport Fishing; Opening of Certain National Wildlife Refuges in Arizona, California and New Mexico

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Special Regulations.

SUMMARY: The Director has determined that the opening to sport fishing of certain National Wildlife Refuges in Arizona, California and New Mexico is compatible with the objectives for which these areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. This document establishes special regulation effective for the upcoming sport fishing season.

DATES: Effective on date of publication from January 1, 1981 through December 31, 1981.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the address or telephone number listed below: Albert W. Jackson, Area Manager, U.S. Fish and Wildlife Service, 2953 West Indian School Road, Phoenix, AZ 85017. Telephone: 602-241-2487.

SUPPLEMENTARY INFORMATION:

General

Sport fishing is permitted on the National Wildlife Refuge indicated below in accordance with 50 CFR Part 33 and the following special regulations. Portions of refuges which are open to sport fishing and designated by signs and/or delineated on maps. No vehicle travel is permitted except on designated maintained roads and trails. Special conditions applying to individual refuges are listed on leaflets available at refuge headquarters and from the Office of the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (1) that such recreational use will not interfere with the primary purpose for which the areas were established, and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which National Wildlife Refuges were established. This determination is based upon consideration of among other things, the Service's Final Environmental Statement on the operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Fishing shall be in accordance with all applicable Federal and State Laws and regulations subject to the following conditions:

§ 33.5 Special regulation; sport fishing for individual wildlife refuge areas.

Arizona and California

Cibola National Wildlife Refuge, Box AP, Blythe, CA 92225. Contact Wesley V. Martin, Refuge Manager at 714-922-4433. Special condition:

(1) Zone III is closed to fishing and boating from January 1 through March 15, 1981, and from September 6 through December 31, 1981. The use of boats, rafts, or floating devices or fishing from the banks of the lake or Colorado River in Zone III is prohibited during this period. This closure is necessary to protect migratory waterfowl wintering on Cibola Lake from disturbance. Zone III includes Cibola Lake and associated waters and is identified as all refuge lands lying within the area enclosed on the north by the east-west half section line of Sec. 7, T. 2 S., R. 23 W.; the refuge boundary on the east and south; and the center of the Cibola Dry Cut Section of the Colorado River on the west.

(2) The use of bow and arrow for taking carp and bullfrogs is permitted in refuge waters open to fishing.

Havasu National Wildlife Refuge, P.O. Box A, Needles, CA 92363. Contact Tyrus W. Berry, Refuge Manager at 714-326-3853. Special conditions:

(1) The open season for sport fishing on the refuge extends from January 1 through December 31, 1981, except that the closed area, as posted, in Topock Marsh is closed to all entry from January 1 through January 31, 1981, and from October 1 through December 31, 1981.

(2) The use of bow and arrow for taking carp and bullfrogs is permitted in refuge waters open to fishing.

Imperial National Wildlife Refuge, P.O. Box 2217, Martinez Lake, AZ 85364. Contact Gerald E. Duncan, Refuge Manager at 602-783-3400. Special conditions:

(1) The open season for sport fishing on the refuge extends from January 1 through December 31, 1981, except for an area of approximately 175 acres in Martinez Lake, as posted, to be closed during the periods from January 1 through March 1, 1981, and from October 1 through December 31, 1981, and an area of approximately 60 acres in Ferguson Lake, California, as posted, to be closed during the same periods.

(2) The use of bow and arrow for taking carp and bullfrogs is permitted in refuge waters open to fishing.

New Mexico

Bitter Lake National Wildlife Refuge, Box 7, Roswell, NM 88201. Contact LeMoyne B. Marlatt, Refuge Manager at 505-622-6755. Special conditions:

(1) Sport fishing on the Bitter Lake National Wildlife Refuge, New Mexico, is permitted only on pool Units 5, 6, 7, 15 and 16.

(2) The open season for sport fishing extends from April 1 through October 15, 1981, inclusive.

(3) The use of boats is prohibited.

(4) Fishing hours are from one hour before sunrise until one hour after sunset daily.

Bosque del Apache National Wildlife Refuge, P.O. Box 1246, Socorro, NM 87801. Contact Ronald L. Perry, Refuge Manager at 505-835-1828. Special conditions:

(1) The open season for sport fishing on all areas on the refuge extend from May 24, 1981, through September 30, 1981, inclusive.

(2) Fishing hours are from one-half hour before sunrise to one-half hour after sunset.

(3) Troutlines and bows and arrows are prohibited.

(4) Seining, dip netting, cast netting and use of traps is prohibited.

(5) The use of boats or other floating devices is prohibited.

(6) Wading is prohibited.

(7) Frogging is prohibited.

(8) Fires are prohibited.

Maxwell National Wildlife Refuge, P.O. Box 276, Maxwell, NM 87728. Contact Jon Brock, Refuge Manager at 505-375-2331. Special conditions:

(1) Fishing is permitted from February 28 through October 12, 1981 on portions of Lake 13 and Lake 14. Areas open are designated on maps available at the refuge headquarters. Fishing is prohibited within 150 feet of headgates.

(2) Boats not to exceed trolling speed are permitted on Lakes 13 and 14 during fishing season.

(3) Camping is permitted on Lake 13 during fishing season, not to exceed three consecutive days.

The provisions of these special regulations supplement the regulations which govern fishing on wildlife refuge areas generally set forth in Title 50, Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

Note.—The Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Albert W. Jackson,

Area Manager, Phoenix, AZ.

December 10, 1980.

[FR Doc. 80-39249 Filed 12-17-80; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 45, No. 245
Thursday, December 18, 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 AGRICULTURE

Farmers Home Administration

7 CFR Parts 1924 and 1951

Borrower Supervision, Servicing, and Collection of Single Family Housing Loan Accounts

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend, consolidate and redesignate its regulations regarding Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts. This redesignation, revision, and consolidation is designed to place in one regulation the requirement for borrower supervision and servicing and collection of single family housing loan accounts, provide counseling and supervisory guidelines for field staff to meet the indicated needs of borrowers, and to provide specific steps in the servicing and collection of delinquent accounts. The action is required so that the FmHA can provide single family housing borrowers better counseling and supervisory assistance and enable field staff to take specific actions to assist borrowers to remove and reduce delinquencies.

DATES: Written comments must be received on or before February 17, 1981.

ADDRESSES: Submit an original and copy of all written comments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, United States Department of Agriculture, Room 6346, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the address given above.

FOR FURTHER INFORMATION CONTACT: Ron Tharrington, Senior Program Specialist, Farmers Home Administration, USDA, Room 5309, South Agriculture Building, 14th and Independence Avenues, SW, Washington, D.C. 20250, telephone 202-447-3766. The Draft Impact Analysis describing the options considered in developing this proposed rule and implementing each option is available on request from Mr. Joseph Linsley, Chief, Directives Management Branch, USDA—FMHA, 14th and Independence Ave., SW, Room 6346-S, Washington, D.C. 20250, phone (202) 447-4057.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified not significant. The FmHA programs and projects which are affected by this instruction are subject to state and local clearinghouse review in the manner delineated in FmHA Instruction 1901-H. (CFDA No. 10-410 Low to Moderate Income Housing Loans) and (CFDA No. 10.417 Very Low-Income Housing Repair Loans and Grants). The Farmers Home Administration proposes to establish under Chapter XVIII, Title 7, Subchapter H, in the Code of Federal Regulations Part 1951, Servicing and Collections, a new Subpart G, "Borrower Supervision, Servicing, and Collection of Single Family Housing Loan Accounts." This new Subpart G of Part 1951 also will replace Part 1951, Subpart A, Section 1951.17 and Part 1924, Subpart B, and will be amended and no longer will pertain to Single Family Housing Borrowers. Therefore, as proposed Part 1951, Subpart A, Section 1951.17 is deleted; Part 1924, Subpart B, is revised and no longer is applicable for Single Family Housing Borrowers and a new Subpart G of Part 1951 is added.

As proposed, Subpart B of Part 1924 and Subparts A and G of Part 1951 are amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

Subpart B—Management Assistance to Individual Borrowers and Applicants

1. The Authority Citation for Part 1924 reads as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; Sec. 10 Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegations of authority by Dir., OEO 29 Fr 14764, 33 FR 8950.

2. Section 1924 as proposed is revised to read as follows:

§ 1924.51 General.

This Subpart sets forth policies for providing management assistance to individual applicants and borrowers except Rural Housing (RN) borrowers unless the borrower is also indebted for an active farmer program type loan. The term "individual" as used in this Subpart also applies to farming partnerships and corporations receiving Emergency (EM) and Soil and Water (SW) loans. This subpart pertains to all insured loans that depend on farm income for loan repayment except for Rural Housing (RH) borrowers who are not also indebted for an active farmer program type loan.

PART 1951—SERVICING AND COLLECTIONS

3. The Authority Citation for Part 1951 reads as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; Sec. 10 Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegations of authority by Dir., OEO 29 FR 14764, 33 FR 8950.

Subpart A—Account Servicing Policies

4. Section 1951.17, as proposed is deleted and reserved.

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts.

5. As proposed Subpart G of Part 1951 is added and reads as follows:

Sec.
1951.301 Purpose.
1951.302 Authorities and responsibilities.
1951.303-1951.306 [Reserved]
1951.307 Supervision.
1951.308 Collection.
1951.309 Amortization of recoverable cost.
1951.310 Reports, statements and notices.
1951.311 Servicing.
1951.312 Changes in payment plan.
1951.313 Subsequent loans.
1951.314 Moratorium on principal and interest payments on Sections 502 and 504 loans.
1951.315 Reamortizing direct and insured Section 502 and 504 RH accounts.
Exhibits: A—Cooperative Agreement for Utilization of Housing Supervisory and

Counseling Services Between the Farmers Home Administration and

§ 1951.301 Purpose.

This Subpart sets forth policies and procedures of the Farmers Home Administration (FmHA) to ensure that in borrower supervision, servicing and collections of Single Family Housing Loan Accounts, all authorities are considered and used to assist borrowers to become successful homeowners, thereby reducing the number and amount of borrower delinquencies and borrower failure resulting in liquidation of the account. This Subpart pertains to all Section 502 and 504 Single Family Rural Housing (RH) Borrowers except those who are also indebted for an active farmer program type loan. In those cases the account will be serviced in accordance with Subpart B of Part 1924 of this chapter.

§ 1951.302 Authorities and responsibilities.

County Supervisors are responsible for borrower supervision and, servicing and collecting all single family housing loans as prescribed by this Subpart under the general guidance and supervision of District Directors and State Office personnel.

§ 1951.303–§ 1951.306 [Reserved]

§ 1951.307 Supervision.

Supervision and counseling will be provided to give borrowers an opportunity to become successful homeowners, thereby accomplishing the purpose and objective of the loan.

(a) *Supervising and counseling borrowers.* The County Supervisor, and supervisory and counseling agencies where a Cooperative Agreement is in effect, will counsel borrowers on property care and maintenance, reducing energy consumption in the home, preventing and reducing delinquencies and/or other problems, in order to reduce defaults and the need for initiating liquidation actions. County Supervisors and counselors employed by supervisory and counseling agencies will:

(1) Counsel borrowers on adequate care for and maintenance of their dwellings and sites.

Distribution

(2) Develop plans to assist and encourage borrowers in the reduction of energy consumption and cost by:

(i) Becoming aware of the various types of energy conservation practices available and being able to estimate relative costs and benefits to the borrower of such practices.

(ii) During visits to borrower's homes, inspecting the dwellings for energy waste and explaining the advantages of taking the necessary action to lessen energy use. The borrower should be made aware that utility companies and other private suppliers have technicians available to assist homeowners with energy audits.

(iii) Encouraging borrowers not to heat their homes above 68°, or to cool them below 78° if the dwelling has air conditioning.

(iv) Encouraging borrowers to weatherize their dwellings, when cost effective, by using:

(A) Borrower funds.

(B) Loan funds from FmHA or other sources.

(C) Funds available from other Federal or State agenices.

(v) Encouraging borrowers to participate in "even payment" plans or similar services offered by most utility companies.

(3) Provide Credit Counseling. The following action or steps should be taken to assist borrowers with their financial problems.

(i) Counsel borrowers as to the general use and cost of credit.

(ii) Assist borrowers in planning for the wise use of credit, including advice on debt levels, credit purchases and consumer and cost awareness.

(iii) Counsel borrowers that credit should only be used if they can reasonably expect to repay such credit when payments become due.

(iv) Counsel borrowers about the FmHA's graduation requirements as prescribed in Part 1865 of this Chapter (FmHA Instruction 451.6).

(v) Advise borrowers that FmHA may grant interest credits and/or a moratorium on loan payments in some cases to assist them when they have had a loss or reduction of income or are facing other difficulties which unduly impair their standard of living.

(4) Assist borrowers in resolving their construction complaints in accordance with Subpart F of Part 1924 of this Chapter.

(5) Encourage borrowers, on an informal basis to obtain assistance from other sources such as the local Agricultural Extension Service, Soil Conservation Service, utility companies, etc.

(b) *Use of Housing Counselors from other sources.* There are several agencies and organizations, including the Department of Housing and Urban Development (HUD), Community Services Administration (CSA), ACTION, and public and private nonprofit organizations, and State and local organizations that have programs to provide supervision and counseling or approve or certify nonprofit corporations and public bodies to perform supervision and counseling services for low- and moderate-income families. These agencies, nonprofit corporations and public bodies have employees with the background and experience to perform the needed counseling. Prior to participating in a counseling program with these agencies and organizations, the FmHA must enter into a Cooperative Agreement with the agencies or organizations providing the counseling services as outlined in Exhibit A.

(1) County Supervisors are authorized to enter into Cooperative Agreements with nonprofit corporations and public bodies which employ qualified housing counselors. The counseling Agency will provide free counseling to the FmHA borrower and neither the counseling Agency nor the Counselor will receive payment from the borrower or the FmHA. In all cases, the Cooperative Agreement must contain the information in Exhibit A unless an exception is authorized by the National Office. Item 4(B) of Exhibit A will be deleted if the counseling Agency is not working with delinquent borrowers.

(2) In counties where a Cooperative Agreement is in effect and the Counseling Agency will be counseling delinquent borrowers, the County Supervisor will furnish to the Agency the names, addresses, monthly payment amount, and length and amount of the delinquency, for each borrower who the County Supervisor determines needs assistance in order to overcome the delinquency problem and to become a successful borrower. A letter should be sent to those delinquent borrowers whose names were given to the Counseling Agency. (See Guide Letter 1951–G–1) This letter is to introduce the counseling program to the delinquent borrower and encourage their participation. When the borrower has agreed to participate, the counselor will request the borrower to execute an agreement so that all the information in the borrower's case file which is needed for collective counseling can be made available to the Counselor. (See Guide Letter 1951–G–2)

(3) The County Supervisor, with assistance from the District Director and State Staff, will provide necessary training in FmHA loan policies and servicing policies to the counselors. This will include, as a minimum, training concerning:

(i) Interest Credit.

(ii) Moratorium.

(iii) Rescheduled Payment Agreements.

(iv) Reamortization.

(v) FmHA budget Forms.

(vi) The borrowers obligation under the promissory note and security instrument.

(vii) Home Energy Management.

(4) While a counselor is working with a borrower, the County Supervisor will not take any liquidation action for three months following referral of the matter to the Counselor. The account is considered referred when the borrower executes Guide Letter 1951-G-1. If the borrower makes loan payments equaling at least the interest accruing on the loan account, the suspension of liquidation action will be extended for an additional three months unless a new repayment schedule has been approved and the borrower fails to pay as agreed.

(c) *Technical and supervisory assistance grants.* In those counties or areas in which Technical and Supervisory Assistance (TSA) Grants have been funded and implemented, the County Supervisor will refer those FmHA low-income borrowers who are in need of counseling and supervisory assistance as defined in Subpart K Part 1944 of this Chapter, and recommend their participation in this program.

§ 1951.308 Collection.

Borrowers are expected to repay loans to the FmHA in accordance with their agreements.

(a) *Payments on accounts.* All Single Family Housing borrowers will be furnished a packet of prepunched payment cards showing the borrower's name, case number, due date, and amount of the monthly or annual payments.

(1) *Payments to Finance Office.* Normally, borrowers should mail their payments directly to the Finance Office in the self-addressed envelope provided with the card packets.

(2) *Payments to County Office.* Direct payments may be accepted in the County Office or in the field by employees listed in Exhibit B of Subpart B of FmHA Instruction 1951-B. (Available in any FmHA office)

(i) A regular payment paid by check or money order and made payable to the "Farmers Home Administration" should be placed in a direct payment envelope with the appropriate payment card, sealed, and transmitted to the Finance Office with other remittances being mailed that day in the manner outlined in Section 1951.60(a)(2). The check or money order and the appropriate payment card should not be stapled, clipped, or attached in any manner.

(ii) Payments received in currency or coin and payments without direct payment cards will be combined with other collections for deposit and listed in Form FmHA 451-2 "Schedule of remittance, in accordance with Subpart B of Part 1951 of this Chapter. The payment card will not be transmitted with Form FmHA 451-2.

(iii) Extra payments and refunds as defined in Section 1951.8 of Subpart A of Part 1951 of this Chapter will be deposited and listed on Form FmHA 451-2 in accordance with Subpart B of Part 1951 of this Chapter.

(b) *Application of payment.* The definition of regular payments, extra payments, and refunds in Subpart A of Part 1951 of this Chapter apply to this Subpart.

(1) *Regular payments.* Regular payments will be applied by the Finance Office in the following order of priority.

(i) Advances for recoverable cost in the amount necessary to keep the advance accounts current. Payments on amortized advances can only be applied to the amortized advance in full monthly increments. Partial payments are not applied to the amortized advance, but are applied to the borrowers loan account.

(ii) Accrued interest on the note account.

(iii) Principal on the note account.

When a borrower makes a payment in an amount insufficient to pay the amount then due and such borrower has more than one loan of the same type, the payment shall be applied on a prorate basis to each loan according to the amount then due. For delinquency reporting purposes, a borrower with more than one loan of the same type will be considered delinquent only if the payments received are less than the combined amounts due on all loans of the same type.

(2) *Extra payments and refunds.* Extra payments and refunds will be credited to the borrower's note account as of the date of the Form FmHA 451-2 and will be applied first to interest accrued to the date of the payment and second to principal. Extra payments and refunds will not relieve borrowers from making their next scheduled payment.

(3) *Notice of applications.* Form FmHA 451-26, "Transaction Record" will no longer be prepared for payments applied to Single Family Housing loan accounts.

(c) *Issuing payment cards.* A packet of 12 payment cards and preaddressed envelopes is provided initially for each borrower. A new packet of 12 cards and envelopes will be provided when:

(1) The tenth card in the packet is processed in the Finance Office; or

(2) The Finance Office is notified that the borrower needs additional cards; or

(3) The required monthly payment is changed for one of the following reasons:

(i) Recoverable cost is charged to the borrower's account.

(ii) "Additional Partial Payment Agreement," is processed.

(iii) A subsequent loan is obligated.

(iv) The final payment of an advance is paid.

(v) A rescheduled account becomes current.

(vi) An Interest Credit Agreement is cancelled or renewed for a different amount.

(vii) An interest credit agreement is placed in effect.

(viii) The account is reamortized.

§ 1951.309 Amortization of recoverable cost.

When an advance is made by FMHA to pay recoverable costs, the Finance Office will automatically increase the payments during the amortization period by the amount necessary to repay the advance, with interest computed at the note rate or the Interest Credit Agreement rate, whichever is applicable.

(a) *Monthly payment borrowers.* Recoverable costs will be automatically amortized for 12 months when charged to monthly payment accounts unless the County Supervisor determines that based on the borrower's repayment ability that a longer period is needed and specifies so on the voucher. An amortization period of more than 12 months will be use only when the recoverable cost charged is (1) two or more years, or (2) a non-recurring cost. If there is an outstanding balance from a previous advance when a new advance is made, the two amounts will be combined and reamortized. If the new installment is less than the previous installment, the larger of the two will be used, thus causing the balance to be paid in less than 12 payments.

(b) *Other than monthly payment borrower.* Recoverable costs will be automatically due and payable for all other than monthly payment borrowers on the next payment due date, unless the County Supervisor determines, based on the borrower's repayment ability, that a longer period is needed and specifies so on the voucher. The advance can be prorated over the next two payment due dates.

(c) *Scheduling adjusted loan payments.* A copy of Form FmHA 451-26, "Transaction Record," will be sent to the County Office when a recoverable cost is charged to an account. The first increased payment will be due on the first regular monthly due date occurring

not less than 30 days after the effective date of the charge.

§ 1951.310 Reports, statements and notices.

(a) *Past due notices.* The Finance Office will prepare a form FmHA 451-35, "Past Due Notice," on any account that remains behind schedule after all payments received by the fifteenth day after the due date have been processed. The Past Due Notice will be mailed directly to the borrower. The borrower will continue to receive a notice each month until (1) the account becomes current or ahead of schedule, (2) a Form FmHA 451-37, is processed by the Finance Office, (3) the account is more than three payments behind schedule, or (4) the Finance Office is notified that liquidation action has been initiated. Past Due Notices will not be prepared for accounts that are flagged because of unprocessed transactions, borrowers discharged in bankruptcy who have not signed a new promise to pay, bankruptcy or other court actions pending, or foreclosure action pending. When the County Supervisor believes that payments have not been correctly applied to the borrower's account, the Finance Office should be notified and furnished all pertinent information, including a copy of both sides of the canceled check, if possible, to assist in correcting the error.

(b) *Monthly report.* The Finance Office will provide each County Office with a monthly report showing the unpaid balance of interest and principal, daily interest accrual, date of last payment, and schedule status of each borrower that is behind schedule. Separate reports will be prepared for monthly payment borrowers and annual payment borrowers. The Finance Office will provide each State Office with a monthly report showing the number of delinquent monthly and annual payment borrowers in each County Office. For purposes of these reports, borrowers who have signed Form FmHA 451-37, will not be shown as being behind schedule so long as payments are made in accordance with the agreements.

(c) *Semi-annual report.* The Finance Office will provide each County Office with a semi-annual report showing the unpaid balance of interest and principal, daily interest accrual, date of last payments and schedule status of each borrower. A separate report will be prepared for monthly payment borrowers and annual payment borrowers.

(d) *Annual statement.* At the end of each calendar year, the Finance Office will send each borrower a statement showing the unpaid loan balance and the total amount of principal and interest paid during the year. If the borrower received subsidy that is subject to recapture, the annual statement will also show the annual and total subsidy granted on the loans. The annual statement will invite the borrower to write, call, or meet with the County Supervisor if the borrower does not understand or is in disagreement with the information contained in the annual statement.

§ 1951.311 Servicing.

County Supervisors should make all reasonable efforts to avoid foreclosure of mortgages. The County Supervisor will use all the authorities available to give borrowers an opportunity to become successful homeowners, in an effort to reduce the number and amount of borrower delinquencies and failures resulting in liquidation of the account. Account servicing includes the following:

(a) *Hold payment cards.* For all new loans, the payment cards will be held for the first three payments or until the County Supervisor determines that the borrowers understand their responsibilities and will make payments in a timely manner. For problem delinquent cases the County Supervisor will also hold the borrower payment cards until the delinquency is removed or the problem corrected.

(b) *Interest credit.* When servicing loan accounts County Supervisors should make sure that borrowers are receiving all of the interest credit assistance for which they are eligible as provided for in Exhibit E of Subpart A of Part 1822 of this Chapter. (FmHA Instruction 444.1).

(c) *Moratorium.* Borrowers who due to circumstances beyond their control, are unable to continue with the scheduled payments on their loan without unduly impairing their standard of living should be considered for a moratorium in accordance with Section 1951.314.

(d) *Supplementary payment agreement.* Delinquent borrowers will be expected to bring their accounts current as soon as possible, based on their ability to repay as determined by a completed Form FmHA 431-3, "Family Budget." Borrowers who are unable to pay the delinquent amount in a single payment should pay a larger than scheduled regular payment until the account is current. If the account can be brought current in four payments or less, a Form FmHA 451-37 need not be sent to the Finance Office to change Finance Office records or cause new payment cards to be issued.

(e) *Rescheduled payment agreements.* Form FmHA 451-37 should be used to establish or reschedule a new payment amount for borrowers who need more than four months to repay a delinquency, or to repay an advance. Repayment of the delinquency should be scheduled within the borrower's ability to pay as determined by a completed Form FmHA 431-3, however, the amount of the additional partial payment as shown on Form FmHA 451-37 cannot be less than $10 per month.

(f) *Special servicing of delinquent and other problem individual housing loans.* At least once each month the County Supervisor and County Office staff will review the borrower delinquency report received from the Finance Office and determine the appropriate servicing action needed in each case. The District Director will assist in the review each month if practicable and in all cases at least once each quarter.

(1) A systematic method must be developed and implemented to service accounts of delinquent borrowers. The following system is to be followed as a minimum in servicing each delinquent housing account.

(i) *New borrower delinquent first time.* A new borrower scheduled to make payments in the county office must be contacted when a payment is not made as scheduled for the first time. This contact should be by telephone or by a personal visit immediately following the due date of the scheduled payment. If contact cannot be made by telephone or personal visit, the County Supervisor should write a letter notifying the borrower than the account is delinquent and that the payment should be remitted immediately. Also the borrower should be informed that the FmHA will insist that payments be made on time and if for a legitimate reason a payment cannot be made, when due, the County Office is to be notified. (See Guide Letter 1951-G-3)

(ii) *One payment delinquent other than new borrower.* The County Supervisor should write a letter notifying the borrower that the required payment has not been received and to remit immediately. The letter will notify the borrower of the interest credit and moratorium provisions and request that the borrower contact the County Office if the borrower has experienced a reduction in income. When possible the borrower should also be contacted by telephone. (See Guide Letter 1951-G-3)

(iii) *Two payments deliquent.* All borrowers who are two payments behind schedule will be contacted by telephone when possible, or the County Supervisor should write a letter notifying the borrower that the account is two months deliquent and to remit the required payments. Also the County

supervisor should inform the borrower that if problems have developed that have caused a reduction in income to contact the local FmHA County Office. [See Guide Letter 1951-G-4].

(iv) *Three months delinquent.* The County Supervisor must contact the borrower by letter, with a Family Budget, Form FmHA 431-3, attached. This letter will notify the borrower of the interest credit and moratorium provisions and ask that the borrower visit the County Office at an appointed time. The borrower will be requested to bring to the FmHA Office the following, (1) payment cards, and (2) the completed family budget. [See Guide Letter 1951-G-5]

During the borrowers visit at least one of the following actions will be initiated or taken:

(A) Develop a repayment plan to remove the delinquency by either entering into a supplemental payment agreement or an Additional Partial Payment Agreement, Form FmHA 451-37.

(B) Develop an interest credit Agreement.

(C) Processing of a moratorium on principal and interest payments.

(D) Confirm in writing that payments will continue to be made at the scheduled amount or for a lesser amount for a temporary period of time or

(E) If the borrower is not eligible for moratorium and does not have income to be successful even with interest credit assistance the County Supervisor will explain to the borrower that the FmHA has no other choice but to take action to liquidate the account. The County Supervisor should explain to the borrower all the options available through the voluntary liquidation process as outlined in paragraph (f)(1)(v)(2) of this section.

(v) *Four payments delinquent.* If the borrower does not respond to the County Supervisor's appointment and/or becomes 4 payments behind schedule the County Supervisor will notify the borrower of a planned visit to the property to counsel the borrower, to make a security check and to make an evaluation of the property. [See Guide Letter 1951-G-6]

When the County Supervisor visits the borrower at the property, the following items are to be discussed.

(A) Is the borrower willing and able to make additional payments in excess of the scheduled payment to bring the account current?

(B) Is the borrower entitled to interest credit assistance or additional interest credits?

(C) Does the borrower qualify for a moratorium?

If the borrower does not qualify for a moratorium or additional interest credit and cannot or is not willing to make a firm commitment to make additional payments to bring the account current, the County Supervisor will discuss voluntary liquidation of the account. The following points should be covered with the borrower:

(1) When there is equity, inform the borrower the approximate amount of equity in the property and the advantage of placing the dwelling on the market for sale. The borrower should be given a reasonable time to complete the sale, including a possible assumption of the indebteness by an FmHA applicant.

(2) If there is no equity, explain that the Government will accept a voluntary conveyance instead of taking the necessary action to foreclose. Outline to the borrower the advantages of voluntarily conveying the property.

(vi) *More than four payments delinquent and/or it is recommended that the account be liquidated.* If the borrower has failed to keep appointments, to make payments according to previous agreements or has abandoned the property, the County Supervisor will prepare Form FmHA 465-7, "Report on Real Estate Problem Case," and send the case to the District Director with a recommendation for foreclosure of the loan. The District Director will review the file and decide if appropriate action has been taken by the County Supervisor to adequately service the account in an effort to give the borrower an opportunity to become a successful homeowner. If the District Director determines that appropriate action has been taken in servicing the account, but the borrower failed to respond, keep agreements made or make payments in accordance with available income, foreclosure action will be recommended and the file forwarded to the State Director. If the District Director determines that there is some question concerning the servicing of the account the borrower will be given an appointment to meet with the District Director in the County Office. [See Guide Letter 1951-G-7] During the meeting with the borrower the District Director will evaluate the borrower's financial condition; whether the borrower has been unemployed, or has had an above normal amount of sickness and the borrower's attitude about paying the FmHA debt. After this evaluation the District Director will determine if it is appropriate to work out an agreement with the borrower to bring the account current or whether to recommend foreclosure and forward the file to the State Director.

(vii) All actions taken, Agreements reached and recommendations made in the servicing of a borrower's account are to be documented. *In order to establish a good loan servicing system, an effective followup procedure must be developed.* County Offices should use the Management System Card, or some other system to show the status of actions planned as a means of triggering needed followup activity.

(2) *Delinquent and other problem cases review and report.* The printout received monthly for both annual and monthly payment borrowers will be used to determine payment status and to assist in determining servicing action to be taken in each case. District Directors will send a quarterly report to the State Director for each County Office in the district where more than 20 percent of the monthly payment borrowers are deliquent or more than 5 percent of these borrowers are over three payments delinquent. As a minimum, the report should describe the reasons for the high delinquency rate, actions planned, and the accomplishment in reducing delinquencies. State Directors will forward a quarterly report to the Area Director with a copy to the Single Family Housing, Servicing and Property Managment Division, listing all County Offices where the monthly delinquency exceeds 20 percent or where more than 5 percent of the borrowers are over three payments delinquent given the same information requested in the District Director's reports as well as the action to be taken by the State Office to service the loan accounts. Those reports will reflect the delinquency status as of March 1, June 1, Sept. 1, and December 1. The District Directors report will be forwarded to the State Director within 15 days after the end of each quarter. The State Director's report to the Administrator will be forwarded to the National Office within 30 days after the end of each quarter.

§ 1951.312 Changes in payment plan.

(a) *From annual payment to monthly payment.* If borrowers agree they may be converted from annual payments to the monthly payment plan at any time by using Form FmHA 451-34, "Direct Payment Plan Change," completed in accordance with the Forms Manual Insert (FMI). The County Office must be careful not to create a delinquency when making this conversion. When the form is processed in the Finance Office, the required monthly payments will be established as 1/12th of the annual installment. Cents will be rounded to the next higher dollar.

(b) *From monthly payments to annual paymnent.* Borrowers with annual

payment notes who voluntarily converted to the monthly payment plan without signing an additional Partial Payment Agreement may be removed from the monthly paynent plan upon request. The change will be accomplished by completing Form FmHA 451-34.

(c) *Change in place of payment.* Payment Cards are prepared and sent to the County Office, for all housing loan borrowers when an initial or subsequent loan is closed. The County Supervisor will deliver the payment cards to initial loan borrowers after the first three payments are made and the borrower has shown that payments will be made in a timely manner. Additional payment cards will be prepared by the Finance Office as needed and mailed either to the borrower or the County Office as determined by the code in the borrower's file.

(1) If Form FmHA 451-34 has been submitted indicating payment to the Finance Office, the cards will be mailed to the borrower.

(2) If a Form FmHA 451-34 has been submitted indicating payment to the County Office, the cards will be mailed to the County Office. The place of payment on the Finance Office records only controls the mailing of replacement cards and may be changed by submitting Form FmHA 451-34.

§ 1951.313 Subsequent loans.

Initial and subsequent loans of the same loan type must be on the same payment plan and payments must be due on the same date.

(a) *Monthly installment required.* If the initial loan was closed with a monthly payment note or the borrower has assumed a loan to be repaid with monthly installments, the subsequent loan must be closed with a monthly payment note. At the time the subsequent loan is closed, the Finance Office will prepare a new payment card packet and forward it to the County Office. The monthly payment due date shown on the cards will be that required by the initial loan. The first increased payment will be due on the date of the first installment on the subsequent loan.

(b) *Annual installment required.* If the initial loan was closed with an annual installment note, the subsequent loans must be closed with an annual installment note. When the subsequent loan is closed, the Finance Office will automatically place it on the payment plan in effect for the initial loan amd issue payment cards.

§ 1951.314 Moratorium on principal and interest payments on sections 502 and 504 loans.

A moratorium on principal and interest payments shall be granted on sections 502 and 504 RH loans, as authorized under section 505 of the Housing Act of 1949, upon determination that, due to circumstances beyond the borrower's control, the borrower is unable to continue making scheduled payments without unduly impairing his or her standard of living. Cancellation of interest accrued during the moratorium period is also authorized in cases of extreme hardship.

(a) *Definitions.* As used in this section:

(1) "Scheduled payments" means the amount of the monthly or annual installment on an RH loan promissory note as this amount may be modified by any outstanding Interest Credit Agreement, Supplementary Payment Agreement, Additional Partial Payment Agreement, or other written agreements between FmHA and the borrower.

(2) "Unduly impaired standard of living" means a condition whereby the borrower, due to circumstances beyond the borrower's control, is unable to pay normal living expenses and scheduled payments as provided by the loan documents. The borrower must present evidence that the inability to repay the loan will probably last for a period of 6 months or more and that income will be available to resume payments after the moratorium period. The circumstances include but are not limited to the following:

(i) A substantial reduction of income which will cause the total payments on the RH loan and the taxes and insurance on the dwelling to exceed the borrower's ability to pay after all interest credits authorized have been granted. (A moratorium based on loss or reduction of income will not be granted if the sum of the principal, interest, real estate taxes and insurance is less than 30 percent of the borrower's adjusted income based on the next 12 months' projected earnings. The fact that such payments would exceed 30 percent of the borrower's projected annual income does not by itself mean that the borrower is eligible for moratorium.) Such reduction may result from:

(A) Unemployment or underemployment caused by circumstances beyond the borrower's control, or

(B) Loss or reduction in benefits which constituted a substantial part of the annual income as defined in § 1822.3(n) of Subpart A of Part 1822 of this Chapter. (FmHA Instruction 444.1), or

(C) Illness, injury, or death of the borrower or other adult who contributed to the annual income, or

(D) A situation in which a spouse is living apart from the borrower's family and away from the RH financed dwelling and legal action has been started in the appropriate court to commence divorce or legal separation proceedings provided: the remaining spouse is occupying the dwelling, owns a legal interest in the property, is liable for the debt, and the loan account is put in the remaining spouse's name only, or

(E) A situation in which a spouse has lived apart from the borrower's family and away from the RH financed dwelling for 6 months or longer because of broken marriage or separation and not because of work assignment or military order and legal papers have not been filed to commence divorce proceedings, provided the conditions of Paragraph (a)(2)(i) of this Section are met by the borrower who is living in the dwelling. (For purposes of the retroactive provisions of paragraph (b)(4) of this Section the moratorium may be effective 90 days prior to the end of the 6-months' period or the filing of a request for moratorium whichever is later.)

(ii) The need to pay certain essential family expenses which have or may result in a lien being placed on the borrower's dwelling, and which if not paid are likely to result in loss of the dwelling. Such expenses may result from:

(A) Accident, illness, or injury to the borrower or dependent member of the borrower's family, or

(B) Death of a member of the borrower's family, or

(C) Cost of repairs for uninsured damage to the security if the loss occurred because adequate insurance coverage was not available.

(3) "Extreme hardship" means that condition described in paragraph (a)(2) of this section, which has continued until interest accruing or annual payments on the balance of the debt to exceed the borrower's repayment ability if the debt is reamortized over the remaining term of the loan plus any extension authorized in paragraph (e)(1)(iii) of this section, unless all or part of the interest which accrued during the moratorium period is canceled.

(b) *Granting a moratorium.*

(1) Applicants and borrowers will be advised of the moratorium provisions as follows:

(i) In the interview required by § 1822.11(c) of this Chapter (FmHA Instruction 444.1), the interviewer will inform the applicant(s) of moratorium provisions under this Subpart.

(ii) The County Supervisor will advise borrowers in writing of the possible availability of a moratorium when any of the following conditions exist:

(A) The County Supervisor becomes aware of a change in the borrower's circumstances which would be likely to justify the granting of a moratorium, or

(B) The borrower fails to make payments as agreed and the County Supervisor sends a collection letter informing the borrower that the account is delinquent or writes to schedule an appointment to develop a new repayment agreement. The letter will include a statement similar to the following: "If your income has been reduced or you have problems beyond your control that prevent you from making your required payment on time, you should contact the FmHA Office. In some cases interest credits may be granted to reduce the amount of your monthly payment and/or a moratorium may be granted if due to circumstance beyond your control you are unable to continue making payments on your housing loan."

(iii) A notice of acceleration and demand for payment (Exhibit C to Subpart A of Part 1955 of this Chapter) is sent to a borrower whose loan has been approved for forced liquidation because of monetary default. The fifth paragraph on page 2 of the notice will be revised to read as follows: "However, You Have the Opportunity to Have a Hearing Before This Foreclosure Takes Place. If you wish to make use of this opportunity because you believe the United States is in error in accelerating your account(s) and proceeding with the foreclosure, or because you have not been advised of your rights to request a moratorium on payments on your rural housing loan account, you should within 30 days contact the District Director of the Farmers Home Administration in writing at the following address: _____."

(2) Moratorium on principal and interest payments on an RH loan account will be granted when:

(i) The County Supervisor:

(A) Has not taken action to liquidate the account as outlined in § 1872.17 of this chapter (FmHA Instruction 465.1, paragraph XVII) including authorizing the borrower to voluntarily liquidate the loan, prepared Form FmHA 465-7, with a recommendation for foreclosure or accelerated the account.

(B) Had taken action at an earlier date to initiate liquidation of the account, but this action was terminated and the account reinstated.

(ii) The borrower has requested a moratorium on payments in accordance with paragraph (c) of this section and appropriately documents the conditions causing the unduly impaired standard of living.

(iii) The County Supervisor:

(A) Has verified the accuracy of the information received with the request for a moratorium on payments from the borrower, and

(B) Has determined, after using all other alternatives such as granting all authorized interest credits, that a moratorium on payments is still necessary and the borrower is eligible for such moratorium on payments.

(3) The County Supervisor is authorized to approve or disapprove a request for a moratorium and extension thereof. The borrower will be notified of the action taken within 15 days after request has been received in the County Office. The decision relative to a moratorium is recorded on Form FmHA 451-23, "Moratorium on Payment: (Section 502—504 RH Loans)." The reasons and justification for approval or disapproval will be noted or attached as additional information. An original and two copies will be prepared and distributed as indicated on the FMI if the moratorium is denied, the borrower will be notified by letter which will include the following:

(i) A statement of the action taken, a recitation of the facts upon which the decision is based, and the specific reason(s) for the decision denying the moratorium or extension.

(ii) An invitation to call at the County Office to discuss the decision with the County Supervisor.

(iii) A statement that the borrower may appeal the decision. The statement will advise the borrower of appeal rights in accordance with Subpart B of Part 1900 of this Chapter.

(4) A moratorium may only be granted for an initial period of 6 months and successive extensions may be granted in accordance with Paragraph (b)(5) of this Section. The initial moratorium may be retroactive for up to, but not more than, 90 days prior to the date the request for a moratorium was received in the County Office if the circumstances for which the moratorium is to be granted existed during that time.

(5) Immediately before the end of each 6-month period, or sooner if the County Supervisor becomes aware of the facts that substantially change the borrower's repayment ability, the justification for a moratorium will be reviewed by the County Supervisor and the moratorium terminated or extended for another 6-month period if the facts so warrant. The extension will be processed in accordance with paragraph (b)(3) of this section prior to the expiration date of the current moratorium. No moratorium plus extensions may exceed three years. Five years from the end of the moratorium plus extensions must elapse before another moratorium may be granted unless prior approval is received from the State Director. If the situation creating a hardship continues after three consecutive years of moratorium and the borrower is still unable to make scheduled payments even if the account were reamortized, and all authorized interest credits were granted and interest accrued during the moratorium were canceled, the account must be liquidated in accordance with Subpart A of Part 1955 of this Chapter. If, at the end of the moratorium period and any extension(s) thereof, it is determined that the account will be continued (as modified by any interest credit or interest cancellation assistance), it will then be handled in accordance with paragraph (e) of this section.

(6) Interest will accrue during the moratorium at the rate shown on the promissory note as modified by an Interest Credit Agreement. Interest credits will be granted and renewed throughout the period a moratorium is in effect for all loans eligible for interest credits under Exhibit E of Subpart A of Part 1822 of this Chapter (FmHA Instruction 444.1).

(7) Cancellations of part or all of the interest accrued during the moratorium plus any extensions thereof will be granted only in cases of extreme hardship as defined in paragraph (a) (3) of this section. Cancellations will be done in accordance with paragraph (e) of this section.

(c) *Request for moratorium.* The County Supervisor will provide the borrower who wishes to apply for a moratorium with two copies of Form FmHA 451-22, "Request for Moratorium on Payments (Sections 502—504 RH Loans)." The borrower, who may be assisted by County Office personnel, will complete the applicable spaces on the form, and sign and return the original to the County Supervisor. The County Supervisor will retain the original in the borrower's case folder.

(d) *Borrower's appeal of adverse action.* The borrower may appeal an adverse action on the request for moratorium, extension, or cancellation of interest accrued during the moratorium. The appeal will be handled in accordance with Subpart B of Part 1900 of this Chapter.

(e) *Action at the expiration of the final moratorium period.*

(1) At the end of the moratorium period, the County Supervisor will verify the borrower's annual income and obtain a current financial statement to

determine the borrower's ability to repay the unpaid balance of the RH indebtedness. Interest cancellation, reamortization of the account, and repayment schedules will be determined in accordance with the following provisions:

(i) Borrowers who can repay, within 2 years, any principal and interest which was deferred during the moratorium period, in addition to the regular scheduled installments, will execute Form FmHA 451-37 to establish a new repayment schedule.

(ii) For borrowers who cannot meet the repayment requirements of paragraph (e) (1) (i) of this section, the unpaid principal and interest balance of the loan will be reamortized within the remaining term of the loan.

(iii) For borrowers who cannot meet the repayment requirements of paragraph (e) (1) (ii) of this section, the loan account will be reamortized for the remaining term of the loan plus a period not to exceed the time the moratorium was in effect. If the loan was not originally scheduled for the maximum legal term, then the loan can be reamortized for the maximum legal term of the loan plus a period not to exceed the time the moratorium was in effect, less the number of years the loan has been outstanding. State supplements establishing policies and procedures will be issued for extending the term of the loan or advice will be obtained from The Office of General Counsel (OGC) on a case-by-case basis. The borrower must pay for title clearance and legal services needed to assure that the Government's lien priority is retained.

(iv) If the determination is made that the borrower cannot make scheduled payments on the balance owned under the terms of paragraph (e) (1) (iii) of this section without cancellation of part or all of the interest which accrued during the moratorium, the County Supervisor will determine how much interest must be canceled to enable the borrower to repay the loan during the time authorized in paragraph (e) (1) (iii) of this section. The County Supervisor will complete Section II of Form FmHA 451-23 indicating the amount of interest canceled. Such amount will be deducted from the balance owed in determining a new repayment schedule.

(v) The borrower will be advised by letter of the action taken, the reasons for the action, the new repayment schedule, and that, if the borrower does not agree with the action taken, the borrower may appeal the action as provided in Subpart B of Part 1900 of this Chapter.

(2) The County Supervisor, after a determination concerning the cancellation of interest has been made, will complete Form FmHA 452-2, "Reamortization and/or Deferral Agreement," if the account is to be reamortized or Form FmHA 451-37 if reamortization is not planned. If Form FmHA 451-37 is submitted, the County Supervisor will appropriately change County Office records to reflect the amount of the new installments.

§ 1951.315 Reamortizing direct and insured section 502 and 504 RH accounts.

Reamortizing extends loan payments to the maximum repayment period, or rearranges the payments within the remaining years of the original payment period.

(a) Sections 502 and 504 RH loan accounts may be reamortized:

(1) When the borrower has made extra payments or refunds totaling 10 percent or more of the loan being reamortized and the County Supervisor determines that the borrower cannot reasonably be expected to meet the obligation unless the account is reamortized to substantially reduce the annual or monthly installments, or

(2) At the expiration of the final moratorium period in accordance with § 1951.314(e) of this Subpart, or

(3) When a Section 502 or 504 RH loan is being made to a presently indebted Section 502 or 504 RH borrower, and the loan approval official determines that the borrower cannot reasonably be expected to meet installments due unless the account is reamortized.

(4) When the loan was not originally scheduled for the maximum legal term and the security life of the property is such that the term can be extended, then the loan can be reamortized for the maximum legal terms less the number of years the loan has been outstanding provided the County Supervisor determines that the borrower's financial conditions has changed and the borrower cannot reasonably be expected to meet the obligation unless the account is reamortized.

(b) To reamortize the account, the following actions will be taken:

(1) Form FmHA 452-2, will be completed in accordance with the FMI.

(2) If the note or assumption agreement (new terms) being reamortized is not held in the County Office, the County Supervisor will obtain the promissory note and any assumption agreement from the Finance Office before processing the reamortization.

(3) On the back of the original of the note or assumption agreement (new terms), below all signatures and endorsement, the County Supervisor will insert the following: "A reamortization agreement and/or deferral agreement dated ——— 19 , in the principal sum of $———, has been given to modify the payment schedule of this note."

(4) The end of the amortization period will be the final due date of the note being reamortized unless the due date is extended in accordance with Section 1951.314(e)(1)(iii) or Section 1951.315(a)(4).

(5) Interest rate for the account will be unchanged.

§ 1951.316-1951.350 [Reserved]

Exhibit A

FmHA Instruction 1951-G

Cooperative Agreement for Utilization of Housing Supervisory and Counseling Services Between the Farmers Home Administration and ————

1. This agreement, dated ————, between ————, a political subdivision or nonprofit organization of the State of ———— (hereinafter called the Agency), and the United States of America acting through the Farmers Home Administration (FmHA), U.S. Department of Agriculture is entered into for the purpose of permitting the Agency to assist in the FmHA's effort to make available housing counseling and other assistance for FmHA rural housing borrowers in the County of ———— in the State of ———— and to enable them to better care for and maintain their dwellings, reduce energy consumption and better manage their finances.

2. FmHA certifies that it is empowered by current Federal laws and related rules and regulations to enter into this Cooperative Agreement with the Agency and that the work to be done by the Agency will be useful, in the public interest, could not otherwise be provided, and will not result in the displacement of employed workers.

3. The Agency certifies that it has the authority under the laws of the State of ———— to enter into this Agreement and to provide the services agreed upon in the manner provided for.

4. FmHA agrees to: A. Provide training to employees of the Agency who will provide housing counseling. The training will include general information on the section 502 and 504 housing programs and specific information on:

1. Computing interest credit
2. Rescheduled payment agreements
3. Moratorium on payments
4. Reamortization
5. FmHA budget forms
6. The borrower's obligation under the promissory note and security instrument
7. Home Energy management

B. Provide names of delinquent borrowers showing address, amount of regular monthly payment, number of months delinquent and amount delinquent, when FmHA determines that the Agency's services may more effectively assist those borrowers in eliminating the delinquency and managing the borrower's homes and finances.

C. At its discretion, the FmHA may also provide its own servicing actions in a way to

maximize the effectiveness of the Agency's counseling activities.

D. Provide access to FmHA files on a borrower upon receipt of an executed letter of permission from the borrower.

E. Evaluate the success of the counseling provided under this Agreement on a quarterly basis.

F. Consult with the Agency, as necessary, on situations involving misconduct, neglect of work, and apparent conflicts of interest of Agency employees.

5. The Agency agrees to: A. Not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, marital status, national origin or physical or mental handicap. The Agency will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, marital status, national origin or physical or mental handicap. Such action will include, but not be limited to, the following: employment, upgrading, domotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Agency will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. Work with borrowers in a patient and understanding manner, with a goal toward eliminating loan delinquency and other housing-related problems.

C. Pay all salaries and other expenses of Agency employees and comply with Federal, State, and local minimum wage statutes. No monies will be paid by the Administration under this Agreement, either to the Agency or its employees.

D. Not charge borrowers or FmHA for services rendered under this Agreement or receive any compensation or payments from borrowers or FmHA for services rendered pursuant to this Agreement.

E. Not assign specific Agency employees to act as housing counselors for FmHA borrowers upon request of FmHA.

6. The Agency and FmHA mutually understand and agree that reasons for determining that an Agency employee is unacceptable as a housing counselor for FmHA borrowers may include but shall not be limited to the following:

A. Practicing or appearing to practice discrimination for reasons of race, color, religion, sex, age, marital status, national origin, or mental or physical handicap.

B. Being or becoming involved in real or apparent conflicts of interest, such as engaging directly or indirectly in business transactions with FmHA applicants or borrowers, or using or appearing to use a counseling assignment for private gain, other than basic salary and benefits.

C. Engaging in or having engaged in criminal, dishonest, or immoral conduct, or conducting him/herself in a manner which might embarrass or cause criticism of the FmHA.

D. Engaging in direct partisan political activity while working with FmHA borrowers.

7. The Agency and FmHA further understand that:

A. Agency employees may not represent themselves as employees of FmHA.

B. Agency employees may not collect loan payments or other funds in behalf of, or for, FmHA.

8. The term of this Agreement shall commence on the date in the first paragraph. It shall continue until September 30, 198—, unless terminated by at least thirty (30) days' advance written notice by either party to the other. The Agreement may be renewed for a one-year period beginning each October 1 hereafter if mutually agreed to by the Agency and the Administration.

9. No member of or delegate to Congress or resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom, unless it be made with a corporation for its general benefit.

Enter Official Title of Agency

By _____

Authorizing Official

Farmers Home Administration

By _____

FmHA County Supervisor

This document has been reviewed in accordance with FmHA Instruction 1901–G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91.190 an Environmental Impact Statement is not required.

Dated: December 10, 1980.

James E. Thornton

Associate Administrator, Farmers Home Administration.

[FR Doc. 80–39322 Filed 12–17–80; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 93

[Docket No. 70; Notice No. 80–16A]

Special Air Traffic Rules and Airport Traffic Patterns Slot Allocation at Washington National Airport

AGENCY: Office of the Secretary; Department of Transportation (DOT).

ACTION: Proposed rule; extension of comment period and announcement of public hearing.

SUMMARY: This notice announces an extension of comment period for Notice of Proposed Rulemaking (NPRM) No. 80–16 (45 FR 71236; October 27, 1980), which proposed procedures for allocating the hourly number of reservations for instrument flight rules operations (takeoffs and landings or "slot") at Washington National Airport (DCA) in accordance with the Federal Aviation Administration (FAA) High Density Rule (14 CFR 93.121–133). This extension is being issued in response to a petition from the Air Transport Association (ATA) and comments filed by the Civil Aeronautics Board (CAB). This Notice also announces a public hearing.

DATES: *Comment period:* Comments must be received on or before January 26, 1981. In addition, interested persons will have until February 26, 1981, to reply to any comment contained in the public docket.

Public hearing: Thursday, January 8, 1981, 9:00 a.m. to 4:30 p.m.; and Friday, January 9, 1981, 9:30 a.m. to 4:30 p.m.

ADDRESS: The public hearing will be held at: Auditorium, Third Floor, Federal Aviation Administration, Department of Transportation, Federal Office Building 10A, 800 Independence Avenue SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Harvey B. Safeer, Director, Office of Aviation Policy, AVP–1, Federal Aviation Administration, Department of Transportation, Washington, D.C. 20591, Telephone No. 202–426–3331.

SUPPLEMENTARY INFORMATION:

Comment Period; Background

Notice No. 80–16 proposed procedures for allocating the hourly number of slots that may be reserved by air carriers and commuter air carriers at DCA in accordance with the FAA High Density Rule. The alternatives proposed included administrative allocation, slot auction and variations, as well as the continued use of the airline scheduling committee. An extensive background discussion of factors leading to the issuance of the proposal and a detailed explanation of each proposed regulatory change were published as part of the Notice. In addition to inviting comments on the substance of the proposals, the Notice solicited specific information from the public regarding anticipated economic and other aspects. The comment period was initially 60 days from publication of the Notice, or until December 26, 1980. The reply period was initially 90 days from publication of the Notice, or until January 26, 1981.

On November 20, 1980, the Air Transport Association, on behalf of certain air carrier members, petitioned for an extension of time of submit comments (a copy of the petition is in the docket). ATA asked that the comment period be extended until February 24, 1981. In support of its petition, ATA stated that the auction

and administrative assignment proposals are complex and raise serious and far reaching legal and policy questions. In addition, ATA stated that more review and study of the proposed rule are needed before a fully-reasoned industry position, properly coordinated with other air carriers and associations that will be affected by the proposal, can be achieved.

On November 26, 1980, the Civil Aeronautics Board filed an answer to the ATA petition, supporting it to the extent that it agrees with the need for a 30-day extension of time of file comments. The CAB stated that it has instituted an investigation (Docket 20051) to determine whether it should continue to approve the scheduling committee agreements currently in effect. Comments were due in the CAB investigation on December 8, 1980, with reply comments due by January 5, 1981. In order to consider the comments submitted in the investigation in time to incorporate them into a response to this rulemaking, the CAB supported a comment extension to January 26, 1981.

An essential aspect of this rulemaking effort is the current situation at DCA. As a result of the DCA scheduling committee's inability to reach agreement on the allocation of slots at DCA after November 30, the Department was forced to issue a special regulation allocating slots at DCA for air carriers during the period between December 1, 1980, and April 26, 1981, (45 FR 72637; November 3, 1980). The airline scheduling committee will meet beginning January 26 to attempt to resolve slot allocations for the post-April 26 period. The possibility remains, however, that the committee will again fail and the Department will be forced to allocate slots for that period. DOT recognizes that some additional time for submission of comments on Notice 80-16 would be beneficial. Nevertheless, as a result of the current situation at DCA and the amendments to the high density rule, which become effective on April 26, 1981, any extension of the comment period must be limited. The comment period is therefore extended 30 days to January 26, 1981, with reply comments due by February 26.

Comments Invited

In Notice 80-16, interested persons were invitied to participate in the making of the rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of the proposals contained in Notice 80-16 were specifically invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before January 26, 1981, and reply comments received on or before February 26, 1981, will be considered before taking action on the proposed rule. The proposals contained in Notice 80-16 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 substantive public contact with DOT personnel concerned with the rulemaking will be filed in the docket.

ADDRESS: Comments on the proposal should identify the docket number and be submitted in duplicate to the Docket Clerk, Office of the Secretary, Docket No. 70, Notice No. 80-16, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590, or be delivered in duplicate to Room 10421, 400 Seventh Street, SW., Washington, D.C. Comments delivered must be marked: Docket No. 70. Comments may be inspected at Room 10421 between 9:00 a.m. and 5:30 p.m.

Public Hearing

The Department will hold a public hearing in connection with the Notice 80-16 proposals on January 8 and 9, 1981. All interested persons are invited to attend to present their views on any aspect of these proposals.

Request To Make a Presentation

Interested persons are invited to attend the hearing and to participate by making oral or written statements. Written statements should be submitted in duplicate and will be made a part of the rules docket. Persons wishing to make oral statements at the hearing must notify the FAA on or before December 30, 1980, and indicate the amoun of time requested for the initial statements. Presentations will be scheduled on a first-come, first-served basis as time permits. Requests to be heard should indicate the subject matter of the presentation and time required, and be sent to Mr. Safeer, whose address is printed above.

Hearing Procedures

The following procedures will be followed to facilitate the workings of the hearings: (a) The hearing will be informal in nature and will be conducted by the designated representatives of the Secretary and the Federal Aviation Administrator. Each participant will be given an opportunity to make a presentation. After all presentations have been made, an opportunity for rebuttal will be given.

(b) The hearing will begin at 9:00 a.m., January 8, 1981, at the Federal Aviation Administration, Department of Transportation, Federal Office Building 10A, 800 Independence Avenue, SW., Washington, D.C., in the third floor auditorium. There will be no admission fee or other charge to attend and participate. The hearing sessions will be open to all on a space-available basis. The presiding officer may accelerate the hearing agenda to enable early adjournment if the progress of the hearing is more expeditious than planned.

(c) The hearing will run from 9:00 a.m. to 4:30 p.m. on January 8 and from 9:30 a.m. to 4:30 p.m. on January 9, with an hour break between 12:30 and 1:30.

(d) All hearing sessions will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter. A copy of the transcript will be filed in the docket. The sessions will also be recorded on tape.

(e) Position papers or other material may be accepted at the discretion of the presiding officer.

(f) Statements made by the DOT participants at the hearing should not be taken as expressing a final agency position.

(Secs. 103, 307(a) and (c), 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1303, 1348 (a) and (c), and 1354(a)); Sec. 6 of the Department of Transportation Act (49 U.S.C. 1655); Sec. 2, Act for the Administration of Washington National Airport (54 Stat. 688))

Note.—The Department has determined that this document involves a proposed regulation that is significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft Regulatory Analysis prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting Mr. Safeer, whose address is printed above under "FOR FURTHER INFORMATION CONTACT."

Issued at Washington, D.C., on December 15, 1980.

Neil Goldschmidt,

Secretary of Transportation.

[FR Doc. 80-39363 Filed 12-15-80 4:17 pm]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 271

[E.R. Docket 39041; EDR-415]

Guidelines for Subsidizing Air Carriers Providing Essential Air Transportation

December 11, 1980.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The CAB proposes guidelines to be used in determining the amount of subsidy needed to ensure the continuation of essential air transportation at eligible points. The guidelines are required by the Small Community Air Service section of the Federal Aviation Act.

DATE: Comments by: February 17, 1981.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on the Service List by: December 29, 1980

The Docket Section prepares the Service List and sends it to each person listed, who then serves comments on other on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 39041, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Copies may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Rules & Legislation Division, (202) 673-5442; or John R. Hokanson, Bureau of Domestic Aviation, Chief, Air Carrier Subsidy Need Division, (202) 673-5364, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION:

Background

The purpose this rulemaking is to develop a subsidy system that will ensure the maintenance of essential air transportation at small communities through 1988. The Airline Deregulation Act of 1978 increased the competitive pressures on airlines to trim out unprofitable operations, and made it easier for them to do so. To deal with situations where small communities were threatened with loss of service, the Act added a new section 419 to the Federal Aviation Act to ensure that no community lost all its air service under deregulation. This section guarantees that at least essential air service will continue at communities that are "eligible points," with Federal subsidy if necessary. Eligible points are communities that were listed on a carrier's certificate on October 24, 1978, plus others that the Board may designate under the traffic and isolation criteria required by section 419(b) of the Act and contained in 14 CFR Part 270. What constitutes essential air transportation for eligible points was discussed in previous Board notices dealing with the subject: PSDR-59, 44 FR 27438, May 10, 1979, and PS-87, 44 FR 52646, September 7, 1979.

Since 1938 the Act has contained a subsidy provision in section 406. Although the Board has built incentives into that subsidy system to encourage air service at small communities, section 406 has not always been effective as a tool to prevent the withdrawal of carriers from these small points. One reason is that section 406 is limited to certificated air carriers, who typically use large aircraft inappropriate for service to small communities. Also, the Board must consider the needs of the certificated carrier's system when determining the carrier's subsidy need.

Until the passage of the Deregulation Act, this subsidy provision had not been significantly modified since the adoption of the Civil Aeronautics Act. Its primary intent was the development of a national air transportation system, rather than ensuring air service to small communities. That is why the Board was to consider the financial need of the carrier's entire system in establishing subsidy rates. This approach enabled carriers to expand and acquire larger aircraft. While this worked well in building the air transport system and nurturing carriers to self-sufficiency, the shift to larger equipment made high-frequency service to smaller points increasingly impractical. Because the section 406 subsidy was limited to certificated carriers, the Board was unable to subsidize the air taxi industry whose equipment was better suited to serving the small points.

Section 419 corrects this problem. It authorizes the Board to subsidize air taxis, especially the commuter air carriers. This subsidy is to be aimed at ensuring an essential level of air service at each affected community, rather than meeting the financial needs of the recipient's entire route system. Thus, the Board now has the authority to assure that subsidized service to small communities is economical and tailored to the needs of the community involved.

Objectives of the Board's Subsidy Program

Section 419 does not dictate a particular subsidy approach. Congress expected the Board to develop new and innovative subsidy methods. Our emphasis, however, clearly should be on ensuring reliable and continous service to small communities rather than on minimizing the cost of the program. Language emphasizing low cost such as that found in the ratemaking provisions of section 1002 of the Act ("the lowest cost consistent with the furnishing of [adequate] service") is absent from section 419. Section 419(d) states that the subsidy paid should be "the fair and reasonable amount of compensation required to insure the continuation of essential air transportation." Of course, the Board must be prudent with taxpayers' money, so we are faced with the dual goals of keeping subsidy at reasonable levels while ensuring the continuation of essential air service at eligible points.

Our efforts to hold subsidy to reasonable levels should not be misconstrued as an attempt to develop a "low-bid system." The Board does not intend to award subsidy only to those who propose to perform the essential service at the least cost. The lowest bidder may not be the most reliable or efficient carrier. If it turns out that the low bidder cannot perform the service at the promised price, the subsidy will have to be increased or the carrier replaced. This can lead to a loss of credibility in the system, decreased traffic at the affected community, the risk of start-up problems on the part of a new carrier, and other problems that should be minimized if air service is to be successful at small communities. Furthermore, forcing the essential service carrier to perform at unrealistically low subsidy levels may frustrate both of our long-run goals, improving air service at small communities and holding subsidy costs to reasonable levels.

An ingredient common to achieving both goals is the development of the market demand at the communities involved. If traffic is stimulated at small communities, more flights can profitably be added, thereby improving service without increasing subsidy. In fact, at most points, efficient and aggressive carriers will be able to stimulate demand sufficiently to enable them to become self-sufficient. It is important therefore that our subsidy program reward efficiency and not discourage a carrier from adding flights above essential service levels. This requires that incentives be built into the program.

Such a program could become complex. We consider it important that the program contain the necessary incentives and be tailored where necessary to the individual circumstances of each carrier and community. It is also important, however, that the subsidy system not unduly interfere with management decisions nor become so involved as to be unworkable for the relatively small business operations affected by it. Thus, we must have an additional objective the development of subsidy procedures that work as simply and smoothly as possible. This is necessary for efficient administration by both the Board and the carriers.

In evaluating the subsidy approaches proposed here, commenters should keep in mind the objectives described above.

Alternative Approaches

Cost-Plus System

One approach that the Board has considered, but rejected, is the cost-plus subsidy system. This would be the simplest of the three approaches discussed here. Under this system, the Board would set a target loss, the financial loss that we project the carrier would sustain in providing essential service to the eligible point. As the carrier's costs decreased or revenues increased, the Board would revise the subsidy downward to account for the carrier's actual performance. Thus a carrier would not benefit from performing better than expected. On the other hand, if the carrier's costs increased or revenues decreased, the subsidy bill would rise under this system. Indeed, ever-increasing subsidy without any corresponding increase in service is a likely result of the cost-plus system because that system does not offer the carrier any incentive to strive for greater cost-efficiency or to develop the market beyond the level of service determined to be essential.

Of course, any system involving Federal subsidy will contain the potential for perverse incentives such as padding costs to insure continued payments, or settling for a normal return through subsidy rather than developing the market at the risk of attracting competition. While present in any subsidy system, these perversities would be more pronounced in a cost-plus system. The only way to protect against padding is to monitor and, where necessary, audit a carrier's results and compare them to prior costs incurred by that carrier or by other carriers in similar situations. This will have to be done regardless of the subsidy system adopted. The second problem, carrier complacency in accepting initial traffic levels, however, can be overcome only by a system of incentives.

We therefore favor some type of incentive subsidy system. An incentive rate allows a carrier to reap the benefits of developing a market, thereby offering strong encouragement for it to do so. Under an incentive system, the profit motive is relied on to encourage efficiency and market development. This is preferable to achieving these goals by government prodding and interference in management decisions.

Fixed Incentive Rate

The fixed incentive rate is the direct opposite of the cost-plus system. Under both approaches, the Board would set a target loss, the amount of money the carrier could be expected to lose providing essential service at the point. While under the cost-plus system the Board would pay for all the carrier's losses that exceeded the target, under a fixed rate, the carrier would have to absorb all such losses in excess of the target. The advantage of the fixed rate from a carrier's standpoint is that to the extent that it could beat the rate (incur losses lower than the target loss) its profits would increase accordingly.

It is possible that a truly efficient and aggressive carrier would be able to reduce costs or increase revenues and thereby reap large profits under a fixed incentive rate. While profits in such cases might appear excessive over the shortrun, the price would be justified by the improved service and eventual reduction in or elimination of the carrier's subsidy need. The success of fixed incentive rates depends to a large extent on accurate forecasting. The carriers and the Board must develop cost and revenue projections that are realistically attainable if carriers makes reasonable attempts to control costs and to develop markets.

A fixed incentive rate subsidy program has disadvantages. For one, a carrier may be reluctant to accept the risks inherent in a fixed rate unless it is confident that it can beat the rate. This may force the Board to set the projected loss higher than seems appropriate in order to obtain agreement from the carrier to provide the essential service. More significantly, there is a danger of service disruptions under the fixed rate. Since we would not allow carriers to continually renegotiate the rate, lest it be effectively converted into a cost-plus system, the only alternative for a carrier forced to absorb losses under a fixed rate might be to terminate service at the eligible point. Although we would hold the carrier to that service and continue to compensate it, the resulting uncertainty and possible change in carriers would be detrimental to the long-run air service needs of the community affected.

Shared Incentive Rate

Under the shared incentive approach, as with the others, the airline would be reimbursed for a predetermined projected loss and allowed a reasonable profit. The difference is that under the shared incentive rate, the Board would compensate the carrier for some of its additional losses instead of all of them (cost-plus system) or none of them (fixed rate system). The advantage of this approach is that it may pose less danger of service terminations. It represents the middle ground between the cost-plus system and the fixed incentive rate.

Since a carrier would reap some benefit from increasing its revenue or reducing its costs, there would still be an incentive under a shared rate for it to develop the market and control its costs, although not as strong as under a fixed rate where the carrier reaps all the benefit or pays all the cost. On the other hand, the fact that the risk of loss is shared affords the carrier some protection against disappointing results. The sharing of excess losses may make it less likely that there will be service terminations or the need to repeat the carrier selection process.

The main disadvantages of the shared rate are that incentives are weaker, it is more difficult to administer and reporting will be more burdensome for the carriers than the fixed rate. Under a fixed rate, it would only be necessary for us to establish a subsidy rate that would be the basis for the payments. The shared rate, however, has more variables because a formula for sharing extra profits and losses would have to be established. Since it would be necessary to compute periodically the payments due the carrier under the formula, carriers being subsidized under a shared rate would be required to submit more detailed information to the Board on their costs and revenues than would be required of carriers under a fixed rate. Carriers on a shared rate would also have to submit reports more frequently.

In sum, both the fixed rate and the shared rate appear to meet the most important objectives of a subsidy program, ensuring that essential air service is provided at small communities and that there are incentives to improve that service. The incentives appear stronger under a fixed rate. Also, the fixed rate is simpler to administer and less burdensome to carriers. So far, carriers have generally preferred fixed

rates because of the certainty associated with them. We would, therefore, employ the fixed incentive rate for most carriers unless a strong case was made for the shared approach. In some cases, the Board may arrange a hybrid system combining characteristics of both rates. A more complete explanation of the shared incentive rate may be obtained from the Subsidy Division, B-69B, and has been placed in the docket of this proceeding.

Subsidy Rate

Regardless of which approach is chosen in an individual case, a subsidy rate will have to be established by the Board. A carrier's subsidy is simply its projected operating loss plus a reasonable profit. The carrier's loss is determined by projecting the expenses that it will incur in providing the essential service and subtracting from that the projected revenues that it will receive from providing that service.

The subsidy may be increased to allow for the carrier's tax obligation if it has one. A carrier may submit data supporting a tax allowance if it considers itself entitled to one.

It is important that the subsidy be set at a realistic level. If it is set too low, it will either not be accepted by the carrier or will later force that carrier to try to renegotiate the rate or to renege on the promised service. This would place the Board in the position of having to resecure essential service and subjecting the community to an additional transition period. If, on the other hand, the subsidy is set too high, the carrier stands to make excessive profits through subsidy. Although the rate should be set so as to enable the carrier to make extra profits by extra effort, it should not be set so high that it allows the carrier such profits with merely normal effort. Setting the appropriate level will be difficult until more experience is gained with the cost and traffic potential of commuter operations. For now, it will be largely based on the Board's analysis of the expense and revenue data submitted by carriers in individual cases.

Expenses

One element in establishing a subsidy rate would be the carrier's projected expenses. Section 419(d) of the Act directs the Board to "include expense elements based on representative costs" in our subsidy guidelines. We do not read "representative costs" as requiring the use of an industry average in evaluating carriers' subsidy proposals. It would not make sense to develop a subsidy formula based on the costs of other carriers and then to use that as the formula from which subsidy payments would automatically flow. There is too much diversity in aircraft size, route lengths and other factors that affect costs to allow the expenses of one group of carriers to govern the reasonableness of the projected costs of any single carrier. Furthermore, limiting a carrier's subsidy to an industry average may prevent it from launching a subsidized operation that, given more flexibility on our part, could have satisfactorily served the eligible point. The Board, however, is developing representative costs for the commuter industry and these will enable us to set subsidy rates more accurately.

We consider the term "representative costs" to mean those costs of carriers similarly situated in terms of aircraft size, route lengths, geographic area and other factors, and we propose to employ those costs only as a guideline. This is consistent with the tide of section 419(d), "Guidelines for Compensation," and with the language of that section concerning the significance of aircraft size. We would not necessarily refuse to subsidize a carrier merely because its projected costs were above some industry average. Even if its costs were higher than those of comparable carriers, they may be accepted by the Board if the applicant air carrier supplied an acceptable justification for them. This approach will give the Board the flexibility to reach an arms-length agreement with a carrier that is suitable to the unique circumstances of the case.

In applying for subsidy, carriers must submit projections of their costs for providing the essential service to the eligible point. The cost data submitted should be broken down into direct and indirect expenses. Direct expenses are those costs attributable to the carrier's flying operations such as fuel and oil, maintenance of its aircraft, and depreciation and rental of its equipment. They include the wages of pilots and copilots but not those of flight attendants. They also include other crew costs such as fringe benefits and payroll taxes. Indirect expenses include commissions, advertising, landing fees, ground services, maintenance of ground facilities, insurance costs (other than hull), wages of flight attendants and general overhead.

The cost data submitted by the applicant air carrier would be subject to an analysis comparing them with Board cost estimates. The Board estimates will be developed using direct operating unit costs for each aircraft type. The unit employed will usually be revenue block hours. The estimates will be based on reports from small carriers, data collected by Board auditors, and data from other carrier's subsidy proposals and from the manufacturer of the aircraft that will be used.

The reasonableness of a carrier's projected indirect expenses will be tested by comparing its ratio of indirect to direct costs to that of other carriers. Typically, the percentage of indirect to direct expenses will be larger for the larger carriers. To the extent possible, we will use the methodology set forth in the "Small Aircraft Costing System" in analyzing subsidy proposals. This booklet may be obtained from the Financial & Cost Analysis Division of our Office of Economic Analysis.

Often, a carrier's passenger and airline servicing systems at existing stations are not being fully used and consequently the carrier can increase its traffic without proportionate increases in its costs. Similarly, if its aircraft are not fully utilized, it will be able to provide the new service using unused aircraft time rather than by the more expensive route of purchasing new planes. Allocating only these incremental costs to the essential service segement may result in a lower estimate of its subsidy need and thus provide it with a competitive advantage in the selection process. The incremental costing approach may be particularly attractive to carriers who can integrate the essential service into part of a linear system. Subsidy applications based on incremental costing will be evaluated by the Board under proposed § 271.4(b) and may be given preference.

Fuel costs would usually be handled separately. Fuel prices have risen quickly and unpredictably in recent years. Many carriers, and particularly newly organized commuters, have had to purchase fuel at spot-market prices that were often higher than the prevailing contract prices. These carriers have very little control over fuel prices and special provision for fuel cost increases appears to be justified.

One way to deal with the fuel problem would be to consider revising the subsidy rate whenever an individual carrier requested a fuel adjustment. We are reluctant to be in a position of having to constantly reopen the rate, and instead have tentatively decided to meet the problem of rising fuel prices under the sharing formula.

If a formula for sharing fuel costs were included in the rate, it would not pay the full cost of the increase in a carrier's fuel bill. That would leave the carrier with no incentive to keep its fuel expenses down. It might also prompt fuel suppliers to raise their prices to a subsidized carrier because the carrier

could merely pass the cost on to the Federal government in the form of higher subsidy. Instead, the Board would cover a portion of the increase in a carrier's expenses attributable to fuel price rises. This formula should protect carriers from severe losses if fuel prices rise rapidly again, while still leaving them with an incentive to make reasonable efforts to keep their fuel costs in line.

All cost projections must be based on the use of aircraft that are appropriate for serving the community involved. This is specifically required by section 419(d) of the Act. The appropriateness of the equipment on which the cost estimates are based will be evaluated in light of the traffic densities, distances, altitudes, and other operational elements involved in serving the eligible point.

Revenues

The second element in establishing the subsidy rate is the carrier's projected revenue. Projected revenues would be determined by multiplying the carrier's estimated net fare by its projected traffic at the eligible point. The net fare is the carrier's standard fare less any dilution caused by joint fare arrangements, discount fares or the proration of fares of through on-line traffic. The carrier would be expected to explain the basis for its fare estimates.

In evaluating the carrier's fare estimates, the Board will consider the fares in other markets of comparable distance and traffic density and those of the previous carrier, if any, at the eligible point. The carrier's pricing practices in other markets would also be considered. We would accept the carrier's fare estimate as the basis for its revenues projections if it was within a reasonable range of those of comparble markets, or otherwise justified.

In computing traffic, the Board would not only consider the passengers that originate at the eligible point. Passengers that originate at another point but travel over the essential service segment (the route between the eligible point and the hub designated as essential by the Board) would also be included in the traffic computation.

Projected traffic would be based on the historic traffic at the eligible point when data for that market are available. We would not accept projections of substantially increased traffic levels by a carrier without convincing evidence supporting such forecasts. Low, innovative fares would not be considered an adequate basis for a high traffic projection, because they would open an avenue for unrealistic and unreliable estimates. It is difficult to determine the effect on traffic, and hence revenues, of any particular fare. If traffic projections based on a low-fare experiment proved to be overly optimistic, the Board could be forced into renegotiating the rate or seeking a replacement carrier. Carriers are of course free to undertake pricing experiments. Under the fixed rate they, and not the Board, would reap the benefit or absorb the loss.

It is mandatory that the carrier submit its own estimates of expenses and revenues and not merely rely on the Board to supply them. We appreciate that difficulty in estimating these items, especially revenues, since the typical proposal will be based on the use of more frequent service and a different service pattern with smaller aircraft than was formerly employed at the point involved. It therefore may be impossible for a carrier to base its revenue projections on the experience of other carriers that served the point. We would be willing to accept conservative estimates reflecting current conditions and realistc expectations on the state of the market, but we would not accept proposals that do not include any traffic and revenue projections.

Profit Element

The subsidy rate would also allow for a reasonable profit. We are considering four possible approaches for calculating the profit element. The alternatives are a return on investment, a return on equity, a return on sales or revenues, and a return on expenses. Based on our initial experience with carriers seeking to serve small communities on a subsidized basis, it is clear that a simplified approach is necessary if it is to be applied uniformly. Many of these carriers do not have adequate records to support a sophisticated methodology for calculating the profit element, and developing such records would force them to incur considerable expense.

It is primarily this need for simplicity that causes us to reject the return-on-investment approach. Calculating a return on investment is a difficult task in any event and would necessitate imposing a significant reporting burden on carriers. The problems with this approach are further complicated by the fact that many small carriers, those best suited for serving small communities, lease their aircraft. This would have to be considered in calculating return, possibly by capitalizing the leases. If a carrier wanted the Board to adopt a return-on-investment approach for its particular case, however, we would consider it.

We are also not proposing to adopt a return-on-equity approach. This would not be practical, because many carriers which have shown interest in serving small communities with subsidy are relatively new businesses and have little or no equity.

At first glance, return on sales appears to be a desirable approach. Tying the allowable return to sales would permit a reasonable profit without either encouraging carriers to acquire larger equipment where it is not needed to satisfy demand nor discouraging that result where the carrier considers that it can do so profitably. We have tentatively decided to reject this approach, however, because revenues may vary considerably from one market to another even when the type and level of operation are similar. It is hard to justify a different profit element for two carriers when their operations involve similar investments and operating costs.

We propose to calculate profit as a return on projected expenses. We reach this tentative conclusion not only through the process of elimination, but also because it would be simple to administer and would impose no reporting burden on carriers. This approach, however, is not without its problems. Basing return on expenses may provide an incentive for carriers to inflate costs in order to increase their profit element. This perverse incentive should be held in check, however, by competition for the subsidy from other carriers and by the Board's analysis of the proposal.

Having tentatively decided that the profit element should be based on a return on expenses, the question remains whether it should be a uniform percentage and, if so, what percentage. Setting the percentage of expenses at the same amount for all carriers would make the subsidy program easier to administer. On the other hand, a fixed percentage might forestall a carrier from offering to provide the service at a lower rate of return or prevent it from providing the service at all if it considered a higher return necessary. We would not want to be in a position of having to reject a carrier's application merely because it sought a higher percentage of return on expenses than we had established for other carriers. That could create the anomalous result of favoring an inefficient carrier whose costs were high but who accepted the Board's fixed percentage of return over a more efficient carrier whose total subsidy need was lower although it sought a higher profit element.

We do not expect to compute a subsidy rate on the basis of a rate of return greater than 10 percent, unless a carrier presents a convincing

justification for a higher rate in its own case. An applicant would not be rejected merely because it sought a higher percentage of return although a carrier that would agree to a lower profit level might be at a competitive advantage in the selection process.

In light of the dearth of financial information from commuter carriers, and the differences between their operations and those of the larger carriers, it is difficult to justify any particular percentage of return on expenses. We have generally used and now propose 10 percent of expenses as the normal limit for the profit element, although comments are specifically requested in support of a different percentage. We consider 10 percent or less to be a reasonable figure. While local service carriers have experienced a rate of return on investment in the range of 12 to 14 percent, their operating profit as a percent of operating expenses has been only about 6 or 7 percent. Of course, there are differences between local service carriers and the commuters who will be the prime beneficiaries of this program. Nevertheless, by adjusting the percent markup to about 10 percent, we should be compensating for these differences.

When conditions dictate, particularly when aircraft must be acquired at high interest charges or leased by the carrier, a variation on this may be employed. In the former case, rather than calculating profit at about 10 percent of expenses, the Board may use a lower markup (usually 3 or 4 percent of expenses). In such cases, however, we would usually also cover all of the carrier's interest expenses properly associated with the essential services. When aircraft are leased, rental payments would be considered operating expenses. Thus the imputed interest portion of the lease payment, reflecting interest paid by the lessor, would be covered and the lower markup would be applied.

Monthly Payments

After the subsidy rate was set, payments would be made to the carrier on a monthly basis. The amount of each payment would be based on the carrier's annual subsidy level. The actual amount of each monthly payment might vary depending on the number of flights it completes per month (completion factor), adjustments to its subsidy rate, and seasonal characteristics of the market.

The level of traffic at some eligible points will vary between seasons. This may affect a carrier's cash-flow needs. Particularly at resort areas, carriers may have little or no need for subsidy during one season, while requiring large infusions of capital to keep them going during the slack period. The Board would be willing to tie the monthly payments to these variations in traffic if a carrier so requested in its subsidy proposal.

Rate Term

The subsidy rate will usually be established for a 2-year period, either at the same rate for the full two years or at separate rates for each year. But where circumstances warrant, a 1-year rate period may be established. That shorter period would provide us with experience with the market and protect both the Board and the carrier from difficulties caused by errors in forecasting subsidy need there. On the basis of that experience, another 1-year subsidy rate would be set.

Prohibition Against Discrimination

All carriers receiving subsidy under section 419 of the Act would have to comply with 14 CFR Parts 378 and 379. These rules prohibit age and racial discrimination, respectively. They also establish procedures for effecting compliance with those prohibitions and for processing complaints involving age or race discrimination. Compliance with these rules is required by their governing statutes, the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), and Title VI of the Civil Rights Act. (42 U.S.C. 2000d-1). Part 378 has not yet been published, but was approved by the Board on April 10, 1980, and forwarded to the Secretary of Health and Human Services for approval as required by the Age Discrimination Act.

Accordingly, the Civil Aeronautics Board proposes to amend Chapter II of 14 CFR by adding a new Part 271 to read:

PART 271—GUIDELINES FOR SUBSIDIZING AIR CARRIERS PROVIDING ESSENTIAL AIR TRANSPORTATION

Sec.

271.1 Purpose.
271.2 Definitions.
271.3 Carrier subsidy need.
271.4 Carrier costs.
271.5 Carrier revenues.
271.6 Profit element.
271.7 Subsidy payout formula.
271.8 Rate period.
271.9 Discrimination prohibited.

§ 271.1 Purpose.

This part establishes the guidelines required by section 419(d) of the Act to be used by the Board in computing the fair and reasonable amount of compensation needed to insure the continuation of essential air transportation to an eligible point.

§ 271.2 Definitions.

As used in this part—

"Eligible point" means any community in the United States, the District of Columbia, and the several territories and possessions of the United States to which any direct air carrier was authorized, under a certificate issued by the Board under section 401 of the Act, to provide air service on October 24, 1978, whether or not such service was actually provided; or any such community that was deleted from a section 401 certificate between July 1, 1968 and October 24, 1978, that the Board designates as an eligible point under Part 270 of this chapter; or any other community in Alaska or Hawaii that the Board designates as an eligible point under Part 270 of this chapter.

"Essential air transportation" or "essential air service" means the level of air service determined by the Board, according to the guidelines in Part 398 of this chapter, to be necessary to insure that people of the eligible point concerned have access to the Nation's air transportation system and to one or more of their principal destinations.

§ 271.3 Carrier subsidy need.

In establishing the subsidy for a carrier providing essential air transportation at an eligible point, the Board will consider the following:

(a) The reasonable costs of a carrier in serving that point;

(b) The carrier's projected revenues for serving that point;

(c) The appropriate size of aircraft for serving that point; and

(d) A reasonable profit for a carrier serving that point.

§ 271.4 Carrier costs.

(a) The reasonable costs for a carrier providing essential air transportation at an eligible point will be evaluated—

(1) For costs attributable to the carrier's flying operations (direct expenses), by comparing the projected costs submitted by the carrier with direct operating unit costs of similar carriers using similar equipment and with data supplied by the manufacturer of the carrier's aircraft;

(2) For other costs, by comparing the indirect operating expenses submitted by the carrier with the ratio of indirect to direct costs that are representative of the industry;

(3) By considering the unique circumstances of the carrier or the community being served that justify deviations from the costs that would

otherwise be established for that carrier under this paragraph.

(4) By determining whether the aircraft to be used by the carrier at the eligible point and on which its costs are derived, are appropriate for providing essential air transportation there. The appropriateness of the aircraft to be used is based on the following characteristics of the eligible point:

(i) Traffic levels;

(ii) Distance to the designated hub;

(iii) The altitude at which the carrier must fly to the designated hub; and

(iv) Other operational elements involved.

(b) When the essential air service would be made part of the carrier's linear system, the Board might, instead of the factors in paragraph (a) of this section, consider only the incremental costs that the carrier will incur in adding that service to its system.

(c) Except as provided in paragraph (e) of this section, if the carrier's actual costs exceed the amount established by the Board under this section, the carrier shall absorb all the excess expenses, except that the board may share increases in—

(1) Fuel costs; and

(2) Costs whose sharing by the Board would be in the public interest.

(d) Except as provided in paragraph (e) of this section, if the actual costs of the carrier providing the essential service are less than the amount established by the Board under this section, the carrier may retain its savings.

(e) Carriers being subsidized under a shared incentive rate will not have to absorb all their excess costs and will not be able to retain all their savings realized from incurring costs lower than projected by the Board. These will be shared with the Board according to a sharing formula established by the Board.

§ 271.5 Carrier revenues.

(a) The projected revenue for a carrier providing essential air transportation at an eligible point will be calculated by multiplying the following:

(1) The carrier's net fare, which is the standard fare that it charges for service between the eligible point and the designated hub less any dilution caused by joint fare arrangements, discount fares that it offers, or prorates of fares for through on-line passengers; and

(2) The traffic projected to flow between the eligible point and the designated hub or hubs, which is based on the carrier's own estimates, Board estimates, and on traffic levels in the market at issue when such data are available.

(b) The reasonableness of a carrier's revenue projections will be evaluated by—

(1) Comparing the carrier's proposed fare with the fares charged in other city-pair markets of similar distances and traffic densities; and

(2) Comparing the carrier's proposed pricing structure with historical pricing practices in the market at issue and with the pricing practices of that carrier in other markets.

(c) Unless the Board finds that another arrangement is required, to the extent that the carrier's actual revenues exceed or fall short of the projected revenues for that market the carrier shall retain the extra profits or absorb the resulting losses.

§ 271.6 Profit element.

The reasonable return for a carrier for providing essential air transportation at an eligible point generally will be set at either—

(a) A flat percentage, typically not more than 10 percent of that carrier's projected operating costs as established under § 271.4;

(b) A lower percentage, typically not more than 4 percent of the carrier's projected operating costs, as established under § 271.4, plus its interest expenses associated with the essential air service; or

(c) A lower percentage, typically not more than 4 percent of the carrier's projected operating costs, as established under § 271.4, which includes the lease expenses associated with the essential air service.

§ 271.7 Subsidy payout formula.

(a) Subsidy will be paid by the Board to the carrier monthly, based on the subsidy rate established by the Board for the carrier under this part.

(b) The actual amount of each payment may vary depending on the following factors:

(1) Seasonal characteristics of the carrier's operations at the eligible point;

(2) The actual number of flights completed, aircraft miles flown, or variations in other operational elements upon which the subsidy rate is based; or

(3) Adjustments to the carrier's subsidy required by § 271.4(c) or (e) or § 271.8(b).

(c) Payments will continue for the duration of the rate term established under § 271.8 provided that the carrier continues to provide the required service.

§ 271.8 Rate period.

(a) The subsidy rate generally will be set for a 2-year period, or two consecutive 1-year periods. Unless the uncertainties of the market or other circumstances warrant a shorter rate period.

(b) The subsidy rate established for a carrier under this part will not be changed during the rate period unless an adjustment is required in the public interest.

(c) At the end of the rate period, the carrier will not have a continuing right to receive subsidy for providing essential air transportation at the eligible point.

§ 271.9 Discrimination prohibited.

(a) All air carriers receiving subsidy under this part shall comply with the Age Discrimination Act of 1975 and Part 378 of this chapter prohibiting discrimination against passengers on the basis of their age and Title VI of the Civil Rights Act and Part 379 of this chapter prohibiting discrimination against passengers on the basis of race.

(b) Within 18 months after the effective date of Part 378 of this chapter, each air carrier receiving subsidy under this part and employing the equivalent of 15 or more full-time employees shall complete a written evaluation of its compliance with the Age Discrimination Act of 1975. The carrier shall in this evaluation identify and justify each age distinction that the carrier imposes in its programs or activities, if any, and shall make the evaluation available on request to the Board and to the public for a period of 3 years after its completion.

(c) All air carriers seeking subsidy under this part shall include in their subsidy application the assurances required by § 379.4 of this chapter.

(Secs. 204 and 419 of Pub. L. 85-726, as amended, 72 Stat. 743, 92 Stat. 1732, 49 U.S.C. 1324, 1389)

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-39253 Filed 12-17-80; 8:45 am]

BILLING CODE 6320-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6271, File No. S7-857]

Exemption From Registration of Interests and Participations in Certain H.R. 10 Plans

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Commission is extending the period for comments set in Securities Act Release No. 6247, published October 14, 1980 requesting public comment regarding proposed Rule 180 under the Securities Act of 1933. The proposed Rule would exempt from the registration provisions of the Securities Act of 1933 interests or participations issued in connection with H.R. 10 plans of certain partnerships. This action is being taken in order to give the public additional time to comment on the proposed Rule.

DATES: Comments should be submitted on or before January 14, 1981.

ADDRESSES: Persons wishing to submit written comments should file 10 copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C., 20549. All submissions should refer to File No. S7-857 and will be available for public inspection at the Commission's Public Reference Room 6101, 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary A. Cole, (202) 272-3023, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Notice was published on October 14, 1980, Securities Act Release No. 6247 (45 FR 69476, October 21, 1980) requesting the submission of views with respect to proposed Rule 180 under the Securities Act of 1933 (the "Act") (15 U.S.C. 77a-77aa). If adopted, proposed Rule 180 would provide an exemption from the registration requirements of section 5 of the Act (15 U.S.C. 77e) for interests and participations issued in connection with the H.R. 10 plans of partnerships that meet certain criteria. The Commission has received a request from an interested member of the public that the comment period be extended. The Commission has determined that it is in the public interest to allow the request for additional time to submit comments on the proposed rule. Accordingly, the Commission hereby extends the period for comments on proposed Rule 180 to January 14, 1981.

By the Commission.

George A. Fitzsimmons,

Secretary.

December 11, 1980.

[FR Doc. 80-39332 Filed 12-17-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[097190]

Inclusion of Certain Assist Costs Incurred in the United States as Direct Costs of Processing Operations Under the Generalized System of Preferences; Request for Public Comments

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice requesting public comments.

SUMMARY: This document gives notice that the Customs Service is soliciting the public's views on whether certain assist costs incurred in the United States, now excluded from the appraised value of imported merchandise by Public Law 96-39, should continue to be regarded as "direct costs of processing operations" under § 10.178(a), Customs Regulations, in determining the eligibility of an article for duty-free treatment under the Generalized System of Preferences.

DATES: Comments must be received on or before February 17, 1981.

ADDRESS: Comments should be addressed to the Commissioner of Customs, Attention: Regulations and Research Division, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Thomas Lobred, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

In accordance with General Headnote 3(c)(ii), Tariff Schedules of the United States (TSUS), and § 10.176(a), Customs Regulations (19 CFR 10.176(a)), an article which is the growth, product, manufacture, or assembly of a beneficiary developing country (BDC) and which is imported into the Customs territory of the United States directly from the BDC may be eligible for duty-free treatment under the Generalized System of Preference if the sum of the cost of materials produced in the BDC plus the direct costs of processing operations performed in the BDC is not less than 35 percent of the appraised value of the article at the time of its entry into Customs territory.

Section 10.178(a), Customs Regulations (19 CFR 10.178(a)), defines "direct costs of processing operations" as including, among other things, research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise under consideration. In interpreting this regulation, the Customs Service has ruled that research and development costs incurred in the United States are considered a direct cost of processing operations, provided the research and development relates to the specific merchandise under consideration.

Section 201, Trade Agreements Act of 1979 (Public Law 96-39, 93 Stat. 194), amended section 402, Tariff Act of 1930, in part, to specifically exclude from appraised value assists in the form of engineering, development, artwork, design work, and plans and sketches necessary for the production of imported merchandise if undertaken in the United States. In view of this amendment, the question arises whether the cost of these assists incurred in the United States would continue to be treated as a direct cost of processing operations under § 10.178(a), Customs Regulations, if otherwise qualified.

Comments

The Customs Service invites written comments (preferably in triplicate) on whether the cost of assists necessary for the production of imported merchandise, if incurred in the United States, should be treated as a direct cost of processing operations under § 10.178(a), Customs Regulations. All comments received in response to this notice will be available for public inspection in accordance with § 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Research Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Drafting Information

The principal author of this notice was James A. Seal, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices within the Customs Service participated in its development.

Dated: December 15, 1980.

Salvatore E. Caramagno,

Acting Director, Office of Regulations and Rulings.

[FR Doc. 80-39324 Filed 12-17-80; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 51

[Docket No. R-80-774]

Siting of HUD-Assisted Projects in Designated Clear Zones and Accident Potential Zones at Civil Airports and Military Airfields

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notice of proposed rulemaking.

SUMMARY: HUD proposes to add a new Subpart D to 24 CFR Part 51. This Subpart would clarify and expand current Departmental policy governing properties exposed to unusual hazards. It would promote compatible land use around airports and airfields, and it would strengthen HUD policy that is supportive of existing Department of Defense and Federal Aviation Administration policies and programs.

DATES: Comments Due: February 17, 1981.

ADDRESS: Comments should be sent to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of the Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Each person submitting a comment should include his or her name and address and refer to the document by the document number in the heading and give reasons for any recommendations. Comments will be considered before final action is taken on the proposed rule. Copies of all comments received will be available for examination by interested persons in the Office of the Rules Docket Clerk at the address listed above.

FOR FURTHER INFORMATION CONTACT: James F. Miller or Gretchen Van Hyning, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410 (202) 755-8909 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On March 4, 1980 HUD published an Advance Notice of Proposed Rulemaking stating that it was considering the adoption of a new subpart D to 24 CFR Part 51. The advance notice stated that HUD was concerned that its noise policy (24 CFR Part 51 Subpart B) did not completely address the problems of compatible land use around airports and airfields, in that in some cases the areas designated as Clear Zones or Accident Potential Zones extended beyond the boundaries of the high noise areas. Therefore HUD was considering adopting a policy which would specifically address these designated Clear Zones and Accident Potential Zones.

Over 20 comments were received on the advance notice. The comments came from agencies and organizations such as the Georgia Department of Transportation, the Waterloo, Iowa Chamber of Commerce, the Airline Pilots Association, and the Minnesota Department of Transportation. The two most interested Federal agencies, the Department of Defense and the Federal Aviation Administration, both commented.

The majority of the comments were in support of the proposed rulemaking. Among the negative comments, a number of the commentors were critical of what they thought was HUD's intention to apply Department of Defense standards to civilian airports. It apparently was not clear to these commentors that HUD will not designate Clear Zones or Accident Potential Zones itself, and that HUD would be relying on the airport operator to provide the information about these zones.

Several of the commentors stated that they believed current FAA and DOD requirements to be sufficient, particularly for designated Clear Zones. These comments however seemed to be based on the belief that the purchase of the Clear Zone by the airport operator/owner is mandatory under these regulations. In fact neither the FAA or DOD regulations absolutely require purchases. Each only requires purchase when possible and as budgets allow. HUD's experience indicates that many Clear Zones are indeed not owned totally by the airport operators/owners and that tight budgets at the Federal and local level may make future purchases more difficult. HUD believes that there is a sufficient number of cases where these designated Clear Zones and Accident Potential Zones are not adequately controlled to warrant a policy which would prevent HUD from participating in or encouraging incompatible development in these areas.

HUD has determined that the preparation of an Environmental Impact Statement is not necessary. Accordingly, a Finding of No Significant Impact has been prepared in accordance with the Department's environmental procedures. A copy of this finding is available for inspection and copying in the Office of the Rules Docket Clerk at the above address.

This rule is not listed on the Department's semi-annual agenda of significant rules, published pursuant to Executive Order 12221.

Accordingly, the Department proposes to amend 24 CFR Part 51 by adding a new subpart D to read as follows:

Subpart D—Siting of HUD-Assisted Projects in Designated Clear Zones and Accident Potential Zones at Civil Airports and Military Airfields

Sec.
51.300 Purpose and authority.
51.301 Definitions.
51.302 General policy.
51.303 Responsibilities.
51.304 Implementation.
Appendices

1. Excerpts from FAA Regulations on Clear Zones.
2. Excerpts from DOD Instructions on Clear Zones and Accident Potential Zones.

Note.—These regulations are included primarily for illustrative purposes because they contain clear written and graphic descriptions of typical Clear Zones and Accident Potential Zones. The Office of Environmental Quality will provide updated excerpts should the regulations be amended.

§ 51.300 Purpose and authority.

(a) Purpose. The Department of Housing and Urban Development finds that the location of HUD assisted or insured projects in designated Clear Zones and Accident Potential Zones at civil airports and military airfields is not in the best interests of either the Department or the occupants of those projects, in that projects and their occupants in such areas are exposed to a greater risk of personal injury or property damage than those located outside such areas.

It is the purpose of this Subpart to:

(1) Promote compatible land uses around airports and airfields by encouraging land use patterns for housing and other activities involving human occupancy and use that will provide a suitable separation between them and designated Clear Zones and Accident Potential Zones at airports and airfields.

(2) Provide policy on the compatibility of HUD projects in designated Clear Zones and Accident Potential Zones.

(b) Authority: (1) General authority is contained in the Housing Act of 1949 (Pub. L. 81-171) which sets forth the national goal of "a decent home and a suitable living environment for every American family," affirmed by the Housing and Urban Development Act of 1968 (Pub. L. 90-448), and (2) Specific authority is contained in the General Services Administration, Federal

Management Circular 75-2: *Compatible Land Uses at Federal Airfields* which prescribes the Executive Branch's general policy with respect to achieving compatible land uses on either public or privately owned property at or in the vicinity of Federal Airfields.

§ 51.301 Definitions.

For the purposes of this regulation the following definitions apply:

(a) Accident Potential: The locational probability that if an accident occurs, it will occur in a specific place.

(b) Accident Potential Zone: An area, as defined by the Department of Defense in DOD Instruction 4165.57, at military airfields which is beyond the Clear Zone and has a significant potential for accidents.

(1) Accident Potential Zone I (APZ I) is the area immediately beyond the Clear Zone and possesses a significant accident potential.

(2) Accident Potential Zone II (APZ II) is the area beyond APZ I which possesses a lesser but still significant accident potential.

See Appendix 2 for a specific description of the location and dimensions of Accident Potential Zones.

(c) Airport Operator: The civilian or military agency, group or individual which exercises control over the operations of the airport or airfield.

(d) Clear Zones: The areas immediately beyond the ends of a runway which possess a high potential for accidents and have traditionally been acquired in fee and kept clear of obstructions to flight. The clear zones for civil airports are established by FAA regulation 14 CFR Part 152 and for military airfields by DOD Instruction 4165.57.

See Appendix 1 for a specific description of the location and dimensions of Clear Zones for civil airports.

See Appendix 2 for a specific description of the location and dimensions of Clear Zones for military airfields.

(e) Projects: For Title I recipients the term project is as defined in 24 CFR Part 58.

§ 51.302 General policy.

It is HUD's general policy to apply standards to prevent incompatible development around airports and airfields.

(a) HUD policy for projects in designated Clear Zones.

(1) Facilities intended for human occupancy or use:

(i) It is HUD policy not to provide any assistance, subsidy or insurance which would in any way bring about the construction of new facilities or which would in any way significantly prolong the physical or economic life of existing facilities. This policy applies not only to HUD programs which provide direct assistance for construction but also to programs which provide assistance, subsidy, or insurance for land development, new communities, community development or redevelopment or any other provision of facilities and services which are designed to make land available for construction. This policy applies not only to new construction but also to substantial rehabilitation and modernization.

(ii) This policy does not apply to HUD programs where the action only involves the purchase, sale or rental of an existing property without prolonging the physical or economic life of the property. The policy also does not apply to research or demonstration projects which do not result in new construction or reconstruction, to interstate land sales registration, or to any action or emergency assistance which is provided to save lives, protect property, protect public health and safety, remove debris and wreckage.

(iii) In all cases involving the purchase or sale of an existing property in a Clear Zone, the buyer must be advised that the property is indeed in a Clear Zone, what the implications of such a location are, and the possibility that the property may, at a later date, be acquired by the airport operator as part of a Clear Zone acquisition program. The buyer must be required to sign a statement indicating his/her awareness of the situation and his/her willingness to, nonetheless, purchase the property.

(2) Facilities not intended for human use or occupancy:

(i) It is HUD policy not to provide any assistance, subsidy or insurance which would in any way bring about the construction of new facilities or significantly prolong the physical or economic life of existing facilities unless reasonable assurances are provided by the airport operator to the effect that, for the foreseeable future, there are no plans to purchase the land involved with such facilities as part of a Clear Zone acquisition program. This policy applies not only to new construction but also to substantial rehabilitation and modernization.

(ii) This policy does not apply to HUD programs where the action only involves the purchase, sale or rental of an existing property without prolonging the physical or economic life of the property. This policy also does not apply to research demonstration projects which do not result in new construction or reconstruction, to interstate land sales registration, or to any action or emergency assistance which is provided to save lives, protect property, protect public health and safety or remove debris and wreckage.

(b) HUD policy for projects intended for human occupancy or use in designated Accident Potential Zones.

(1) It is HUD policy to discourage the provision of any assistance, subsidy or insurance that would bring about the construction of new facilities or which would significantly prolong the physical or economic life of existing facilities when such facilities are wholly or partially located in an Accident Potential Zone. In determining whether to approve a project in a designated Accident Potential Zone the following factors must be considered by the approving or certifying official and documented as part of the environmental clearance or, when no clearance is required, in the project file:

(i) The appropriateness of the site for the use based on all other HUD environmental criteria and standards.

(ii) For housing: the density of the housing and the type of potential occupants (i.e., the elderly, children or the disabled).

(iii) For nonhousing activities: the number of people likely to be concentrated in the area over an extended period to time.

(iv) The presence of explosive, flammable or highly toxic materials at the project.

(v) The availability of other suitable sites for the project outside the designated Accident Potential Zone.

(vi) The actual accident history of the airport or airfield.

(vii) Whether the project is located in Accident Potential Zone I or II.

Wherever the project is situated only partially within an APZ the applicant shall be encouraged to site facilities intended for human occupancy and use outside the portion of the project located in the Accident Potential Zone.

(2) This policy applies to new construction and to modernization and rehabilitation when the rehabilitation or modernization would:

(i) Change a facility from one not intended for human occupancy or use to one intended for human occupancy or use.

(ii) Signficantly increase the density or number of people at the site.

(iii) Introduce explosive, flammable or toxic materials to the project.

This policy applies not only to programs which provide direct assistance for construction but also to all programs providing assistance, subsidy, or insurance for land

development, new communities, community development or redevelopment or any other provision of facilities and services which are directed to making land available for facilities intended for human occupancy or use.

(3) This policy does not apply to HUD programs where the action only involves the purchase, sale or rental of an existing property without prolonging the physical or economic life of the property. The policy does not apply to research or demonstration projects which do not result in new construction or reconstruction, to interstate land sales registration, or to any action or emergency assistance which is provided to save lives, protect property, protect public health and safety, remove debris and wreckage.

§ 51.303 Responsibilities.

(a) Authority to approve projects in Designated Accident Potential Zones:

(1) Title I projects: The authority to approve a project in a designated Accident Potential Zone shall rest with the certifying officer of the grant recipient as defined in 24 CFR 58. 24 CFR Part 58 requires all grant recipients to address deviations from standards in their environmental reviews.

(2) All other HUD programs: The authority to approve a project in a designated Accident Potential Zone shall rest with the program personnel having overall approval authority for the project.

(b) Notice to Applicants. At the earliest possible stage in the application process, HUD program administrators shall:

(1) Determine whether the project is located in a designated Clear Zone or Accident Potential Zone;

(2) Notify applicants of any adverse or questionable conditions; and

(3) Assure that prospective applicants are made aware of the standards contained herein so that future site choices will be consistent with these standards.

§ 51.304 Implementation.

(a) Use of data on Clear Zones and Accident Potential Zones. The only Clear Zones and Accident Potential Zones which will be used in applying this policy are Clear Zones and Accident Potential Zones which are used by the airport operators and which are prepared in accordance with FAA regulations 14 CFR Part 152 or DOD Instruction 4165.57. The dimensions of these designated Clear Zones and Accident Potential Zones should be obtained from the airport operator. If the dimensions of the designated Clear Zones and Accident Potential Zones have not already been published as part of a report such as an Air Installation Compatible Use Zone report or an Environmental Impact Statement, the airport operator should be requested to provide the dimensions. The Area Office Environmental Officer shall obtain as soon as possible the dimensions for designated Clear Zones and Accident Potential Zones for all active airports and airfields within their jurisdictions. The Environmental Officer will provide technical assistance and guidance on the implementation of this policy.

(b) Changes in designated Clear Zones and Accident Potential Zones. Changes in the layout or operations of an airport or airfield can affect the location or dimensions of designated Clear Zones and Accident Potential Zone. The Area Office Environmental Officer shall establish procedures to make sure that they are informed of any changes in the Clear Zones and Accident Potential Zones. If changes in the designated Clear Zones or Accident Potential Zones are made, the Area Office shall immediately adopt these revised zones for use in reviewing proposed projects. As soon as possible, Area Office personnel shall notify affected developers, builders, local governments, etc. of the change in the zones being used by HUD for review.

Issued at Washington, D.C., November 14, 1980.

Moon Landrieu,

Secretary of Housing and Urban Development.

Appendix 1.—Excerpts from FAA Regulations on Clear Zones

Part 152.—Airport Aid Program

Published December 1974

§ 152.9 Runway clear zones: general.

(b) *Meaning of "runway clear zone."* For the purpose of this Part, a runway clear zone is an area at ground level that begins at the end of each primary surface defined in § 77.25(c) of this chapter and extends with the width of each approach surface defined in § 77.25(d), to terminate directly below each approach surface slope at the point, or points, where the slope reaches a height of 50 feet above the elevation of the runway end or 50 feet above the terrain at the outer extremity of the clear zone, whichever distance is shorter.

§ 77.25 Civil airport imaginary surfaces.

(c) Primary surface—a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 900 feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of a primary surface is:

(1) 250 feet for utility runways having only visual approaches.

(2) 500 feet for utility runways having nonprecision instrument approaches.

(3) For other than utility runways the width is:

(i) 500 feet for visual runways having only visual approaches.

(ii) 500 feet for nonprecision instrument runways having visibility minimums greater than three-fourths statute mile.

(iii) 1,000 feet for a nonprecision instrument runway having a nonprecision instrument approach with visibility minimums as low as three-fourths of a statute mile, and for precision instrument runways.

The width of the primary surface of a runway will be that width prescribed in this section for the most precise approach existing or planned for either end of that runway.

(d) Approach surface—a surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.

(1) The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:

(i) 1,250 feet for that end of a utility runway with only visual approaches;

(ii) 1,500 feet for that end of a runway other than a utility runway with only visual approaches;

(iii) 2,000 feet for that end of a utility runway with a nonprecision instrument approach;

(iv) 3,500 feet for that end of a nonprecision instrument runway other than utility, having visibility minimums greater than three-fourths of a statute mile;

(v) 4,000 feet for that end of a nonprecision instrument runway, other than utility, having a nonprecision instrument approach with visibility minimums as low as three-fourths statute mile; and

(vi) 16,000 feet for precision instrument runways.

(2) The approach surface extends for a horizontal distance of:

(i) 5,000 feet at a slope of 20 to 1 for all utility and visual runways;

(ii) 10,000 feet at a slope of 34 to 1 for all nonprecision instrument runways other than utility; and,

(iii) 10,000 feet at a slope of 50 to 1 with an additional 40,000 feet at a slope of 40 to 1 for all precision instrument runways.

(3) The outer width of an approach surface to an end of a runway will be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.

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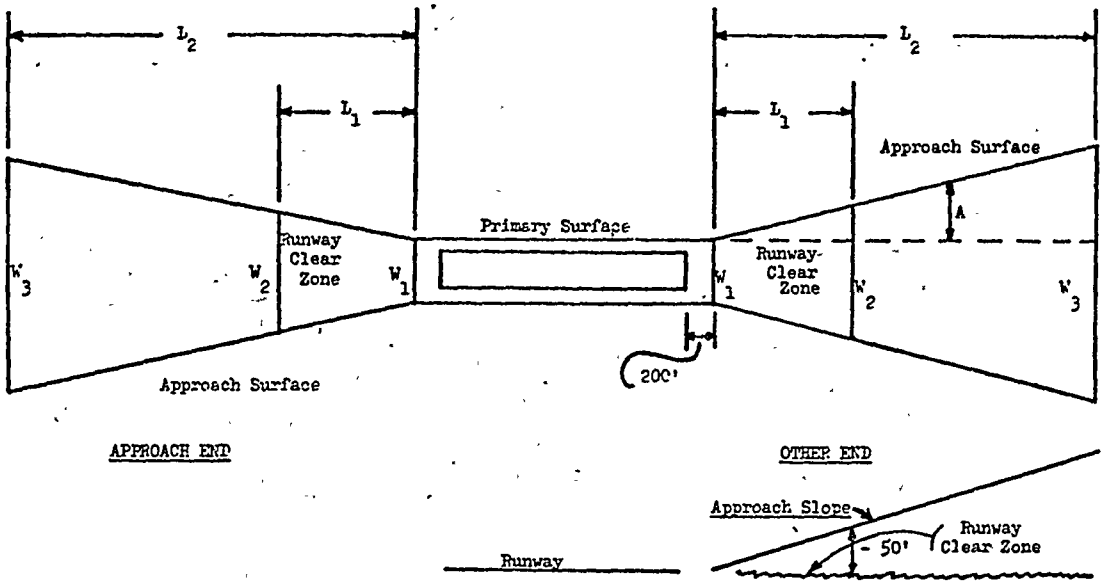
RUNWAY CLEAR ZONE DIMENSIONS



R/W TYPE	SET NO.	RUNWAY END APPROACH	RUNWAY END OTHER	DIMENSIONS (FEET) L 1	L 2	W 1	W 2	W 3	SLOPE	R/W CZ AREA	FLARE RATIO A
UTILITY RUNWAYS	1	V		1,000	5,000	250	450	1,250	20:1	8.035	.1:1
			V	1,000	5,000	250	450	1,250	20:1	8.035	.1:1
	2	V		1,000	5,000	500	650	1,250	20:1	13.200	.075:1
			N.P.	1,000	5,000	500	800	2,000	20:1	14.922	.15:1
	3	N.P.		1,000	5,000	500	800	2,000	20:1	14.922	.15:1
			N.P.	1,000	5,000	500	800	2,000	20:1	14.922	.15:1
OTHER THAN UTILITY RUNWAYS	4	V		1,000	5,000	500	700	1,500	20:1	13.77	.1:1
			V	1,000	5,000	500	700	1,500	20:1	13.77	.1:1
	5	V		1,000	5,000	500	700	1,500	20:1	13.77	.1:1
			N.P. 3/4+	1,700	10,000	500	1,010	3,500	34:1	29.465	.15:1
	6	V		1,000	5,000	1,000	1,100	1,500	20:1	24.105	.05:1
			N.P. 3/4	1,700	10,000	1,000	1,510	4,000	34:1	48.978	.15:1
	7	V		1,000	5,000	1,000	1,100	1,500	20:1	24.105	.05:1
			P	2,500	50,000	1,000	1,750	16,000	50:1/40:1	78.914	.15:1
	8	N.P. 3/4+		1,700	10,000	500	1,010	3,500	34:1	29.465	.15:1
			N.P. 3/4+	1,700	10,000	500	1,010	3,500	34:1	29.465	.15:1
	9	N.P. 3/4+		1,700	10,000	1,000	1,425	3,500	34:1	47.320	.125:1
			N.P. 3/4	1,700	10,000	1,000	1,510	4,000	34:1	48.978	.15:1
	10	N.P. 3/4+		1,700	10,000	1,000	1,425	3,500	34:1	47.320	.125:1
			P	2,500	50,000	1,000	1,750	16,000	50:1/40:1	78.914	.15:1
	11	N.P. 3/4		1,700	10,000	1,000	1,510	4,000	34:1	48.978	.15:1
			N.P. 3/4	1,700	10,000	1,000	1,510	4,000	34:1	48.978	.15:1
	12	N.P. 3/4		1,700	10,000	1,000	1,510	4,000	34:1	48.978	.15:1
			P	2,500	50,000	1,000	1,750	16,000	50:1/40:1	78.914	.15:1
	13	P		2,500	50,000	1,000	1,750	16,000	50:1/40:1	78.914	.15:1
			P	2,500	50,000	1,000	1,750	16,000	50:1/40:1	78.914	.15:1

ABBREVIATIONS USED IN THE ABOVE CHART

V = Visual approach
N.P. = Non-precision approach
N.P. 3/4+ = Non-precision approach with visibility minimums greater than 3/4-mile
N.P. 3/4 = Non-precision approach with visibility minimums as low as 3/4-mile
P = Precision instrument approach

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Appendix 2.—Excerpts from DOD Instructions on Clear Zones and Accident Potential Zones

November 8, 1977.

Department of Defense Instruction

Subject: Air Installations Compatible Use Zones

References:

(a) Department of the Air Force Manual 86-8, "Airfield and Airspace Criteria," November 10, 1964

(b) Department of the Navy Publication, NavFac P-272, "Definitive Designs for Naval Shore Facilities," July 1962

(c) Department of the Navy Publication, NavFac P-80, "Facility Planning Factor Criteria for Navy and Marine Corps Shore Installations"

(d) through (j), see enclosure 1.

A. Purpose

This Instruction: (1) sets forth Department of Defense policy on achieving compatible use of public and private lands in the vicinity of military airfields; (2) defines (a) required restrictions on the uses and heights of natural and man-made objects in the vicinity of air installations to provide for safety of flight and to assure that people and facilities are not concentrated in areas susceptible to aircraft accidents; and (b) desirable restrictions on land use to assure its compatibility with the characteristics, including noise, of air installations operations; (3) describes the procedures by which Air Installations Compatible Use Zones (AICUZ) may be defined; and (4) provides policy on the extent of Government interest in real property within these zones which may be retained or acquired to protect the operational capability of active military airfields (subject in each case to the availability of required authorizations and appropriations).

B. Applicability

This Instruction applies to air installations of the Military Departments located within the United States, its territories, trusts, and possessions.

C. Criteria

1. *General.* The Air Installations Compatible Use Zone for each military air installation shall consist of (a) land areas upon which certain uses may obstruct the airspace or otherwise be hazardous to aircraft operations, and (b) land areas which are exposed to the health, safety or welfare hazards of aircraft operations.

2. *Height of Obstructions.* The land areas and height standards defined in AFM 86-8 (reference (a)), NavFac P-272 (reference (b)), and P-80 (reference (c)), and TM5-803-4 (reference (d)) will be used for purposes of height restriction criteria.

3. *Accident Potential.* a. *General.*—(1) Areas immediately beyond the ends of runways and along primary flight paths are subject to more aircraft accidents than other areas. For this reason, these areas should remain undeveloped, or if developed should be only sparsely developed in order to limit, as much as possible, the adverse effects of a possible aircraft accident.

(2) DoD fixed wing runways are separated into two types for the purpose of defining accident potential areas. Class A runways are those restricted to light aircraft (see enclosure 2) and which do not have the potential for development for heavy or high performance aircraft use or for which no foreseeable requirements for such use exists. Typically these runways have less than 10% of their operations involving Class B aircraft (enclosure 2) and are less than 8000 feet long. Class B runways are all other fixed wing runways.

(3) The following descriptions of Accident Potential Zones are guidelines only. Their strict application would result in increasing the safety of the general public but would not provide complete protection against the effects of aircraft accidents. Such a degree of protection is probably impossible to achieve. Local situations may differ significantly from the assumptions and data upon which these guidelines are based and require individual study. Where it is desirable to restrict the density of development of an area, it is not usually possible to state that one density is safe and another is not. Safety is a relative term and the objective should be the realization of the greatest degree of safety that can be reasonably attained.

b. *Accident Potential and Clear Zones (See Enclosure 3).*—(1) The area immediately beyond the end of a runway is the "Clear Zone," an area which possesses a high potential for accidents, and has traditionally been acquired by the Government in fee and kept clear of obstructions to flight.

(2) Accident Potential Zone I (APZ I) is the area beyond the clear zone which possesses a significant potential for accidents.

(3) Accident Potential Zone II (APZ II) is an area beyond APZ I having a measurable potential for accidents.

(4) Modifications to APZs I and II will be considered if:

(a) The runway is infrequently used.

(b) The prevailing wind conditions are such that a large percentage (i.e., over 80 percent) of the operations are in one direction.

(c) Most aircraft do not overfly the APZs as defined herein during normal flight operations (modifications may be made to alter these zones and adjust them to conform to the line of flight).

(d) Local accident history indicates consideration of different area.

(e) Other unusual conditions exist.

(5) The takeoff safety zone for VFR rotary-wing facilities will be used for the clear zone; the remainder of the approach-departure zone will be used as APZ I.

(6) Land use compatibility with clear zones and APZs is shown in enclosure 4.

Runway Classification by Aircraft Type

Class A Runways

S-2	U-10
VC-6	U-11
C-1	LU-16
C-2	TU-16

Runway Classification by Aircraft Type—Continued

TC-4C	HU-16
C-7	U-21
C-8	OU-22
C-12	E-1
C-47	E-2
C-117	O-1
U-1	O-2
U-3	OV-1
U-6	OV-10
U-8	T-28
U-9	T-34
	T-41
	T-42

Class B Runways

A-1	F-106	C-121
A-3	F-5	EC-121
A-4	F-15	WC-121
A-5		C-123
A-6	S-3	C-130
A-7	T-29	HC-130B
A-38	T-33	C-131
AV-8	T-37	C-140
P-2	T-39	C-5A
P-3	T-1	KC-97
F-9	T-2	C-124
F-14	T-38	EC-130E
F-4	B-52	HC-130
F-8	B-57	C-135
F-111	B-57F	VC-137
YF-12	B-66	C-141
SR-71	C-9	KC-135
F-100	C-54	EC-135
F-101	C-97	RC-135
F-102	C-118	U-2
F-104	C-119	
F-105		

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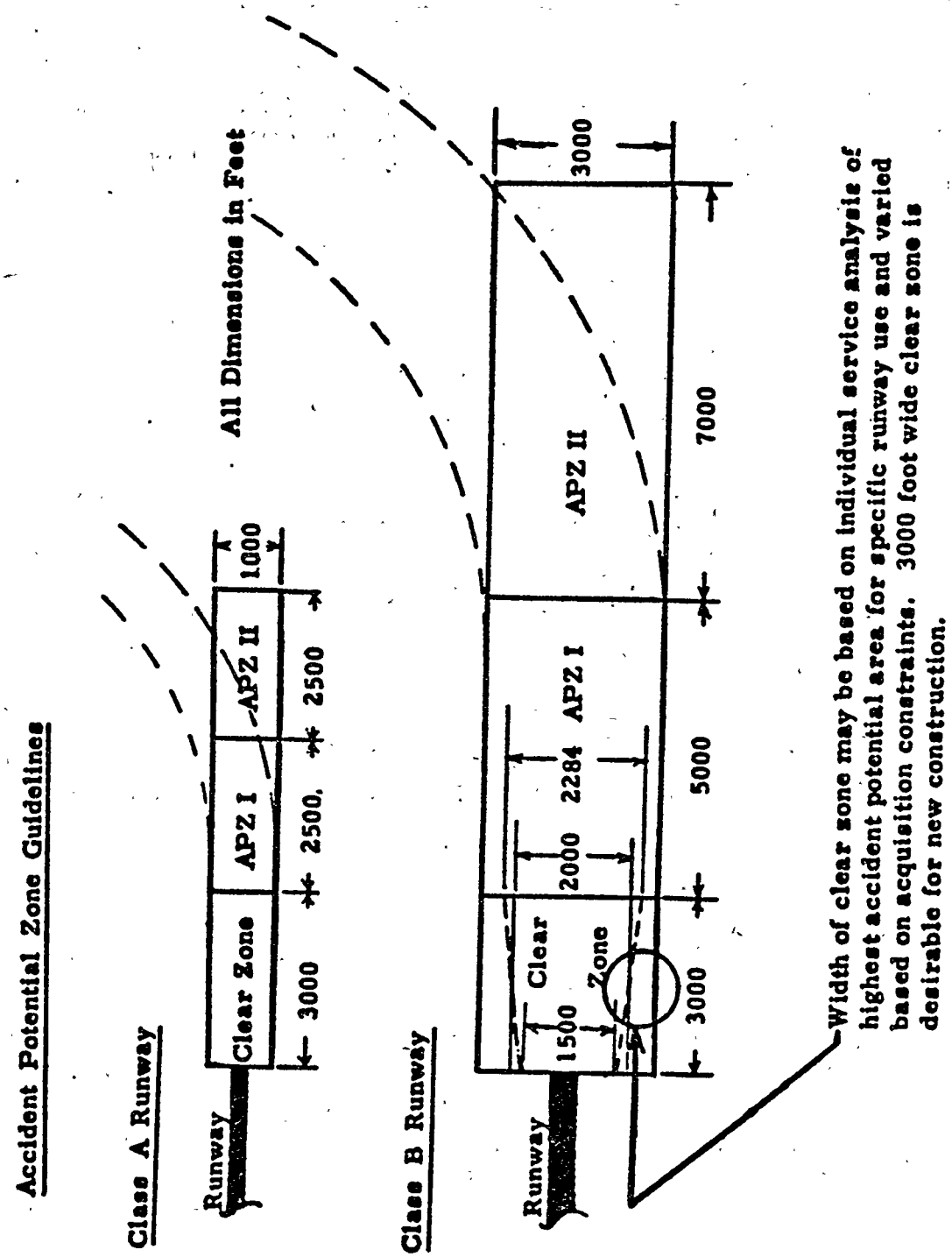

[FR Doc. 80-39180 Filed 12-17-80; 8:45 am]
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24 CFR Parts 1800-1835

[Docket No. R-80-901]

Solar Energy and Energy Conservation Bank

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of congressional waiver request.

SUMMARY: Section 7(o) (4) of the Department of HUD Act permits the Secretary to request waiver of the legislation's requirements in appropriate instances. This Notice lists and briefly summarizes for public information an interim rule with respect to which the Secretary is presently requesting waiver.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuances of this Notice, the Secretary is forwarding to the Chairman and Ranking Minority Members of both Congressional Banking Committees, the interim rule listed below. The purpose of the transmittal is to request waiver of both the 15-day prepublication review period, under section 7(o) (2), and the 30-day delay effective date for the final rule under section 7(o) (3) of the Department of Housing and Urban Development Act. A summary of the rulemaking document for which waiver has been requested is set forth below:

Solar Energy and Energy Conservation Bank

This interim rule constitutes the first regulations of the Solar Energy and Energy Conservation Bank, established under Title V of the Energy Security Act. The interim rule will be basis for the Bank's operation of its solar energy program for residential buildings and its energy conservation programs for residential and multifamily residential buildings.

(Section 7(o) (4) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o))

Issued at Washington D.C., December 12, 1980.

Moon Landrieu,

Secretary of Housing and Urban Development.

[FR Doc. 80-39335 Filed 12-17-80; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 82

[CGD 80-096]

COLREGS Demarcation Line, Chesapeake Bay Entrance, VA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is proposing to relocate the COLREGS demarcation line at the entrance to Chesapeake Bay, Virginia from its current position (a line drawn from Cape Charles Light to Cape Henry Light) shoreward to coincide exactly with the Chesapeake Bay Bridge-Tunnel. This proposal is a direct result of National Transportation Safety Board (NTSB) recommendation M-79-77, which advised that the line be moved because of its proximity to the pilotage area at the Chesapeake Bay entrance. Relocating the line to less congested waters and away from the pilotage area could further the safety of navigation.

DATES: Comments must be received on or before February 2, 1981.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/24) (CGD 80-096), U.S. Coast Guard, Washington, D.C. 20593. Comments will be available for examination at the Marine Safety Council (G-CMC-24), Room 2418, U.S. Coast Guard Headquarters, 2100 Second St. S.W., Washington, D.C. 20593.

FOR FOR FURTHER INFORMATION CONTACT: Ensign Edward G. LeBlanc, Office of Marine Environment and Systems (G-WWM-2) Room 1608, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593, (202) 426-4958.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Commenters should include their name and address, reference the docket number (80-096), identify the specific section of the proposal to which each comment applies, and include sufficient detail to indicate the basis on which each comment is made. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the Federal Register if requested in writing by an interested person raising a genuine issue and desiring to comment orally at a public hearing.

Drafting Information

The principal persons involved in drafting this proposal are: Ensign Edward G. LeBlanc, Office of Marine Environment and Systems, and Lieutenant Kenneth E. Johnson, Project Counsel, Office of the Chief Counsel.

Discussion of the Proposed Regulations

The NTSB investigated the 4 March 1979 collision between the *M/V Star Light* and the *USS Francis Marion* and in their 2 August 1979 Marine Accident Report concluded that: "The location of the demarcation lines for the Inland and International Rules of the Road adds an unnecessary element of confusion concerning what rules are applicable within the designated pilotage area." Passing agreements are made using whistle signals which have different meanings under the Inland and International Rules of the Road. This line is presently located in an area where ships slow to pickup or drop off pilots. Relocating the line to less congested waters and away from the pilotage area could further the safety of navigation.

The relocation of the current line is designed to enhance the safety of navigation at the entrance to Chesapeake Bay by decreasing the probability of conflicting encounters and collisions due to passing vessels utilizing different sets of rules. Although there is no evidence that the current demarcation line adversely affects navigation safety, it is felt necessary to move the line away from the precautionary area and out of the pilotage area to prevent any possible future mishaps due to confusion as to which rules apply.

Evaluation

The proposed regulation has been evaluated under the DOT Order 2100.5, "Policies and Procedures for Simplification, Analysis, and Review of Regulations," and has been determined to be non-significant. It does not place any new requirements or burdens on the public, but would merely relocate an existing demarcation line. Because the expected impact of the proposed regulation is so minimal, no evaluation has been prepared.

In consideration of the above, it is proposed that Part 82 of Title 33 of the Code of Federal Regulations be amended as follows:

* * * * *

§ 82.510 Chesapeake Bay entrance, VA

A line formed by the centerline of the Chesapeake Bay Bridge-Tunnel.

* * * * *

(Pub. L. 95-75, 91 Stat. 310; 49 CFR 1.46(n)(4); Pub. L. 96-324, 94 Stat. 1020; 33 U.S.C. 151)

Dated: December 10, 1980.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 80-39388 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 155

[CGD 79-116a]

Qualifications of Persons in Charge of Oil Transfer Operations

AGENCY: Coast Guard, DOT.

ACTION: Proposed rules.

SUMMARY: The Coast Guard is proposing to issue regulations governing the qualifications of personnel in charge of and assisting in the handling, transfer, and transportation of oil and hazardous liquid cargoes in bulk aboard vessels. Human error and lack of awareness of the hazards involved on the part of personnel engaged in these operations has resulted in several marine casualties. Better qualified personnel in charge of these operations should lead to a reduction in similar casualties.

DATES: Comments must be received on or before: March 18, 1981.

The Coast Guard will hold four public hearings beginning at 10 a.m. at the following locations:

1. January 21, 1981, St. Louis, Missouri.
2. February 4, 1981, New Orleans, Louisiana.
3. February 18, 1981, Long Beach, California.
4. February 25, 1981, Washington, D.C.

ADDRESSES: 1. Comments should be mailed to Commandant (G-CMC/24), (CGD 79-116a) U.S. Coast Guard, Washington, D.C. 20593. Between the hours of 7 a.m. and 5 p.m., Monday through Thursday, comments may be delivered to and will be available for examination at the Marine Safety Council (G-CMC/24), Room 2418, 2100 Second Street SW, U.S. Coast Guard Headquarters, Washington, D.C. 20593.

2. The Coast Guard will hold four public hearings at the following locations:

a. January 21, 1981, Rooms 1 and 2, Holiday Inn Downtown, 2211 Market Street, St. Louis, Missouri 63103.

b. February 4, 1981, French Room, International Hotel, 300 Canal Street, New Orleans, Louisiana 70140.

c. February 18, 1981, King's Grill, Queen Mary Hotel, P.O. Box 8, Pier J, Long Beach, California 90802.

d. February 25, 1981, Room 2230, Nassif Building, 7th & D Streets, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Cdr. W. R. Arnet, Jr., Office of Merchant Marine Safety (G-MVP-3/14), Room 1400, U.S. Coast Guard Headquarters Building, Washington, D.C. 20593. (202-426-2251).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written data, views or arguments. Written comments should include the docket number (CGD 79-116a), the name and address of the person submitting the comments and the specific section of the proposal to which each comment is addressed and give reasons for the comment. Persons desiring acknowledgment that their comment has been received should enclose a stamped, self-addressed postcard or envelope. All comments received before the expiration of comment period will be considered before final action is taken on this proposal.

Interested persons are invited to attend the hearing and present oral or written statements on this proposal. It is requested that anyone desiring to make comments notify the Executive Secretary, Marine Safety Council, (G-CMC/24), (CGD 79-116), U.S. Coast Guard, Washington, D.C. 20593, at least 10 days before the scheduled date of the public hearing and specify the approximate length of time needed for the presentation. It is urged that a written summary or copy of the oral presentation be included with the request. Comments at the public hearing will normally be heard in the order the requests to comment are received.

DRAFTING INFORMATION: The principal persons involved in drafting this proposal are Commander Richard T. Hess, Office of Merchant Marine Safety, Project Manager and Ms. Mary Ann McCabe, Office of the Chief Counsel, Project Attorney.

Discussion of the Proposed Regulations

A proposed revision to the qualifications of the person in charge of an oil transfer operation is being made to reflect the proposed requirements for tankerman training and certification, published elsewhere in this issue of the Federal Register. (See table of contents for page number.) For a full discussion of the background and reasons for the proposed changes, please see that document.

In consideration of the foregoing, it is proposed to amend Part 155 of Title 33 of the Code of Federal Regulations as follows:

1. By revising § 155.700 to read as follows:

§ 155.700 Applicability.

This subpart applies to all vessels with a capacity of 250 barrels or more of oil.

2. By adding a new § 155.705 as follows:

§ 155.705 Designation of person in charge.

The master, owner, operator or agent of a vessel transferring oil to or from the vessel or on which tanks that previously contained oil are being cleaned shall designate the person in charge of each transfer or tank cleaning operation.

(33 U.S.C. 1321(j)(1) (C) and (D); E.O. 11735, 3 CFR 1971-1975 COMP., p. 793; 49 CFR 1.46(m))

3. By revising § 155.710 to read as follows:

§ 155.710 Qualifications of person in charge.

(a) On a self-propelled tankship documented under the laws of the United States the person in charge of oil cargo transfer operations shall—

(1) Hold a license authorizing service as a deck officer aboard that tankship;

(2) Hold the appropriate tankerman certificate issued under 46 CFR Subpart 13.01 for the cargo being transferred; and

(3) Have served during the preceding two years aboard that tankship or another tankship with similar cargo containment, transfer, control and monitoring systems. This service shall include:

(i) Acting as the person in charge of cargo transfer operations; or

(ii) Assisting the person in charge of cargo transfer operations during at least two transfers of cargo.

(b) On a tank barge, documented or numbered under the laws of the United States, the person in charge of oil cargo transfer operations to or from the barge, shall hold a tankerman certificate issued by the Coast Guard which authorizes the holder to supervise the handling and transfer of the particular cargo involved.

(c) During oil cargo tank cleaning operations on a tank vessel the person in charge shall be a tankerman qualified for the category of the last cargo carried in the tanks being cleaned.

(d) On a foreign self propelled tank vessel the person in charge of oil transfer operations to or from the vessel or engaged in oil cargo tank cleaning, shall—

(1) Hold a license or certificate authorizing service as master, mate, engineer or operator on that vessel;

(2) Hold a certificate or other acceptable document issued by a foreign administration or its authorized agent attesting to the holder's competency to

act as a person in charge of oil, chemical or liquefied gas transfer operations, and

(3) Be capable of clearly understanding, in English, all instructions relative to cargo and vessel operations.

(e) On a foreign tank barge, the person in charge of oil transfer operations to or from a barge or engaged in tank cleaning, shall—

(1) Hold a certificate or other acceptable document issued by a foreign administration or its authorized agent attesting to the holder's competency to act as a person in charge of oil, chemical or liquefied gas transfer operations; and

(2) Be capable of clearly understanding, in English, all instructions relative to cargo and tank barge operations.

(46 U.S.C. 391a, as amended by P.L. 95-474, 92 Stat. 1480; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(n)(4))

Dated: December 11, 1980.

J. B. Hayes,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 80-39380 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

[34 CFR Part 280]

Emergency School Aid

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education proposes to amend the regulations governing local educational agency (LEA) public and advisory committee participation under the Emergency School Aid Act (ESAA). An LEA that applies for assistance after the effective date of any amended regulations must satisfy the requirements of those regulations relating to the development of an application for an ESAA grant.

DATE: Comments must be received on or before February 2, 1981.

ADDRESS: Comments should be addressed to Dr. Shirley McCune, U.S. Department of Education, Room 2001, FOB-6, 400 Maryland Avenue S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Ms. L. Ann Benjamin, Room 2001-A, FOB-6, 400 Maryland Avenue S.W., Washington, D.C. 20202. Telephone: (202) 245-8230.

SUPPLEMENTARY INFORMATION: The authority for these proposed regulations is the Emergency School Aid Act, Title VI of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 3191 *et seq.*)

Background

On June 29, 1979 a Notice of Proposed Rulemaking (NPRM) for programs authorized under ESAA was published in the Federal Register (44 FR 38364). The proposed regulations included provisions governing LEA advisory committees. Near the end of the period for public comment on the proposed regulations, fiscal year 1980 applications were invited under the major programs to which the advisory committee provisions apply (44 FR 49590 August 23, 1979). The notice inviting applications provided that applicants should base their applications on the proposed rule. It also provided that the due date for applications might be extended to permit applicants to amend their applications in order to take account of changes in the proposed regulations made in light of public comment. When substantive changes in the proposed regulations for the program authorized by section 608(b) of the statute were determined to be necessary, the due date for applications was extended (44 FR 75237 December 19, 1979). No substantive changes in the rules governing advisory committees were considered necessary on the basis of public comment received during the comment period.

Several months after the close of the comment period, a number of interested organizations raised objections to the latitude given to the LEA in selecting members of the ESAA advisory committee under the NPRM. These organizations recommended that teacher organizations and community groups be permitted to select their own representatives to serve as members of the advisory committee, and that provisions of the regulations in effect in prior fiscal years be restored. The Secretary did not adopt these recommendations in the final ESAA regulations published in the Federal Register on May 16, 1980 (45 FR 32586), since applications for fiscal year 1980 awards already has been developed on the basis of the proposed rules. Also, the suggested amendments constituted a substantial departure from both the proposed regulations and the provisions previously in effect. However, the Secretary expressed the intention to issue a separate proposed rule to guide future advisory committee participation. This document sets out that proposed rule.

Invitation To Comment

Interested persons are invited to submit written comments, suggestions, and recommendations to be considered prior to the issuance of the final regulations governing LEA advisory committees. Comments, suggestions and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 45th day after publication of this document will be considered.

The Secretary invites particular attention to section 280.10(a)(3) of the NPRM. That section would require that an LEA solicit the participation of community groups and other organizations in the formation of an advisory committee. Interested persons are encouraged to comment on this provision. The Secretary is particularly interested in suggestions on how to make this kind of solicitation effective, if such a provision is included in the final regulations.

Comments should (1) identify the provision of the proposed regulations to which a comment is directed; (2) describe the concern with respect to that provision; and (3) recommend specific action. This is the kind of information that is needed in order to give maximum consideration to each commenter's concerns.

All written comments submitted in response to this notice will be available for inspection, both during and after the comment period, in Room 2001, FOB-6, 400 Maryland Avenue, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of the proposed regulations. The first citation is the appropriate section of the Act (Title VI of the Elementary and Secondary Education Act of 1965, as amended). This is followed by a citation to the same provision in the United States Code.

Dated: December 12, 1980.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance Program Nos.: 84.056, Basic Grants; 84.102 Magnet School, University/Business Cooperation, and Neutral Site Planning Grants; 84.106, Planning Grants; 84.108, Out-of-Cycle Assistance Grants; 84.109 Special Discretionary Grants; 84.107, Preimplementation Grant)

The Secretary of Education proposes to amend 34 CFR Part 280 as follows:

* * * * * *

1. Section 280.10 is revised to read as follows:

§ 280.10 Public and advisory committee participation.

(a) An LEA shall develop any application for assistance in open consultation with parents, teachers, and, if the LEA operates a secondary school, secondary school students. At a minimum, the LEA shall meet the following requirements:

(1) It shall meet the open meeting requirements of 34 CFR 75.39 through 75.141.

(2) It shall consult with an advisory committee composed of parents of children enrolled in the LEA's schools, teachers, and if the LEA operates a secondary school, secondary school students. At least half the members of the advisory committee must be parents and at least half must be members of minority groups. In addition, the committee must include persons who are familiar with the educational desegregation-related concerns of the entire area to be served.

(3)(i) The applicant shall set forth appropriate procedures for the selection of advisory committee members from teacher, parent, and, where applicable, student organizations, and from any civic or community organization in the area to be served which has an interest in school desegregation and the improvement of race relations. At a minimum, it shall set out how it will provide timely and adequate notice to parents and the general public regarding the selection process. The Secretary recommends that the applicant solicit nominations by publishing in a newspaper of general circulation or other publication reasonably likely to bring the solicitation to the attention of those civic and community organizations.

(ii) The procedures developed by the applicant shall include a provision for selecting teacher members of the committee. The Secretary recommends that nominations be sought from organizations that represent the teachers employed by the LEA, and that where nominations are submitted by these teacher organizations, the applicant selects the teacher members of the committee from these nominees.

(iii) The procedures developed by the applicant shall include appropriate provisions for selecting civic and community organization members of the committee. The Secretary recommends that nominations be sought from civic organizations and that, if five or more civic or community organizations described in paragraph (3)(i) of this section nominate persons to serve on the committee, the applicant selects as members of the committee at least one nominee of at least five of the organizations. The Secretary recommends further that, if fewer than five organizations nominate persons to serve on the committee, the applicant selects as members of the committee at least one nominee of each organization.

(iv) If a final order of a Federal or State court provides for the formation of an advisory committee as a part of the implementation of a plan for desegregation of the applicant's schools, consultation with that committee will meet the requirements of this section for consultation with an advisory committee so long as the committee membership meets the requirements of paragraph (a)(2) of this section.

(b) The Secretary does not approve an applicant for a new project or for a continuation award without having received written comments on the application from a majority of the members of the advisory committee. If a majority of the committee requests an informal hearing concerning the application, the Secretary does not approve the application until the committee has had an opportunity for such a hearing.

(c) If the LEA receives an award, it shall periodically consult with the advisory committee, parents of children enrolled in its schools, and representatives of the area served regarding the services under the award.

(Section 610(a)(1) and (2); 610(c); 20 U.S.C. 3200(a)(1) and (2), 3200(c))

* * * * *

[FR Doc. 80-39217 Filed 12-17-80; 8:45 am]
BILLING CODE 4000-01-M

VETERANS ADMINISTRATION

38 CFR Ch. I

Improving Government Regulations; Semiannual Agenda of Regulations

AGENCY: Veterans Administration.

ACTION: Notice of semiannual agenda of regulations.

SUMMARY: This agenda announces the regulations, both significant and nonsignificant, that the Veterans Administration will have under development and review during the 6-month period from December 18, 1980 through June 14, 1981. The purpose in publishing this agenda is to give the public notice for comment on these regulations under development or review during this 6-month period.

DATES: Comments must be received on or before January 14, 1981.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, D.C. 20420. All written comments will be available for public inspection until January 28, 1981, at the above address, between the hours of 8 am and 4:30 pm Monday through Friday (except holidays). Persons visiting the VA Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit (271A) in room 132. Persons visiting or calling VA field stations will be informed that records are available for inspection only in Central Office.

FOR FURTHER INFORMATION CONTACT: Celia Fasone, Management Services (61), 810 Vermont Avenue, NW., Washington, DC 20420 (202-389-3770.

SUPPLEMENTARY INFORMATION: Executive Order 12044, "Improving Government Regulations" requires that executive agencies publish, every 6 months, in the Federal Register a semiannual agenda of regulations under development and review.

Approved: December 15, 1980.

Max Cleland,

Administrator.

Significant Regulations Under Development or Review

Legal Authority	Title	Description	Contact
Pub. L. 95-563, Contract Disputes Act of 1978, Nov. 1, 1978.	Rules of Procedure for VA Board of Contract Appeals.	Contains the rules to be followed in appeals to the VA Board of Contract Appeals under Pub. L. 95-563 and guidelines for uniform rules issued by OFPP (44 FR 34227) June 14, 1979.	Patricia H. Maloy, (202) 275-1750.

Nonsignificant Regulations Proposed or Under Development

31 U.S.C. 665	Administrative Control of Funds	These regulations will implement provisions of OMB Circular A-34.	Dennis Bowser, (202) 389-2119.
Pub. L. 96-466, Vocational Rehabilitation and Educational Amendments of 1980.	Referral to Consumer Reporting Agencies (CRA).	New legislation requires the VA to refer delinquent debts and related information to consumer reporting agencies.	Peter T. Mulhern, (202) 389-3405.

Nonsignificant Regulations Proposed or Under Development—Continued

Legal Authority	Title	Description	Contact
[1]38 CFR 1.450–1.455	Investigation	Covers investigation policies, jurisdiction, and regulations pertaining to Central Office investigations.	William L. Retzer, (202) 389-3333.
[1]38 CFR 1.514	Medical Records Disclosure	To permit medical records disclosure to treating physicians with verified oral consent from the veteran.	Neal Lawson, (202) 389-3294.
[1]38 CFR 1.577 and 1.579	Access to One's Own Records	To establish special procedures for disclosure of an individual's records if they would be harmful to the individual's mental or physical health; also to rearrange subsections between the two regulations.	Do.
38 CFR 1.911	Demand for Payment	Ensures that the initial notice of indebtedness also provides the debtor with notice of certain waiver, hearing, and appellate rights in compliance with a recent U.S. Supreme Court decision.	Peter T. Mulhern, (202) 389-3405.
38 CFR 1.912	Collection by Offset	Provides that offset from current or future benefits will not be initiated until the debtor is provided with notice of certain waiver, hearing, and appellate rights and that a decision will be rendered upon a request for waiver filed within a certain specified period of time.	Do.
38 CFR 1.957	Refunds	Permits refund of the entire amount of an indebtedness, regardless of the date of the receipt of the waiver request.	Do.
38 CFR 6.58	Conditional Designation of Beneficiary	Gender changes	Robert W. Carey, (215) 951-5360.
38 CFR 6.60	Change of Beneficiary	Gender changes	Do.
38 CFR 6.62	Assignment, Claims of Creditors, and Taxation.	Gender changes	Do.
38 CFR 6.69b	Higher Interest Rates for Amounts Payable to Beneficiaries.	Paragraph is added to allow the beneficiary of a United States Government life insurance policy who is receiving the proceeds in equal monthly installments over a limited period of months to receive a higher rate of interest on each installment than the current prescribed interest rate being paid.	Do.
38 CFR 8.26	Dividends, How Paid	Subparagraph (a)(3) is amended to authorize dividends on insurance issued under section 725, of Title 38, United States Code, as amended by Pub. L. 96-128.	Do.
38 CFR 8.82	Higher Interest Rates for Amounts Payable to Beneficiaries.	Paragraph is added to allow the beneficiary of a National Service Life Insurance (NSLI) policy who is receiving the proceeds in equal monthly installments over a limited period of months to receive a higher rate of interest on each installment than the prescribed interest rate now in use.	Do.
38 CFR 17.30(w)	Definitions	Redefines Veterans Administration facilities to provide authority to furnish medical services at private facilities for certain veterans receiving housebound or aid and attendance benefits. To define also, authority to obtain diagnostic services from private facilities under certain conditions.	J. Fleckenstein, (202) 389-3785.
38 CFR 17.49	Admission Priorities	Defines the admission priority for hospital care for Commonwealth Army Veterans and New Philippine Scouts.	Do.
38 CFR 17.60b	Emergency Outpatient Care	Defines authority for furnishing outpatient care in emergencies to individuals attending national conventions of VA recognized organizations.	Do.
38 CFR 17.60g	Priorities for Medical Services	Defines the outpatient priority category for veterans being examined to determine the existence or rating of a service-connected disability.	Do.
38 CFR 17.62	Charges for Emergency Services	Defines authority for charging for emergency services provided to individuals, other than eligible veterans, attending national conventions of VA recognized service organizations.	Do.
[2]38 U.S.C. 17.54	Medical Care for survivors and dependents of certain veterans.	Revise the current regulation to provide CHAMPVA benefits to the surviving spouse or child of a person who died in the active military, naval or air service, in the line of duty, and who is not eligible for CHAMPUS or MEDICARE benefits.	Do.
[2]38 CFR 17.166c	Amount of aid payable	Amend the published per diem rates payable to a recognized state home for domiciliary care, nursing home care, and for hospital care furnished to eligible veterans.	Do.
[2]38 CFR Part 18e	Age discrimination	To establish standards for determining what age discrimination is and procedures for enforcing the Age Discrimination Act of 1975.	Marion Stachta, (202) 389-2943.

Nonsignificant Schedule for Review

Pub. L. 96-342	Length of service requirement	To provide that a person who enlists in the service after 9/7/80 must serve at least 24 months to be eligible for benefits.	T.H. Spindle, (202) 389-3005.
38 CFR 3.272	Exclusions from income	To provide that income received under a Domestic Volunteer Service Act program shall be excluded in determining entitlement to improve pension.	Do.
Pub. L. 96-272	The Adoption Assistance and Child Welfare Act of 1980.	To provide that certain persons who were required to elect improved pension may disaffirm their election.	Do.
Pub. L. 96-385	Veterans' Disability Compensation and Housing Benefits Amendments of 1980.	To provide for increased compensation and DIC rates, reduction of payments to incarcerated beneficiaries receiving compensation or DIC, a new limited specially adapted housing and various other provisions.	Do.
38 U.S.C., Ch. 31 (Pub. L. 96-466)	Vocational Rehabilitation and Education Amendments of 1980.	To incorporate provisions of Pub. L. 96-466	S. L. Lemons (202) 389-2026.
38 U.S.C., Chapters 32, 34, 35, 36 (Pub. L. 96-466).	Vocational Rehabilitation and Educational Amendments of 1980.	To incorporate provisions of Pub. L. 96-466	J. C. Schaefer, (202) 389-2092.
38 CFR 1.512	Release of Information from Loan Guaranty files.	To revise the methods and procedures for release of information from Loan Guaranty files as required by Pub. L. 96-466.	George D. Moerman, (202) 389-3042.

Nonsignificant Schedule for Review—Continued

Legal Authority	Title	Description	Contact
[3] 38 CFR 1.526, 1.555 and 1.579	Fee Regulations	To update and consolidate these regulations into a single agency fee schedule regulation covering duplication, search and certification fees and fee waiver criteria.	Neal Lawson, (202) 389-3294.
[4] 38 CFR 6.79, 6.80 and 6.88	United States Government Life Insurance	Change in job titles to Assistant Director for Insurance. Make the necessary gender changes.	Murray Zuckerman; (215) 486-5733.
[4] 38 CFR 6.90	Physical Examination and Inspections	Enables a physician's assistant to make certain examinations for insurance purposes. Make the necessary gender changes.	Do.
[4] 38 CFR 8.0	National Service Life Insurance Eligibility	To include the Modified Life at Age 70 plan. Make the necessary gender changes.	Do.
[4] 38 CFR 8.1	Definition of and criteria for "good health"	To make the required gender changes	Do.
[4] 38 CFR 8.3	Premiums	To include the 20-Payment Life plan where appropriate.	Do.
[4] 38 CFR 8.24	Application and Medical Evidence	Change in job title to Assist Director for Insurance. Make the necessary gender changes.	Do.
[4] 38 CFR 8.27	Cash Value	States how long paid-up additions must be in force for cash values. Includes 20-Payment Life plan where appropriate.	Do.
[4] 38 CFR 8.29	Extended Term and Paid-up Insurance	To make the necessary changes for the Modified Life at Age 70 plan.	Do.
[4] 38 CFR 8.33-8.36	Change in Plan	To make the necessary changes for the Modified Life at Age 70 plan and 20-Payment Life plan. Make the necessary gender changes.	Do.
[4] 38 CFR 8.40-8.42	Premium Waivers and Total Disability	To make the necessary changes for the Modified Life at Age 70 plan and 20-Payment Life plan. Make the necessary gender changes.	Do.
[4] 38 CFR 8.64 and 8.65	Examinations	Enables a physician's assistant under certain conditions to make an examination. Changes the title to Director for the head of a regional office. Necessary gender changes made.	Do.
[4] 38 CFR 8.70	Claims Alleging Insurance where there is no Application for Insurance on File.	Changes the title of person charged with making original determinations as to valid contracts.	Do.
[4] 38 CFR 8.99c	Total Disability Income Provisions	Provides for updated pamphlets dealing with premiums for the Total Disability Income Provisions. Adds the 20-Payment Life plan where appropriate.	Do.
[4] 38 CFR 8.100	Insurance Provided by Special Legislation	Makes the required gender changes	Do.
[4] 38 CFR 8.102	National Service Life Insurance Appropriations.	Provides for the 20-Payment Life plan where appropriate.	Do.
[4] 38 CFR 8.103	National Service Life Insurance Nonparticipating Funds.	Provides for the 20-Payment Life plan where appropriate. Makes the necessary gender changes.	Do.
[4] 38 CFR 8.108	National Service Life Insurance Policy Forms.	Updates the applicable forms. Includes the Modified Life at Age 70 plan and the 20-Payment Life plan where appropriate.	Do.
[4] 38 CFR 8.110-8.112b	National Service Life Insurance issued on or after April 25, 1951.	Includes the Modified Life at Age 70 plan where appropriate. Makes the necessary gender change.	Do.
[5] 38 CFR 18.1-18b.95	Civil Rights	Gender changes. Updated material includes Affirmative Action, written agreements, compliance reports, compliance reviews, prohibited intimidatory or regulatory acts, and administrative review procedures.	Marion Slachta, (202) 389-2943.
[6] 38 CFR 36.4200 thru 36.4287	Mobile Home Regulations	To revise necessary regulations to implement statutory changes mandated by Pub. L. 96-385.	George D. Moerman, (202) 389-3042.
[6] 38 CFR 36.4283(f)	Resale and Repairs to Repossessed Mobile Home Units.	To authorize the Administrator to enter into indemnification agreements with holders when repossessed mobile home units are resold and to limit the dollar amount of repairs which a holder may expend on behalf of the Administrator.	Raymond L. Brodie, (202) 389-3668.
38 CFR 36.4300	Home Loan Regulations	To revise necessary regulations to implement statutory changes mandated by Pub. L. 96-385.	George D. Moerman, (202) 389-3042.
38 CFR 36.4400	Specially Adapted Housing Regulations	To revise necessary regulations to implement statutory changes mandated by Pub. L. 96-385.	Do.
38 CFR 36.4500 thru 36.4526	Direct Loan Regulations	To revise necessary regulations to implement statutory changes mandated by Pub. L. 96-385.	Do.

[1] These regulations were listed in the agenda of June 18, 1980; the regulations are currently under development.
[2] These regulations were listed in the agenda of June 18, 1980. They are currently under revision and will soon be submitted for publication.
[3] These regulations were listed in the agenda of June 18, 1980; these regulations are pending final intra-agency concurrences.
[4] These insurance regulations were listed in the June 18, 1980 agenda; the regulations are still under review.
[5] These civil rights regulations were listed in the June 18, 1980 agenda; the regulations are still under review.
[6] These regulations were listed in the June 18, 1980 agenda. The regulations have been reviewed, but the revisions are not yet finalized.

[FR Doc. 80-39392 Filed 12-17-80; 8:45 am]
BILLING CODE 6320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-5955]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or

Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4 (a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arizona	Florence (Town), Pinal County	Gila River	50 feet downstream of intersection of Gila River and U.S. Highway 80, 89.	*1,460
Maps available for inspection at Town Hall, 1206 Main Street, Florence, Arizona.				
Send comments to Honorable Jimmy Avenenti, P.O. Box 490, Florence, Arizona 85232.				
Arizona	Kearny (Town), Pinal County	Steamboat Wash	20 feet downstream of intersection of steamboat Wash and Southern Pacific Railroad.	*1,841
		Gila River	Termination of Airport Road, 2,420 feet along road southeast of its intersection with Tilbury Drive.	*1,832
Maps available for inspection at Town Hall, 377 Alden Road, Kearny, Arizona.				
Send comments to Honorable Ernie McCallister, Box 388, Kearny, Arizona 85237.				
California	Burlingame (City), San Mateo County.	Shallow flooding	Intersection of Grove Avenue and California Drive	*11
			Intersection of Sanchez Avenue and California Drive	*13
Maps available for inspection at City Hall, 501 Primrose Road, Burlingame, California.				
Send comments to Honorable R. D. Martin, 501 Primrose Road, Burlingame, California 94010.				
California	Millbrae (City), San Mateo County	Shallow flooding	Approximately 500 feet northeast of intersection of Lerida Avenue and Cuardo Avenue.	*4
			Intersection of San Anselmo Avenue and Landing Lane	*8
Maps available for inspection at City Hall, 621 Magnolia Avenue, Millbrae, California.				
Send comments to Honorable Mary Griffin, 621 Magnolia Avenue, Millbrae, California 94030.				
California	South San Francisco (City), San Mateo County.	Shallow Flooding	Intersection of South Linden Avenue and North Canal Street	*9
			Intersection of Chestnut Avenue and Mission Road	*24
		Colma Creek	Approximately 400 feet east of intersection of Hickey Boulevard and El Camino Real (State Route 82).	*80
Maps available for inspection at City Hall, 400 Grand Avenue, South San Francisco, California.				
Send comments to Honorable Ronald G. Acosta, 400 Grand Avenue, South San Francisco, California 94080.				
Delaware	Frankford (Town), Sussex County.	Vines Creek	Downstream Corporate Limits	*23
			Roxana Road (Upstream side)	*25
			Main Street (Downstream side)	*26
			Main Street (Upstream side)	*32
			Upstream Corporate Limits	*32
Maps available at the Town Hall, Frankford, Delaware.				
Send comments to Honorable Kay Olmstead, Mayor of Frankford, P.O. Box 270, Frankford, Delaware 19945.				
Florida	North Port (City), Sarasota County.	Big Slough Canal and Myakkahatchee Creek.	At center of McCarthy Boulevard crossing	*17
		Shallow Flooding	At the intersection of Lacey Street and Hablow Lane	#1
		Charlotte Harbor	At the intersection of West Safford Terrace and Freement Street	*8
		Gulf of Mexico	At the intersection of Alyer Creek and western corporate limit	*11
Maps available for inspection at Municipal Building, 311 North Port Boulevard, North Port, Florida.				
Send comments to Honorable Margaret Gentle, 311 North Port Boulevard, North Port, Florida 33596.				
Idaho	Blaine County (Unincorporated Areas).	Cory Creek	At confluence with Democrat Gulch	*5,393
		Deer Creek	225 feet downstream from center of dam	*5,616
		East Fork Big Wood River	100 feet upstream from confluence with Big Wood River	*5,545
		Trail Creek	125 feet upstream from center of Union Pacific Railroad Bridge	*5,753
		Warm Springs Creek	125 feet upstream from center of Bridge Number 19 (Sandy Lane)	*6,157
		Eagle Creek	100 feet upstream from center of Eagle Creek Road	*6,241
		Big Wood River	100 feet upstream from center of Idaho State Highway 63	*4,836
			100 feet upstream from center of Poverty Flat Road	*5,070
			150 feet upstream from most downstream crossing of U.S. Highway 93.	*5,534
			100 feet upstream from center of Hulen Meadows Road	*5,934

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			150 feet upstream from center of 3rd crossing of U.S. Highway 93	*6,154
			30 feet east of Union Pacific Railroad, 0.9 mile northwest from its intersection with Spruce Street (within the City of Bellevue).	#2
		Seamans Creek	150 feet upstream from dam which is approximately 500 feet south of Seamans Creek Road, approximately 3.4 miles west along Seamans Creek Road from U.S. Highway 93.	*5,495
		Quigley Creek	At confluence with Deadman Gulch	#2
Maps available for inspection at Blaine County Courthouse, Hailey, Idaho.				
Send comments to Honorable Ray Sweat, Box 400, Hailey, Idaho 83333.				
Idaho	Downey (City), Bannock County	Downey Drainageway—Shallow Flooding Areas.	Intersection of 1st Street West and 4th Street North	#1
			Area southwest of the intersection of 1st Street West and 3rd Street North.	#3
			Intersection of 2nd Street East and 4th Street South	*4,853
Maps available for inspection at City Hall, 7 South Main, Downey, Idaho.				
Send comments to Honorable Frank Howe, 7 South Main, Downey, Idaho 83234.				
Illinois	(C), Batavia, Kane County	Fox River	About 3,000 feet downstream of Fabyan Forest Preserve Island Road.	*659
			Just upstream North Batavia Dam	*668
			At upstream corporate limits	*670
		Mahoney Creek	Confluence with Fox River	*659
			About 600 feet downstream Illinois Route 25	*660
			About 100 feet upstream Burlington Northern railroad	*675
			About 50 feet upstream Pine Street	*692
			About 50 feet upstream Forest Avenue	*702
			About 750 feet downstream of Radiant Road	*707
			About 100 feet downstream Gabion Spillway	*709
			Upstream end of Gabion Spillway	*715
			About 150 feet upstream Wilson Street	*725
			About 50 feet upstream Burlington Northern railroad	*730
			Just downstream Kirk Road	*738
Maps available for inspection at the City Comptroller's Office, Municipal Building, 101 North Island Avenue, Batavia, Illinois.				
Send comments to Honorable Archie L. Bentz, Mayor, City of Batavia, Municipal Building, 101 North Island Avenue, Batavia, Illinois 60510				
Illinois	(V), Chatham, Sangamon County	Polecat Creek	About 2,600 feet downstream State Route 4	*572
			Approximately 320 feet upstream of State Route 4	*577
			Just upstream of Downing Drive	*585
			About 1,800 feet upstream Downing Drive	*587
Maps available for inspection at Village Hall, 117 East Mulberry, Chatham, Illinois.				
Send comments to Honorable John Whitney, Village President, Village of Chatham, Village Hall, 117 East Mulberry, Chatham, Illinois 62629.				
Illinois	(V), Durand, Winnebago County	South Branch Otter Creek	Just downstream Chicago, Milwaukee, St. Paul and Pacific Railroad	*755
			About 1,300 feet upstream Center Road	*767
		North Branch Otter Creek	About 1,200 feet downstream Mulvain Street	*755
			Just upstream Mulvain Street	*759
			About 1,600 feet upstream Mulvain Street	*759
Maps available for inspection at Village Hall, 308 West Main Street, Durand, Illinois.				
Send comments to Honorable Marion Patterson, Village President, Village of Durand, Village Hall, 308 West Main Street, Durand, Illinois 61024.				
Illinois	(V), Hillview, Greene County	Illinois River	Flooding affecting northwest corporate limits	*445
		Hurricane Creek	About 500 feet upstream of Main Street	*445
			About 170 feet downstream of private road	*450
			At upstream corporate limits	*455
Maps available for inspection at the Office of the Clerk, Village Hall, Hillview, Illinois.				
Send comments to Honorable Charles L. Snyder, Village President, Village of Hillview, Village Hall, Hillview, Illinois 62050.				
Illinois	(V), Pearl, Pike County	Illinois River	About 0.4 mile downstream of Illinois Central Gulf Railroad	*445
			About 0.6 mile upstream of Illinois Central Gulf Railroad	*445
		Hardy Creek	About 0.1 mile upstream of East Street	*445
			About 0.7 mile upstream of East Street	*452
Maps available for inspection at Holloway's Red and White Grocery Store, Pearl, Illinois.				
Send comments to Honorable Roger Hatcher, Village President, Village of Pearl, Village Hall, Pearl, Illinois 62361.				
Illinois	(V), Pleasant Plains, Sangamon County.	Branch of Richland Creek	At downstream corporate limits	*578
			Just downstream of County Highway 96	*581
			At upstream corporate limits	*588
Maps available for inspection at the Village Hall, Pleasant Plains, Illinois.				
Send comments to Honorable Rolland Boesdorfer, Village President, Village of Pleasant Plains, Village Hall, P.O. Box 245, Pleasant Plains, Illinois 62677.				
Illinois	(C), St. Charles, Kane and DuPage Counties.	Fox River	Just downstream of confluence of 7th Avenue Creek	*682
			Just upstream St. Charles Dam	*691
			At the confluence of Ferson Creek	*692
			About 1.3 miles upstream of the confluence with Ferson Creek	*693
		Ferson Creek	Just upstream State Route 31	*693

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 1.2 miles upstream of State Route 31	*706
		7th Avenue Creek	Just upstream of Riverside Drive	*682
			Just upstream 7th Avenue	*710
			Just downstream Tyler Road	*733
		7th Avenue Creek Tributary	At the confluence with 7th Avenue Creek	*719
			Just downstream of West Main Street	*725
			About 100 feet upstream of State Avenue	*731
		State Street Creek	At confluence with Fox River	*691
			At confluence of State Street Creek Tributary	*723
			Just downstream Chicago and North Western Railroad	*726
		State Street Creek Tributary	About 450 feet downstream 15th Street	*732
			About 225 feet upstream 15th Street	*744
Maps available for inspection at the Engineering Department, Municipal Building, 2 East Main Street, St. Charles, Illinois.				
Send comments to Honorable Fred T. L. Norris, Mayor, City of St. Charles, Municipal Building, 2 East Main Street, St. Charles, Illinois 60174.				
Maine	Windham (Town), Cumberland County.	Presumpscot River	Downstream Corporate Limits	*77
			South Windham Dam (Downstream)	*82
			Mallison Street (Upstream)	*95
			Little Falls Dam (Downstream)	*97
			State Route 202 (Upstream)	*115
			Newhall Dam (Downstream)	*118
			Gambo Road (Downstream)	*140
			Dundee Dam (Downstream)	*144
			Dundee Dam (Upstream)	*190
			Great Falls Bridge (Downstream)	*193
			Gorham Dam (Upstream)	*225
			240' downstream of Eel Weir Power Station	*226
		Ditch Brook	Varney's Mill Dam (Upstream)	*231
			Gravel Pit Road (Upstream)	*245
			1,150' upstream of Gravel Pit Road	*255
			Collins Pond Dam (Upstream)	*273
			Mill Pond Dam (Downstream)	*280
		Sebago Lake	Entire Shoreline within community	*268
		Little Sebago Lake	Entire Shoreline within community	*288
		Mill Pond	Entire Shoreline within community	*285
		Collins Pond	Entire Shoreline within community	*273
Maps available at the Office of the Code Enforcer, Town Offices, South Windham, Maine.				
Send comments to Honorable Kathleen Jenks, Manager of Windham, Town Offices, South Windham, Maine 04082.				
Massachusetts	Hanson (Town), Plymouth County	Indian Head River	Downstream Corporate Limits	*26
			Downstream of State Street	*33
			Upstream of State Street	*39
			Upstream of Winter Street	*45
			Upstream Corporate Limits on Factory Pond	*50
		Indian Head Brook	Downstream Corporate Limits	*41
			Upstream of Washington Street	*47
			Upstream of Brook Street	*54
			Downstream of Liberty Street	*60
			Upstream of Liberty Street at Wampatuck Road	*70
Maps available at the Hanson Town Hall, Liberty Street, Hanson, Massachusetts.				
Send comments to Honorable Patricia Stearns, Chairwoman of the Hanson Board of Selectmen, Hanson Town Hall, Liberty Street, Hanson, Massachusetts 02341.				
Massachusetts	Palmer Town, Hampden County	Chicopee River	50' upstream of Corporate Limits	*281
			3/10 mile downstream of Bridge Street	*289
			Upstream side of Bridge Street	*298
			Approximately 190' upstream of Central Vermont Railroad Bridge	*301
		Quaboag River	Approximately 50' downstream of Springfield Street	*301
			Upstream side of Palmer Street	*301
			Upstream side of Central Vermont Railroad Bridge	*311
			Upstream side of Massachusetts Turnpike	*312
			Downstream side of Wilbraham Street	*314
			Upstream side of Conrail	*317
			Downstream side of Central Vermont Railroad Bridge	*321
			Upstream side of Lower Palmer Road	*326
			1/4 mile upstream of Lower Palmer Road	*335
			1,585' downstream of U.S. Route 20	*345
			Upstream side of U.S. Route 20	*350
			1 mile downstream of Conrail Bridge	*357
			1,040' downstream of Conrail Bridge	*367
			Upstream side of Conrail Bridge	*373
			Upstream side of Washington Street	*374
			1/4 mile upstream of Washington Street	*384
			Upstream side of Massachusetts Turnpike	*386
			2 1/2 miles upstream of Washington Street	*395
			3/10 mile downstream of the intersection of Boston Road and Warren Road.	*405
			1/2 mile downstream of the intersection of Boston Road and Warren Road.	*415
			1/4 mile south of the intersection of Boston Road and Warren Road	*425
			400' downstream of the intersection of Boston Road and Warren Road.	*435
			800' upstream of the intersection of Boston Road and Warren Road	*445
			1,800' upstream of the intersection of Boston Road and Warren Road	*455
			2,400' upstream of the intersection of Boston Road and Warren Road	*465

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
		Ware River	Confluence with Chicopee and Quaboag Rivers	*301
			Confluence of Swift River	*310
			Upstream side of State Route 181	*312
			3,590' upstream of State Route 181	*322
			318' downstream of Main Street	*332
			Upstream side of Main Street	*333
			Downstream side of downstream dam	*339
			Upstream side of downstream dam	*345
			100' downstream of Church Street	*355
			Upstream side of Church Street	*358
			Downstream side of upstream dam	*361
			Upstream side of upstream dam	*370
			Upstream side of State Street	*377
			First upstream Corporate Limits	*379
			Downstream Corporate Limits	*393
			Second Upstream Corporate Limits	*395
		Swift River	Confluence with Ware River	*310
			Upstream side of Central Vermont Railroad Bridge	*314
			2,138' downstream of River Street	*324
			Upstream side of River Street	*331
			Downstream side of Otis Company Dam	*332
			Upstreat side of Otis Company Dam	*343
			Upstream side of Factory Road	*350
			Downstream side of Otis Company Dam	*352
			Upstream side of Otis Company Dam	*366
			Downstream side of Corporate Limits	*366

Maps available at the Conservation Commission, Palmer Town Building, Palmer, Massachusetts.

Send comments to Honorable William S. Lemanski, Chairman of the Palmer Board of Selectmen, Palmer, Massachusetts 01069.

Massachusetts	Ware (Town), Hampshire County	Ware River	Downstream Corporate Limits	*379
			Approximately 1,850' upstream State Route 32	*390
			Approximately 2,800' upstream of confluence of Flat Brook	*400
			Downstream of South Street	*406
			Approximately 185' upstream of South Street Dam	*426
			Approximately 285' upstream of East Main Street	*443
			Approximately 1,425' upstream of East Main Street Dam	*471
			Approximately 2,535' upstream of Church Street	*480
			Approximately 5,385' upstream of Church Street	*490
			Approximately 3,010' downstream of Bridge Street	*500
			Approximately 1,000' downstream of Bridge Street	*510
			Bridge Street	*520
			Approximately 475' upstream of Bridge Street	*528
		Muddy Brook	Confluence with Ware River	*403
			Snow Pond Dam	*415
		Flat Brook	Confluence with Ware River	*398
			Approximately 90' upstream of confluence with Ware River (Just upstream of spillway).	*400
			Approximately 370' upstream of Malbeouf Road	*410
			Approximately 925' upstream of Malbeouf Road	*420
			Approximately 740' downstream of State Route 32	*430
			Approximately 460' upstream of State Route 32	*440
			Approximately 1,240' upstream of State Route 32	*448

Maps available at the First Selectman's Office, Town Hall, Ware, Massachusetts.

Send comments to Honorable Abraham Goodman, Chairman, Board of Selectmen, First Selectman's Office, Town Hall, Ware, Massachusetts 01082.

Michigan	(Twp), Avon, Oakland County	Sargent Creek	At downstream corporate limits	*775
			Just upstream of Livernois Road	*805
			Just upstream private dam	*823
			Jut upstream Tienken Road	*870
			Just downstream Newkent Drive	*933
			About 2,800 feet upstream Newkent Drive	*942
		Clinton River	About 0.2 mile downstream Avon Road	*676
			Just downstream Conrail (second crossing)	*699
			Jut upstream Conrail (second crossing)	*703
			Just downstream Grand Trunk Western Railroad	*743
			About 1.1 miles upstream of Livernois Road	*759
			Just upstream of Crooks Road	*779
			Just downstream Adams Road	*802
			Just upstream Adams Road	*807
			About 2 miles upstream Adams Road	*832
		Galloway Crek	About 1,000 feet downstream Butler Road	*816
			About 2,000 feet upstream Butler Road	*823
			At upstream corporate limits	*835
		Stony Creek	About 600 feet downstream Grand Trunk Western Railroad	*694
			About 500 feet upstream Tienken Road	*730
			Just downstream Winkler Mill Road	*768
			About 460 feet upstream Winkler Mill Road	*770
		Paint Creek	About 1,550 feet downstream Tienken Road	*770
			Just upstream Kings Cove Road	*776
			About 1,400 feet upstream Kings Cove Road	*779
			Just downstream Dutton Road	*795

Maps available for inspection at the Department of Planning and Zoning, Avon Township Hall, 407 Pine Street, P.O. Box 250, Rochester, Michigan.

Send comments to Honorable Earl E. Borden, Township Supervisor, Township of Avon, Avon Township Hall, 407 Pine Street, P.O. Box 250, Rochester, Michigan 48063.

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Michigan	(Twp.); Canton, Wayne County	Fellows Creek	At Palmer Road	*659
			About 400 feet upstream Cherry Hill Road	*670
			Just downstream Elmhurst Road	*682
			About 700 Feet upstream Ford Road	*687
		Green Meadows Drain	At mouth at Tonquish Creek	*684
			About 2,100 feet upstream Fleet Road	*688
		Tonquish Creek	About 2,700 feet downstream Lilley Road	*675
			Just downstream Joy Road	*692
		Willow Creek	At downstream corporate limits	*667
			Just upstream Warren Road	*689
			Just downstream Canton Center Road	*707
Maps available for inspection at the Office of the Clerk, Canton Township Hall, 1150 South Canton, Canton, Michigan.				
Send comments to Honorable Noel Culbert, Township Supervisor, Township of Canton, Canton Township Hall, 1150 South Canton, Canton, Michigan 48183.				
Minnesota	(C), Brainerd, Crow Wing County	Mississippi River	At the downstream corporate limit	*1,163
			Just downstream of the Northwest Paper Company's dam	*1,167
			Just upstream of the Northwest Paper Company's dam	*1,177
			At the upstream corporate limit	*1,178
		Rice Lake	Shoreline	*1,178
Maps available for inspection at the City Hall, Brainerd, Minnesota.				
Send comments to Honorable C. Elmer Anderson, Mayor, City of Brainerd, City Hall, Brainerd, Minnesota 56401.				
Minnesota	(C); Crosby; Crow Wing County	Serpent Creek	About 100 feet downstream of the Soo Line railroad	*1,237
			Just upstream of the Soo Line railroad	*1,240
			Just downstream of Main Street	*1,242
			Just upstream of First Street South	*1,246
			Just downstream of Fourth Street South	*1,247
		Serpent Lake	At the shoreline	*1,249
Maps available for inspection at the City Hall, Crosby, Minnesota.				
Send comments to Honorable William L. Andrews, Mayor, City of Crosby, City Hall, Crosby, Minnesota 56441.				
Minnesota	(C), Lanesboro, Fillmore County	South Branch Root River	At downstream corporate limits	*810
			About 50 feet upstream of State Highway 250	*825
			About 140 feet upstream Chicago, Milwaukee, St. Paul and Pacific Railroad (near West Elmwood Street).	*838
			About 120 feet downstream of dam	*843
			Just upstream corporate limit	*860
			At upstream corporate limit	*861
Maps available for inspection at City Hall, P.O. Box 333, Lanesboro, Minnesota.				
Send comments to Honorable David R. Drake, Mayor, City of Lanesboro, City Hall, P.O. Box 333, Lanesboro, Minnesota 55949.				
Minnesota	(C), Medford, Steele County	Straight River	Downstream corporate limit	*1,077
			About 0.5 mile upstream from North Main Street	*1,081
Maps available for inspection at City Hall, 101 North Main Street, Medford, Minnesota.				
Send comments to Honorable Loyal Merritt, Mayor, City of Medford, City Hall, 101 North Main Street, Medford, Minnesota 55409.				
Minnesota	Norman County (Unincorporated Areas).	Red River of the North	Intersection of County Road 102 and County State Aid Highway 17	*865
			Intersection of County Road 106 and County Road 195	*877
		Wild Rice River	Intersection of County Road 108 and County State Aid Highway 25	*889
			Intersection of County State Aid Highway 25 and County State Aid Highway 20.	*895
Maps available for inspection at Norman County Courthouse, Ada, Minnesota.				
Send comments to Honorable Warner Mahlum, NOrman County Courthouse, Ada, Minnesota 56510.				
Minnesota	(C), Riverton, Crow Wing County County.	Little Rabbit Lake	Shoreline	*1,181
Maps available for inspection at the City Hall, P.O. Riverton Road, Riverton, Minnesota.				
Send comments to Honorable Joe Paul, Mayor, City of Riverton, City Hall, P.O. Riverton Road, Riverton, Minnesota 56455.				
Minnesota	(C); Shelly, Norman County	Marsh River	Within the corporate limits	*861
Maps available for inspection at the City Hall Shelly, Minnesota.				
Send comments to Honorable Alvina Swenson, Mayor, City of Shelly, City Hall, Shelly, Minnesota 56581.				
Minnesota	(C), Spring Valley, Fillmore County.	Spring Valley Creek	Eastern corporate limits	*1,259
			Just downstream of U.S. Highway 16	*1,267
			About 160 feet upstream of U.S. Highway 16	*1,272
			Just upstream of West Park Street	*1,279
			About 160 feet downstream of an abandoned railroad	*1,280
			Just upstream of an abandoned railroad	*1,283
			Western corporate limits	*1,285
		Eastern Tributary	Just downstream of Main Street	*1,272
			Just upstream of Unnamed Road	*1,280
			About 150 feet upstream of Territorial Road	*1,285

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Southern corporate limits	*1,306
		Western Tributary	About 30 feet downstream of West High Street	*1,278
			About 30 feet downstream of Territorial Road (second crossing)	*1,281
			About 110 feet downstream of County Highway 12	*1,310
			Southern corporate limits	*1,313
Maps available for inspection at the Municipal Building, 112 West Courtland, Spring Valley, Minnesota.				
Send comments to Honorable Harold Smith, Mayor, City of Spring Valley, Municipal Building, 112 West Courtland, Spring Valley, Minnesota 55975.				
Missouri	(C), Pierce City, Lawrence County	Clear Creek	At western corporate limit	*1,189
			Just upstream of South Walnut Street	*1,201
			At eastern corporate limit	*1,205
		Larkins Branch	Just upstream of St. Louis-San Francisco Railroad	*1,208
			About 800 feet upstream of Commercial Street	*1,213
Maps available for inspection at the City Hall, Pierce City, Missouri.				
Send comments to Honorable Richard Jones, Mayor, City of Pierce City, City Hall, Pierce City, Missouri 65723.				
Montana	Big Horn County (Unincorporated Areas).	Tongue River Below Dam	Confluence with Anderson Creek	*3,342
			Confluence with Coal Creek	*3,356
		Tongue River Above Dam	Confluence with Badger Creek	*3,433
Maps available for inspection at Big Horn County Courthouse, 121 West 3rd, Hardin, Montana.				
Send comments to Honorable Adam Seader, P.O. Box H, Hardin, Montana 59034.				
Montana	Golden Valley County (Unincorporated Areas).	Musselshell River	500 feet upstream of the intersection of State Highway 3 (County Route 53) and Musselshell River.	*3,431
Maps available for inspection at Golden Valley Courthouse, Ryegate, Montana.				
Send comments to Honorable Walter Krause, Commissioner's Office, Golden Valley Courthouse, Ryegate, Montana 59074.				
Montana	Harlowton (City), Wheatland County.	Harlowton Overflow Channel	Intersection of SE Logan Street and E Avenue SE	*4161
			50 feet downstream of intersection of B Avenue NW and Harlowton Overflow Channel.	*4168
Maps available for inspection at City Hall, 22 S. Central, Harlowton, Montana.				
Send comments to Honorable Oscar Biegel, 22 S. Central, Harlowton, Montana 59036.				
Montana	Lavina (Town), Golden Valley County.	Musselshell River	100 feet downstream of the intersection of State Highway 3 (County Route 53) and Musselshell River.	*3,429
Maps available for inspection at Town Hall, Lavina, Montana.				
Send comments to Honorable Leroy Lane, Town Hall, Lavina, Montana 59046.				
Montana	Lodge Grass (Town), Big Horn County.	Lodge Grass Creek Overflow Down Main Street.	Intersection of Main Street and Taft Street	*3,366
			Intersection of Main Street and 3rd Avenue	*3,359
		Lodge Grass Creek Overflow Onto Harding Avenue.	South end of the intersection of Harding Avenue and George Street	*3,376
Maps available for inspection at City Hall, 12 Hester Avenue Lodge Grass, Montana.				
Send comments to Honorable Pete Plenty Hawk, P.O. Box 255, Lodge Grass, Montana 59050.				
Montana	Wheatland County (Unincorporated Areas).	Musselshell River	120 feet upstream of the intersection of U.S. Highway 191 and Musselshell River.	*4,173
			Intersection of the Chicago, Milwaukee, St. Paul and Pacific Railroad and Musselshell River.	*4,210
		Antelope Creek	40 feed downstream of the intersection of East Logan Street and Antelope Creek.	*4,165
		Jawbone Creek	50 feet unstream of the intersection of the Lewistown Branch of the Chicago, Milwaukee, St. Paul and Pacific Railroad and Jawbone Creek.	*4,161
		Harlowton Overflow Channel	120 feet upstream of the intersection of U.S. Highway 191 and Harlowton Overflow Channel.	*4,177
Maps available for inspection at Wheatland County Courthouse, Harlowton, Montana.				
Send comments to Honorable Roy Brewinton, Wheatland County Courthouse, Harlowton, Montana 59036.				
Nebraska	(C), Dakota City, Dakota County	Missouri River	At downstream extraterritorial limit	*1,091
			At upstream extraterritorial limit	*1,084
Maps available for inspection at the City Hall, P.O. Box 482, Dakota City, Nebraska.				
Send comments to Honorable Charles E. Strong, Mayor, City of Dakota City, City Hall, P.O. Box 482, Dakota City, Nebraska 68731.				
New Jersey	Little Falls (Township), Passaic County.	Passaic River	100 feet upstream from center of State Route 23	*170
		Peckman River	100 feet upstream from center of U.S. Route 46	*135
		Great Notch Brook	100 feet upstream from center of U.S. Route 46	*140
Maps available for inspection at Municipal Building Annex, 35 Stevens Avenue, Little Falls, New Jersey.				
Send comments to Honorable Fred De Furia, 35 Stevens Avenue, Little Falls, New Jersey 07424.				
New Jersey	Ramsey (Borough), Bergen County.	Ramsey Brook	100 feet upstream from center of Lakeside Drive	*353
			75 feet upstream from center of County Route 17	*368

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Valentine Brook	100 feet upstream from center of East Oak Street	*332
		Valentine Brook Tributary No. 1	100 feet upstream from center of Blauvelt Avenue	*345
		Valentine Brook Tributary No. 2	100 feet upstream from center of Conrail Bridge	*339
		Masenicus Brook	75 feet upstream from center of Grant Street	*341
		Darlington Brook Tributary	100 feet upstream from center of Darlington Avenue	*340
Maps available for inspection at Clerk's Office, City Hall, 33 N. Central Avenue, Ramsey, New Jersey.				
Send comments to Honorable Emil L. Porfido; 33 N. Central Avenue, Ramsey, New Jersey 07446.				
New York	Poestenkill (Town), Rensselaer County.	Poesten Kill	Upstream side of Garfield Road over channel	*430
			Intersection of channel and County Highway 77	*479
		Quaken Kill	Approximately 70 feet upstream of Garfield Road over channel	*430
		Newfoundland Creek	North side of intersection of Garfield Road and State Highway 154	*438
			Approximately 100 feet upstream of intersection of channel and Snyders Corner Road.	*456
		Wynants Kill	Upstream side of Pine Bowl Road over channel	*421
Maps available for inspection at Town Hall, White Church Road, Poestenkill, New York.				
Send comments to Honorable Richard Amadon; P.O. Box 200, Poestenkill, New York 12140.				
Ohio	(C), Parma Heights, Cuyahoga County.	Big Creek	About 1,800 feet downstream of U.S. Higway 42	*820
			Just downstream of U.S. Highway 42	*836
			About 150 feet upstream of U.S. Highway 42	*841
			Just downstream of York Road	*856
			About 300 feet upstream of York Road	*860
			About 150 feet upstream of Ridgewood Drive	*863
			About 120 feet upstream of North Church Drive	*877
			About 150 feet upstream of Independence Boulevard	*890
			At the southern corporate limit	*900
		Reservoir Creek	At the confluence with Big Creek	*792
			About 230 feet downstream of Eureka Parkway	*804
			About 100 feet upstream of Eureka Parkway	*814
			About 90 feet downstream of U.S. Highway 42	*831
			At U.S. Highway 42	*836
Maps available for inspection at the Office of the City Clerk, City Hall, 6201 Pearl Road, Parma Heights, Ohio.				
Send comments to Honorable Paul Cassidy, Mayor, City of Parma Heights, City Hall, 6201 Pearl Road, Parma, Ohio 44130.				
Ohio	(C), South Euclid, Cuyahoga County.	Euclid Creek	About 440 feet downstream of Anderson Road	*881
			About 280 feet downstream of Anderson Road	*884
			Just upstream of Anderson Road	*912
			About 130 feet upstream of Whitehall Drive	*928
			About 150 feet upstream of Liberty Road	*938
			Just upstream of Telhurst Road	*943
			At Mayfield Road	*957
		Tributary 1 of Euclid Creek	At confluence with Euclid Creek	*881
			Just upstream of private drive Number 1	*924
			Just upstream of Anderson Road	*932
			About 170 feet upstream of private drive Number 4	*936
			At upstream corporate limit	*952
Maps available for inspection at the Office of the City Clerk, City Hall, 1349 South Green Road, South Euclid, Ohio.				
Send comments to Honorable Arnold D'Amico; Mayor; City of South Euclid, City Hall, 1349 South Green Road, South Euclid, Ohio 44121.				
Pennsylvania	Bradford (Township), McKean County.	East Branch Tunungwant Creek	Corporate Limits	*1,449
			Approximately 600' downstream of confluence of Rutherford Run	*1,456
			Approximately 3,200' downstream of Minard Run Road	*1,474
			Confluence of Sheppard Run	*1,488
			Approximately 2,100' upstream of East Warren Road	*1,500
			Approximately 1,600' upstream of Brownstown Road	*1,527
		West Branch Tunungwant Creek	Corporate Limits	*1,448
			Approximately 2,400' downstream of Dorothy Lane	*1,459
			Confluence of Marilla Brook Upstream of Clarks Lane	*1,488
			Approximately 1,400' upstream of Clarks Lane	*1,498
			Confluence of Niles Hollow	*1,508
			Approximately 4,700' upstream of Clark Lane	*1,518
			Approximately 3,000' downstream of confluence with Langmade Brook.	*1,528
			Approximately 1,000' downstream of confluence with Langmade Brook.	*1,538
			Crocker House Lane	*1,548
Maps available at the Bradford Township Building.				
Send comments to Honorable Francis L. Wolfe, Chairman of the Bradford Township Board of Supervisors, 160 Hemlock Street, Bradford, Pennsylvania 16701.				
Pennsylvania	Clarksville (Borough), Greene County.	Tenmile Creek	Downstream Corporate Limits	*782
			Upstream Corporate Limits	*786
		South Fork Tenmile Creek	Downstream Corporate Limits	*782
			Approximately 200 feet downstream of Monongahela Railroad bridge	*785
			Upstream Corporate Limits	*789
Maps available at the Borough Building, Clarksville, Pennsylvania.				
Send comments to Honorable Ann Rota, Mayor of Clarksville, Clarksville, Pennsylvania 15322.				

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Delaware (Township), Juniata County.	Juniata River	Downstream Corporate Limits	*409
			Approximately 1 mile upstream from downstream corporate limits	*412
			Approximately 2 miles upstream from downstream corporate limits	*414
			Confluence of Delaware Creek	*417
			Upstream of Thompsontown Bridge	*418
			Confluence of Locust Run	*419
			Upstream Corporate Limits	*422
		Delaware Creek	Confluence with Juniata River	*417
			Thompsontown downstream Corporate Limits	*420
			Thompsontown upstream Corporate Limits	*451
			Upstream of U.S. Routes 22-322 East Bound Lane	*453
			Upstream of Access Ramp	*462
			Upstream of Legislative Route 275	*472
			Approximately 150 feet downstream of Evans Hollow Road	*490
			Approximately 460 feet upstream of Evans Hollow Road	*497
			Approximately 2,440 feet upstream of Evans Hollow Road opposite Legislative Route 275 and Township Route 422 intersection.	*525
			Approximately 990 feet downstream of Private Road Crossing	*535
			Downstream of Private Road	*543
			Upstream of Legislative Route 275	*550
			Confluence of White Oak Hollow Run	*557
			Downstream of Legislative Route 34017 (extended)	*565
			Confluence of Kurtz Valley Run	*569
			Downstream of Legislative Route 637	*575
			Upstream of Legislative Route 637	*579
			Downstream of Township Route 471	*589
			Approximately 800 feet upstream of Township Route 471	*597
			Upstream of Legislative Route 275	*605
			Upstream of 2nd crossing of Township Route 436	*612
			Downstream of Township Route 461	*618
			Downstream of Private Driveway	*621
			Downstream of Township Route 34021 (extended)	*637
			Upstream of Private Driveway	*655
			Downstream of State Route 235	*662
		Tributary 9	Confluence with Delaware Creek	*619
			Upstream of Private Driveway	*621
			Downstream of Private Driveway (extended)	*630
			Approximately 1,920 feet upstream of Private Driveway Crossing	*633
		Locust Run	Confluence with Juniata River	*419
			Downstream of Township Route 393	*424
			Approximately 1,100 feet upstream of Township Route 393	*434
			Upstream Corporate Limits	*443

Maps available at the residence of the Township Secretary, Ms. Kay Lukens, R.D. 1, Thompsontown, Pennsylvania.

Send comments to Honorable Gerald Hart, Chairman of the Board of Supervisors of Delaware, R.D. 2, Mifflintown, Pennsylvania 17059.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Freedom (Township), Blair County	Frankstown Branch Juniata River	Downstream Corporate Limits	*999
			Upstream Conrail	*1,005
			Downstream State Route 164	*1,015
			Approximately 2,400' upstream of Learnerville Road	*1,025
			Approximately 2,350' downstream of Township Route 363	*1,036
			Upstream Township Route 363	*1,047
			Upstream Corporate Limits	*1,053
		Halter Creek	Downstream Corporate Limits	*1,010
			Upstream Conrail	*1,019
			Upstream Corporate Limits	*1,030
			Approximately 150' upstream of Upstream Corporate Limits	*1,034

Maps available at the Freedom Township Building.

Send comments to Honorable J. Dean Fornwalt, Chairman of the Board of Supervisors of Freedom, R.D. 1, East Freedom, Pennsylvania 16637.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Hopewell (Township), York County.	Deer Creek	Downstream of Five Forks Road bridge	*727
			Upstream side of Five Forks Road bridge	*731
			Approximately 1,440 feet upstream of Five Forks Road bridge	*740
			Upstream side of first Private Drive bridge	*744
			Approximately 370 feet downstream of Stewartstown Railroad	*754
			Upstream of Second Private Drive bridge	*762
			Upstream side of Third Private Drive bridge	*771
			Upstream of State Route 851 bridge	*777
			Upstream side of Saddler Church Road bridge	*780
			Approximately 1,250 feet upstream of Saddler Church Road	*790
			Approximately 340 feet downstream of fourth Private Drive	*800
			Upstream side of fourth Private Drive bridge	*808
			Approximately 250 feet downstream of Wolfe Road	*818
			Upstream side of Wolfe Road bridge	*823
			Approximately 900 feet upstream of Wolfe Road	*829
		Ebaughs Creek	Approximately 1,570 feet downstream of Stewartstown Road	*670
			Approximately 440 feet downstream of Stewartstown Road	*680
			Upstream side of Stewartstown Road bridge	*686
			Approximately 1,000 feet upstream of Stewartstown Road	*696
			Upstream side of T-429 bridge	*700
			Approximately 850 feet upstream side of T-429	*710
			Approximately 220 feet downstream of Valley Road	*720
			Upstream side of Valley Road bridge	*723

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 870 feet upstream of Valley Road	*733
			Approximately 80 feet downstream of Stewartstown Railroad	*739
			Approximately 60 feet upstream of State Route 851	*748
		Tributary 1	Confluence with Ebaughs Creek	*747
			Upstream side of State Route 851 bridge	*748
			Approximately 780 feet upstream of State Route 851	*758
			Approximately 440 feet downstream of Shaw Road (downstream crossing).	*768
			Upstream side of Shaw Road bridge (downstream crossing)	*777
			Approximately 300 feet downstream of Shaw Road (upstream crossing).	*787
			Upstream of Shaw Road bridge (upstream crossing)	*794
			Approximately 640 feet upstream of Shaw Road (upstream crossing)	*803
Maps available at the Hopewell Township Building.				
Send comments to Honorable Harry Maddox, Chairman of the Hopewell Board of Supervisors, R.D. 1, Stewartstown, Pennsylvania 17363.				
Pennsylvania	Jefferson (Township), Greene County.	Monongahela River	Downstream Corporate Limits	*780
			Upstream Corporate Limits	*781
		Tenmile Creek	Confluence with Monongahela River	*780
			Pittsburgh Gas Road	*780
			Confluence of South Fork Tenmile Creek	*781
		South Fork Tenmile Creek	Confluence with Tenmile Creek	*781
			Upstream of Center Street	*787
			Approximately 2,450 feet upstream of Center Street	*793
			Upstream of Bridge Street	*801
			Approximately 1,000 feet upstream of Bridge Street	*806
		Muddy Creek	Downstream of Corporate Limits	*1,005
			Downstream of Township Route 634	*1,009
			Approximately 5,000 feet upstream of Township Route 634	*1,019
			Upstream of Legislative Route 30102	*1,029
			Upstream of Private Lane	*1,041
			Approximately 100 feet downstream of Haines Hollow Road	*1,050
Maps available at the Jefferson Township Building.				
Send comments to Honorable Richard Faddis, Chairman of the Jefferson Board of Supervisors, R.D. 1, Rices Landing, Pennsylvania 15357.				
Pennsylvania	Marcus Hook (Borough), Delaware County.	Marcus Hook Creek	Confluence with Delaware River	*10
			Upstream of U.S. Route 13	11
			Approximately 900' upstream of U.S. Route 13	*13
			Upstream Corporate limits	*15
Maps available at the Municipal Building, Tenth and Green Streets, Marcus Hook, Pennsylvania.				
Send comments to Honorable Wayne Curtis Weldon, Mayor of Marcus Hook, Tenth and Green Streets, Marcus Hook, Pennsylvania 19061.				
Pennsylvania	Marlborough (Township), Montgomery County.	Perkiomen Creek	Approximately 500 feet downstream of downstream corporate limits	*186
			Confluence of Unami Creek	*191
			Downstream side of Dam	*194
			Upstream side of Snyder Road	*207
			Upstream side of Knights Lake Dam	*218
			Downstream side of Green Lane Dam	*230
			Upstream side of Green Lane Dam	*250
		Macoby Creek	Downstream corporate limits	*229
			Upstream side of Conrail	*235
			Upstream side of Reiman Road	*240
			Approximately 3,000 feet upstream of Reiman Road	*253
			Upstream side of Conrail	*266
			Approximately 1,300 feet downstream of McLeans Station Road	*275
			Upstream side of McLeans Station Road	*281
			Approximately 75 feet downstream of upstream corporate limits	*292
		Unami Creek	Confluence with Perkiomen Creek	*191
			Upstream side of Crucher Road	*196
			Upstream side of first dam	*210
			Upstream side of second dam	*218
			Upstream side of third dam	*224
			Approximately 2,200 feet upstream of third dam	*234
			Downstream side of fourth dam	*249
			Upstream side of fourth dam	*262
			Delmont Camp Dam	*268
			Upstream side of Hart Camp Dam	*326
			Approximately 60 feet upstream of Hart Lake Dam	*333
			Approximately 640 feet upstream of Hart Lake Dam	*351
			Approximately 1,320 feet upstream of Hart Lake Dam	*370
			Approximately 2,200 feet upstream of Hart Lake Dam	*391
			Approximately 920 feet downstream of County Boundary	*410
			County Boundary	*415
Maps available at the Marlborough Township Municipal Building, Upper Ridge Road, Green Lane, Pennsylvania.				
Send comments to Honorable Samuel H. Snyder, Chairman of the Marlborough Board of Supervisors, Box 9, R.D., Green Lane, Pennsylvania 18054.				
Pennsylvania	Milford (Township), Juniata County.	Juniata River	Downstream Corporate Limits	*438
			Confluence of Tributary A	*444
			Upstream Corporate Limits	*464

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Tuscarora Creek	Downstream Corporate Limits	*438
			Legislative Route 34006 (upstream side)	*443
			Upstream Corporate Limits	*462
		East Licking Creek	Confluence with Tuscarora Creek	*438
			Legislative Route 34024 (upstream side)	*449
			State Route 35 (upstream side)	*459
			Legislative Route 34056 (upstream side)	*470
			Hammer Hollow Road (upstream side)	*484
			Private Drive approximately 5,400 feet upstream of Hammer Hollow Road (downstream side).	*489
			Access Road extended	*500
			Township Route 381 (upstream side)	*509
			Township Route 360 (upstream side)	*531
			Township Route 357 extended	*550
			Dam (upstream side)	*561
			Factory Road (downstream side)	*574
			Factory Road (upstream side)	*581
			Approximately 670 feet downstream of Clearview Dam	*597
		Tributary A	Downstream Corporate Limits	*440
			Upstream Corporate Limits	*455
			Approximately 2,500 feet upstream of confluence with Juniata River	*469
Maps available at the Juniata County Planning Office, Mifflintown, Pennsylvania.				
Send comments to Honorable Ken L. Lehman, Chairman of the Milford Board of Supervisors, R.D. 2, Port Royal, Pennsylvania 17082.				
Pennsylvania	Mount Joy (Township), Lancaster County.	Conewago Creek East	Upstream State Route 230	*385
			Upstream Mill Road	*395
			State route 283	*417
		Tributary to Donegal Creek	Upstream Old Harrisburg Pike	*367
			State Route 230	*373
			Upstream Farm Lane Bridge	*385
			Private Road (approximately 1,900 feet upstream from Farm Lane Bridge).	*388
			Private Road (approximately 3,900 feet upstream from Farm Lane Bridge).	*397
			Private Road (approximately 5,000 feet upstream from Farm Lane Bridge).	*400
			Upstream Schwanger Road	*415
			Upstream Clover Leaf Road, approximately 180 feet	*430
		Conoy Creek	Downstream Corporate Limits	*448
			Approximately 600 feet downstream State Route 283	*451
Maps available at the Mount Joy Township Building.				
Send comments to Honorable Glenn Kaylor, Chairman of the Mount Joy Board of Supervisors, 437 Orchard Road, Mount Joy, Pennsylvania 17552.				
Pennsylvania	New Hanover (Township), Montgomery County.	Swamp Creek	Downstream Corporate Limits (Approximately 3,500' downstream Evans Road).	*222
			Evans Road	*229
			Corporate Limits approximately 1,600 feet upstream Evans Road	*231
			Big Road	*253
			Ludwick Road (upstream)	*258
			Middle Creek Road (upstream)	*268
			Approximately 1,650 feet upstream of Middle Creek Road	*272
		West Branch Swamp Creek	Confluence with Swamp Creek	*228
			Approximately 2,000 feet downstream Sanatoga Road	*235
			Private Road approximately 1,000 feet downstream Sanatoga Road (downstream).	*245
			Approximately 500 feet downstream Sanatoga Road	*253
			Sanatoga Road (upstream)	*262
			Private Road approximately 950 feet upstream Sanatoga (upstream)	*269
			Swamp Pike (downstream)	*275
			New Hanover Square Road (upstream)	*280
			Rosenberry Road (downstream)	*289
			Romig Road (upstream)	*294
			Approximately 1,500 feet downstream of Rhoades-Yerkes Road	*297
			Approximately 50 feet upstream of Rhoades-Yerkes Road	*306
		Minister Creek	Reiffsnyder Road	*245
			Swamp Pike (downstream)	*252
			Layfield Road (upstream)	*259
			Confluence of Tributary to Minister Creek	*262
			Upstream corporate limits	*272
		Tributary to Minister Creek	Confluence with Minister Creek	*262
			Klemen Road (upstream)	*269
			Approximately 1,380 feet upstream Klemen Road	*277
			Approximately 2,580 feet upstream Klemen Road	*283
		Middle Creek	Confluence with Swamp Creek	*260
			Upstream corporate limits	*268
		Schlegel Run	Confluence with Swamp Creek	*258
			Ludwick Road (upstream)	*262
			Approximately 2,560 feet upstream Ludwick Road	*269
			Upstream corporate limits	*276
			Approximately 340 feet upstream of upstream Corporate Limits	*278
		Deep Creek	Downstream corporate limits	*243
			Henning Road	*249
			Eichel Road (downstream)	*256
			Hildebrand Road (downstream)	*265

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 1,300 feet downstream Kulp Road	*275
			Approximately 450 feet downstream Kulp Road	*280
			Kulp Road (upstream)	*289
			Approximately 550 feet upstream Kulp Road	*292
Maps available at the New Hanover Township Building, R.D. 1, Gilbertsville, Pennsylvania.				
Send comments to Honorable Theodore B. DeWalt, Chairman of the New Hanover Board of Supervisors, R.D. 1, Gilbertsville, Pennsylvania 19525.				
Pennsylvania	North Lebanon (Township), Lebanon County.	Tulpehocken Creek	Downstream Corporate Limits	*485
			Township Route 546 (upstream side)	*495
			Private Drive (upstream side) approximately 1,380 feet upstream of Legislative Route 38002.	*518
			Approximately 3,600 feet upstream of Legislative Route 38002	*529
			Township Route 483 (downstream side)	*550
Maps available at the North Lebanon Township Building, 725 Kimmerlings Road.				
Send comments to Honorable Alfred R. Brandt, Chairman of the North Lebanon Board of Supervisors, 725 Kimmerlings Road, Lebanon, Pennsylvania 17042.				
Pennsylvania	North Woodbury (Township), Blair County.	Clover Creek	Approximately 1,750' downstream of First Private Road	*1,338
			Downstream of Third Private Road	*1,372
			Upstream of Abandoned Road	*1,376
			Upstream of Fourth Private Road	*1,390
			Upstream of Fifth Private Road	*1,397
			Upstream of Sixth Private Road	*1,406
			Upstream of Seventh Private Road	*1,411
			Downstream of County Boundary	*1,421
		Tributary to Clover Creek	Upstream Township Route 341	*1,266
			Upstream Township Route 553	*1,288
			Upstream intersection Legislative Route 07051 and State Route 164	*1,298
			Upstream Private Road	*1,314
			Approximately 1,095' upstream of Private Road	*1,335
		Plum Creek	Downstream Corporate Limits	*1,331
			Upstream Township Route 339	*1,338
			Upstream Township Route 338	*1,340
			At second Conrail	*1,342
			Upstream Legislative Route 07050	*1,348
		Cone Creek	Upstream Township Route 338 (First crossing)	*1,340
			Upstream Township Route 338 (Second crossing)	*1,347
Maps available at the North Woodbury Township Building, Martinsburg, Pennsylvania.				
Send comments to Honorable Harold Metzker, Chairman of the North Woodbury Board of Supervisors, R.D. 1, Martinsburg, Pennsylvania 16662.				
Pennsylvania	Peach Bottom (Township), York County.	Susquehanna River	Approximately 8,500 feet downstream of upstream corporate limits	*115
			Upstream corporate limits	*117
		Muddy Creek	Confluence of Scott Creek	*221
			Upstream side of Maryland and Pennsylvania Railroad	*227
			Upstream side of Dam	*237
			Approximately 8,100 feet downstream of upstream corporate limits	*277
			Approximately 5,400 feet downstream of upstream corporate limits	*287
			Approximately 2,100 feet downstream of upstream corporate limits	*297
			Upstream corporate limits	*302
		Fishing Creek	Confluence with Muddy Creek	*228
			Approximately 1,080 feet upstream of confluence with Muddy Creek	*237
			Approximately 1,660 feet upstream of confluence with Muddy Creek	*247
			Approximately 920 feet downstream of Woodbine Road	*257
			Upstream side of Woodbine Road	*265
			Upstream side of Private Drive	*268
			Upstream side of Rock Dam	*281
			Upstream side of Bair Road Bridge	*310
			Upstream side of Bryansville Road	*366
			Upstream side of Kilgore	*367
			Approximately 1,400 feet upstream of Kilgore Road	*377
			Approximately 1,750 feet downstream of Whiteford Road	*387
			Approximately 850 feet downstream of Whiteford Road	*397
			Downstream of Whiteford Road	*406
			Upstream side of Whiteford Road	*412
			Upstream side of (first) Hollow Road Bridge	*425
			Upstream side of (second) Hollow Road Bridge	*434
			Approximately 2,140 feet downstream of (third) Hollow Road Bridge	*454
			Approximately 600 feet downstream of (third) Hollow Road Bridge	*474
			Upstream side of (third) Hollow Road Bridge	*493
		Bald Eagle Creek	Upstream corporate limits	*301
		Neil Run	Confluence with Fishing Creek	*266
			Approximately 5,100 feet upstream of confluence with Fishing Creek	*355
			Approximately 5,460 feet downstream of Gemmell Road	*380
			Approximately 1,970 feet downstream of Gemmell Road	*420
			Upstream side of Gemmell Road	*446
			Approximately 2,400 feet upstream of Gemmell Road	*460
			Approximately 540 feet downstream of Whiteford Road	*480
			Upstream of Whiteford Road	*490
		Scott Creek	Confluence with Muddy Creek	*221
			Upstream side of (first) Maryland-Pennsylvania Railroad Bridge	*228
			Upstream side of Private Drive	*230
			Upstream side of Bryansville Road	*236

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 1,250 feet upstream of Bryansville Road	*246
			Approximately 350 feet downstream of (second) Maryland-Pennsylvania Railroad bridge.	*256
			Upstream side of (second) Maryland-Pennsylvania Railroad bridge	*265
			Upstream side of (third) Maryland-Pennsylvania Railroad bridge	*294
			Approximately 1,200 feet upstream of (third) Maryland-Pennsylvania Railroad bridge.	*304
			Upstream side of State Route 74	*323
			Upstream side of Watson Road	*330
			Upstream side of (fourth) Maryland-Pennsylvania Railroad bridge	*345
			First upstream corporate limits	*362
			Upstream side of (fifth) Maryland-Pennsylvania Railroad bridge	*368
			Upstream side of Township Route 798	*378
			2nd downstream corporate limits	*380
			Approximately 2,000 feet upstream of third downstream corporate limits.	*400
			Third upstream corporate limits	*409
			Approximately 380 feet downstream of third upstream corporate limits	*414
		Michael Run	Approximately 125 feet downstream of Cooper Road	*269
			Upstream side of Cooper Road	*273
			Approximately 2,200 feet upstream of Cooper Road	*293
			Approximately 1,010 feet downstream of Flintville Road	*313
			Upstream of Flintville Road	*326
Maps available at the Peach Bottom Township Building, R.D. 2, Delta, Pennsylvania.				
Send comments to Honorable Albert Steele, Chairman of the Peach Bottom Board of Supervisors, R.D. 1, Delta, Pennsylvania 17314.				
Pennsylvania	Penn (Township), Westmoreland County.	Tributary 1 to Bushy Run	Confluence with Bushy Run	*953
			Upstream of Oak Lane	*984
			Upstream of State Route 130	*1,005
			Upstream of Ridge Avenue	*1,016
			Downstream of Martha Avenue	*1,031
		Tributary 2 to Bushy Run	Confluence with Bushy Run	*982
			Upstream of Walnut Street	*996
			Approximately 1,000 feet upstream of Walnut Street	*998
			Approximately 2,000 feet upstream of Walnut Street	*1,007
			Approximately 1,600 feet downstream of L.R. 64091	*1,019
			Approximately 800 feet downstream of L.R. 64091	*1,027
			Approximately 300 feet upstream of L.R. 64091	*1,040
		Tributary 3 to Bushy Run	Confluence with Bushy Run	*1,039
			Upstream L.R. 64085	*1,046
			Approximately 900 feet upstream of L.R. 64085	*1,060
		Brush Creek	Downstream Corporate Limits	*1,027
			Approximately 2,000 feet upstream of downstream corporate limits	*1,048
			Upstream of downstream Oakford Park Road	*1,070
			Approximately 2,000 feet upstream of downstream Oakford Park Road.	*1,088
			Downstream of upstream Oakford Park Road	*1,099
		Bushy Run	Upstream of Wood Deck Road/downstream corporate limits	*937
			Approximately 2,000 feet upstream of corporate limits	*943
			Confluence with Tributary	*953
			Upstream of downstream Conrail bridge	*971
			Downstream of State Route 130	*980
			Approximately 1,800 feet downstream of Watt Road	*988
			Koter Drive (extended)	*995
			Upsteam of Gumbatch Road	*1,006
			Upstream of Private Drive	*1,013
			1,000 feet upstream Riverside Drive	*1,023
			1,000 feet downstream Tributary 3	*1,034
			Upstream of Dutch Hollow Road	*1,044
			Approximately 900 feet upstream of Dutch Hollow Road	*1,045
Maps available at the Penn Township Building, Jeannette, Pennsylvania.				
Send comments to Honorable Serfine Maloberti, Commission President of Penn, 27 Brenda Avenue, Jeannette, Pennsylvania 15644.				
Pennsylvania	Portland (Borough), Northhampton County.	Delaware River	Corporate Limits Downstream	*293
			Toll Bridge (upstream side)	*294
			Portland-Columbia Footbridge (downstream)	*296
			Corporate Limits (upstream)	298
		Jacoby Creek	Conrail	*295
			State Street (downstream)	*331
			Dam approximately 100 feet upstream State Street (upstream)	*345
			Corporate Limits (upstream)	*346
Maps available at the Municipal Building, Portland, Pennsylvania.				
Send comments to Honorable Wallace Stine, Mayor of Portland, Portland, Pennsylvania 18351.				
Pennsylvania	Silver Spring (Township), Cumberland County.	Conodoguinet Creek	Downstream, Corporate Limits	*359
			Confluence of Hogestown Run	*369
			Downstream side of Willow Mill Road	*376
			Confluence of Beech Cliff Run	*384
			Confluence of Potteiger Run	*390
			Upstream Corporate Limits	*393

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Trindle Spring Run	Confluence with Conodoguinet Creek	*359
			Downstream side of dam located approximately 650 feet from confluence with Conodoguinet Creek.	*359
			Upstream side of dam located approximately 650 feet from confluence with Conodoguinet Creek.	*364
			Downstream side of U.S. Route 11	*371
			Upstream side of U.S. Route 11	*378
			Upstream side of Private Road	*381
			Downstream side of Silver Spring Road	*390
			Downstream side of second crossing of Mulberry Drive from confluence with Conodoguinet Creek.	*397
			Downstream side of Hogestown Road	*404
			Upstream side of Hogestown Road	*408
			Upstream side of Conrail	*414
			Downstream Corporate Limits and Church Road	*422
		Hogestown Run	Confluence with Conodoguinet Creek	*369
			Downstream side of New Willow Mill Road	*380
			Upstream side of New Willow Mill Road	*388
			Upstream side of old Route 11	*392
			Upstream side of Woods Drive	*402
			Downstream side of Hempt Road	*410
			Downstream side of Conrail	*412
			Upstream side of Conrail	*421
			Downstream side of first crossing of Township Route 571	*429
			Downstream side of Private Road	*435
			Upstream Corporate Limit	*444
			Approximately 100' upstream of corporate limit	*448
		Taggerts Run	Confluence with Hogestown Run	*425
			Approximately 4,800 feet upstream of confluence with Hogestown Run.	*432
			Approximately 2,600 feet downstream of Trindle Spring Road	*434
			Trindle Spring Road and Corporate Limit	*453
		Potteiger Run	Confluence with Conodoguinet Creek	*390
			Downstream side of Locust Point Road	*402
			Upstream side of Locust Point Road	*406
			Approximately 2,000 feet downstream of Interstate 81	*413
			Downstream side of Interstate 81	*423
			Upstream side of Interstate 81	*432
			Approximately 1,000 feet upstream of Township Route 574	*440
			Downstream side of Harrisburg Pike	*450
			Corporate Limits	*454
		Green Ridge Run	Confluence with Conodoguinet Creek	*381
			Downstream side of Interstate 81 Northbound	*391
			Upstream side of Interstate 81 Southbound	*398
			Downstream side of Green Ridge Road	*408
			Upstream side of Green Ridge Road	*411
			Downstream side of Pleasant Grove Road	*421
			Approximately 50' upstream of Pleasant Grove Road	*423
		Beech Cliff Run	Confluence with Conodoguinet Creek	*384
			Approximately 1,200 feet upstream of Interstate 81 southbound	*390
			Downstream side of Green Ridge Road	*399
			Approximately 50' upstream of Greeen Ridge Road	*401

Maps available at the Silver Spring Township Building, 6475 Carlisle Pike, Mechanicsburg, Pennsylvania.

Send comments to Honorable Raymond Best, Chairman of the Silver Spring Board of Supervisors, 6475 Carlisle Pike, Mechanicsburg, Pennsylvania 17055.

Pennsylvania	Upper Mount Bethel (Township), Northampton County.	Delaware River	Downstream Corporate Limits	*255
			Confluence with Allegheny Creek	*264
			Confluence with Delawanna Creek (in New Jersey)	*283
			Downstream Corporate Limits (Portland Borough)	*292
			Upstream Corporate Limits (Portland Borough)	*298
			Upstream side of Conrail Bridge	*303
			Confluence with Stafford Creek	*307
			Upstream corporate limits	*315
		Jacoby Creek	Downstream Corporate Limits	*346
			Upstream side of Private Drive	*354
			Upstream side of Jacoby Creek Road	*358
			Approximately 130' upstream of Jacoby Creek Road	*372
		Martins Creek	Downstream Corporate Limits	*611
			Confluence of Tributary to Martins Creek	*630
			Approximately 3,420 feet upstream of downstream corporate limits	*651
			Approximately 5,800 feet upstream of downstream corporate limits	*670

Maps available at the residence of the Township Secretary, Mrs. Lillian Lohman, R.D. 1, Bangor, Pennsylvania.

Send comments to Honorable Larry Rymon, Chairman of the Upper Mount Bethel Board of Supervisors, R.D. 1, Box 533, Mount Bethel, Pennsylvania 18343.

South Carolina	City of Columbia, Richland County.	Congaree River	Just upstream of Blossom Street	*156
			Just upstream of Gervais Street	*157
		Saluda River	Just downstream of Interstate 26	*180
		Broad River	Just upstream of Elmwood Avenue (U.S. Highway 76 and Interstate Highway 126).	*159
			Just downstream of U.S. Highway 1766	*167
		Gills Creek	Just upstream of Woodlake Drive	*161
			Just upstream of Quail Lane	*164

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Tributary G-1	Just upstream of Seaboard Coast Line Railroad	*172
		Wildcat Creek	Just upstream of Fort Jackson Boulevard	*161
		Pen Branch	Just downstream of Trenholm Road	*167
			Just upstream of Trenholm Road	*172
			Just upstream of Parkman Drive	*186
		Eightmile Branch	Just upstream of Foxhall Road	*215
		Tributary E-1	Just upstream of Barnes Spring Road	*217
			Just downstream and upstream of Pine Belt Road	*240
		Rocky Branch	Just upstream of Whaley Street	*184
			Just upstream of Wheat Street	*203
		Smith Branch	Just downstream of Sunset Drive	*198
			Just upstream of Sunset Drive	*207
			Just upstream of Northeastern Expressway	*222
		Bay Branch	Just upstream of Lorick Avenue	*236
			Just upstream of Colonial Drive	*240
			Just upstream of Water Street	*244
		Tributary C-2	Approximately 50 feet upstream of Pinner Road	*236
			Just downstream of Fairfield Road	*260
Maps available for inspection at City Hall, 1737 Main Street, Columbia, South Carolina 29217.				
Send comments to Mayor Kirkman Finlay, Jr., or Mr. Graydon V. Olive, City Manager, City Hall, 1737 Main Street, Columbia, South Carolina 29217.				
South Carolina	Unincorporated Areas of Richland County.	Congaree River	Just downstream of the confluence of Congaree Creek	*138
			Just downstream of Seaboard Coast Line Railroad	*153
			Just upstream of Southern Railway	*154
		Mill Creek	Just upstream of Southern Railway	*169
			Just downstream of U.S. Hwy 76 and 378	*194
		Reeder Point Branch	Just upstream of State Hwy 48, Bluff Road	*136
			Just downstream of Southern Railway	*154
		Gills Creek	Just downstream of White House Road	*140
			Just upstream of Bluff Road	*140
			Just downstream of Garner's Ferry Road U.S. Hwy 76 and 378	*163
			Just downstream of Percival Road	*198
		Eightmile Branch	Just upstream Baldwin Road	*250
		Jackson Creek	Just upstream of Deckor Boulevard	*202
			Just downstream of Pine Tree Lake Dam	*204
			Just downstream of Interstate 20	*225
			Just upstream of Windsor Lake Blvd	*231
		Little Jackson Creek	Just downstream of O'Neil Court	*220
			Just upstream of Lear and Road	*240
		Lightwood Knot Branch	Approximately 110 feet upstream of Parklane Road	*235
			Just upstream of the Northeastern Expressway	*267
		Rocky Branch	Just upstream of Florida Street	*173
			Just upstream of Seaboard Coast Line	*173
		Broad River	Just upstream of U.S. Hwy 176	*168
			Just downstream of the confluence of Crane Creek	*175
			Just upstream of Interstate 210	*178
		Stoop Creek	Just upstream of St. Andrews Road	*214
			Just downstream of Piney Grove Road	*249
		Smith Branch	Just upstream of Southern Railway	*172
			Approximately 200 feet upstream of Clement Road	*179
		Crane Creek	Just upstream of Interstate Hwy 20 Brickyard Road	*182
		Saluda River	Approximately 1,600 feet downstream of Interstate Highway 26	*178
			Just downstream of Interstate Highway 26	*180
Maps available for inspection at Richland County Courthouse, 1701 Main Street, Columbia, South Carolina 29240.				
Send comments to Mr. Tom Maupin, County Administrator or Ms. Jill Tylant, Asst. Administrator, 1701 Main Street, Columbia, South Carolina 29240.				
Texas	Jacinto (City), Harris County	Hunting Bayou	Downstream Corporate Limits	*17
			Upstream Market Street	*20
			Upstream Corporate Limits	*23
		Tributary 6.05	Upstream North Lacross	*31
Maps available at the Jacinto City Hall, 10301 Market Street, Jacinto, Texas.				
Send comments to Honorable Joanne Griggs, City Adminstrator, Jacinto City Hall, 10301 Market Street, Jacinto, Texas 77029.				
Texas	Marshall (City), Harrison County	Parker Creek	Intersection of East Houston Street and Maulding Street	*330
		Happy Hollow Creek	Intersection of James Street and Higgins Street	*331
		Turtle Creek	Intersection of Circle Drive and South Garrett Street (approximately 100 feet south from Turtle Creek, along South Garrett Street.	*338
Maps available for inspection at City Hall, East Houston Street, Marshall, Texas				
Send comments to Honorable W. Q. Burns, P.O. Box 698, Marshall, Texas 75670.				
Texas	Unincorporated Areas of Travis County.	Apache Shores Creek	Just downstream of Running Deer Trial	*527
			Just upstream of Apache Lake Dam	*609
		Apache Shores Tributary	Just upstream of Geronimo Trial	*557
			Just upstream of Indian Creek Road	*612
		Barton Creek—I	Just downstream of Barton Springs Road	*447
			Just downstream of Manor Road	*530
		Barton Creek I—Unnamed Tributary.	Just upstream of Confluence with Barton Creek—I	*555
		Barton Creek—II	Approximately 5 miles downstream of State Highway 71	*710
		Bear Creek	Just upstream of FM 1626	*663

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Bear Creek Tributary	Just downstream of Hewitt Road	*680
			Just upstream of Frato Baker Lane	*703
		Big Sandy Creek—I	Just downstream of Highway 1431	*736
		Big Sandy Creek—II	Just upstream of Confluence of Big Sandy Creek Tributary 3	*917
		Big Sandy Creek Tributary I	Just upstream of Highway 1431	*727
		Big Sandy Creek Tributary	Just upstream of Confluence with Big Sandy Creek—II	*721
		Big Sandy Creek Tributary 3	Just upstream of Confluence with Big Sandy Creek—II	*917
		Blunn Creek	Just upstream of Riverside Drive	*445
			Just upstream of Woodland Ave	*508
			Just upstream of East Live Oak St	*530
			Just upstream of St. Edwards St	*584
			Just upstream of Woodward St	*611
		Boggy Creek North	Just upstream of Springdale Road	*457
			Just upstream of Rosewood Ave	*499
			Just upstream of Wahko Drive	*581
		Boggy Creek North Tributary 1	Just upstream of Missouri-Kansas Texas Railroad	*449
			Just upstream of Springdale Road	*530
		Boggy Creek North Tributary 2	Just downstream of Martin Luther King	*508
			Just upstream of Belfast Drive	*612
		Boggy Creek South	Just upstream of Bluff Springs Road	
			Just upstream of Manchaca Road	*558
				*709
		Bouldin Creek East	Just upstream of Riverside Drive	*444
			Just upstream of Monroe Street	*508
			Just upstream of Ottorl Street	*542
		Bouldin Creek West	Just upstream Barton Springs Road	*457
			Just upstream of Havenside Drive	*555
		Bull Creek	Just upstream of Farm-to-Market 2222	*514
			Just upstream of Loop 360	*576
			Just upstream of Confluence of Bull Creek Tributary 5	*742
		Bull Creek Tributary 1	Just upstream of County limits	*521
		Bull Creek Tributary 2	Just upstream of Spicewood Springs Road	*592
			Just downstream of Unnamed Road	*665
		Bull Creek Tributary 3	Just upstream of Confluence with Bull Creek	*617
		Bull Creek Tributary 4	Just downstream of Spicewood Springs Road	*728
		Bull Creek Tributary 5	Just upstream of Confluence with Bull Creek	*795
		Bull Creek Tributary 6	Just upstream of Confluence with Bull Creek	*778
		Bull Creek West	Just upstream of East Frontage Road	*530
			Just upstream of FM 2222 (downstream crossing)	*558
			Just upstream of FM 2222 (upstream crossing)	*582
		Bull Creek West Tributary 1	Just upstream of Confluence with Bull Creek West	*558
		Carson Creek	Just upstream of Confluence with Colorado River	*423
			Just upstream of Dalton Lane	*443
			Just upstream of Riverside Drive	*484
		Colorado River	Just upstream of Confluence with Gilleland Creek	*409
			Just upstream of State Highway 973	*420
			Just upstream of Bolm Road	*432
		Country Club Creek—Improved Channel.	Just upstream of East Riverside Drive	*477
			Just upstream of East Ottorl St	*499
		Country Club Creek—Old Channel.	Just upstream of Grove Drive	*436
			Just upstream of Faro Drive	*454
		Cypress Creek	Just upstream of Highway 2769	*740
			Just upstream of Cypress Creek Tributary 1	*749
		Cypress Creek Tributary 1	Just upstream of Confluence of Cypress Creek Tributary 2	*764
		Cypress Creek Tributary 2	Just upstream of Highway 2769	*768
		Decker Creek	Just upstream of Taylor Lane	*415
			Just upstream of Decker Creek Tributary 1	*427
		Decker Creek Tributary 1	Just upstream of unpaved road	*477
			Just upstream of Earth Dam	*503
		Dry Creek	Just upstream of Drive	*449
			Just upstream of Rollingwood Drive	*490
			Just upstream of Bee Caves Road	*579
			Just upstream of Walsh Tarleton Drive	*643
		Dry Creek North	Approximately 200 feet upstream of Mt. Bonnell Road	*518
			Approximately 200 feet downstream of FM 2222	*578
		Dry Creek South—I	Just upstream of River Road	*405
			Just upstream of West Bound State Highway 71	*414
		Dry Creek South—II	Just upstream of FM 812	*497
			Just upstream of FM 973	*512
		Gilleland Creek	Just upstream of Taylor Lane	*419
			Just upstream of Confluence of Gilleland Creek Tributary I	*447
		Gilleland Creek Tributary I	Just upstream of Confluence with Gilleland Creek	*447
		Hancock Branch	Just upstream of Shoal Creek Blvd	*623
			Just upstream of Houston St	*651
			Just upstream of Koenig Lane	*666
			Just upstream of Justin Lane	*706
		Harris Branch	Just upstream of Dessau Road	*662
			Just upstream of Crystal Bend Road	*673
		Hurst Creek	Just downstream of Lohman Crossing Road	*748
			Just upstream of World of Tennis Blvd	*784
			Just upstream of unnamed road	*814
		Hurst Creek Tributary I	Just downstream of Carla Van Road	*758
		Johnson's Branch	Just downstream of Winsted Drive (downstream crossing)	*468
			Just upstream of Enfield Road	*518
			Just upstream of Griswold Lane	*538
			Just upstream of Tower Drive	*557

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Lake Creek	Just upstream of Confluence of Lake Creek Tributary 1	*856
			Just upstream of Pecan Street	*925
			Just upstream of School House Lane	*950
		Lake Creek Tributary 1	Just upstream of Anderson Hill Road	*861
		Lake Creek Tributary 2	Just upstream of Briarhollow Street	*880
			Just upstream of Broadmeade Ave	*889
		Lake Creek Tributary 3	Just upstream of Highway 620	*894
		Lime Creek	Just upstream of Confluence with Lake Travis	*716
			Just upstream of Lime Creek Tributary 3	*770
		Lime Creek Tributary 1	Just upstream of Trails End Road	*782
		Lime Creek Tributary 2	Just upstream of Trails End Road	*808
			Just upstream of Stock Pond	*842
		Little Barton Creek	Just upstream of Highway 71	*764
			Just upstream of Confluence of Little Barton Tributary	*844
		Little Barton Tributary	Just downstream of Highway 71	*876
		Little Bear Creek	Just upstream of Confluence with Bear Creek	*633
		Little Walnut Creek	Just upstream of Manor Road	*500
			Just downstream of Loyola Lane	*514
			Just upstream of Highway 290	*535
			Just upstream of Cameron Road	*603
			Just upstream of Georgian Lane	*655
			Just upstream of Rundberg Lane	*675
		Little Walnut Creek Tributary 1	Just downstream of Cameron Road	*595
			Just upstream of Delmar Street	*624
			Just upstream of Bennett Street	*652
			Just upstream of I-35	*677
		Little Walnut Creek Tributary 2	Just upstream of Stonegate Trailer Park Road	*621
			Just upstream of Fiskville Cemetery Road	*639
			Just upstream of Rundberg Lane	*666
		Little Walnut Creek Tributary 3	Just upstream of Collinfield Street	*674
			Just upstream of Hunter's Trace Street	*696
			Just upstream of Northgate Blvd	*716
		Long Hollow Creek	Just upstream of Confluence with Big Sandy Creek—II	*899
		Onion Creek	Just upstream of Highway 71	*436
			Just upstream of Burleson Road	*463
			Just upstream of Highway 183	*477
			Just upstream of Old Lockhart Road	*560
			Just upstream of Twin Creek Road	*613
		Rattan Creek	Just upstream of Unimproved County Rd	*852
		Rinard Creek	Just upstream of Bradshaw Road	*573
		Shoal Creek	Just upstream of Hancock Drive	*628
			Just upstream of White Rock Drive	*662
			Just upstream of Greenlawn Parkway	*687
			Just upstream of Anderson Lane	*702
			Just upstream of Cross Creek Drive	*728
			Just upstream of U.S. 183	*749
		Shoal Creek Tributary 1	Just upstream of Creek Blvd	*705
			Just upstream of Great Northern Blvd	*711
			Just upstream of Spicewood Springs Road	*735
			Just upstream of Ceberry Street	*742
		Slaughter Creek	Just upstream of I-35	*589
			Just upstream of Chappell Lane	*659
			Just upstream of Manchaca Road	*669
			Just upstream of Brodie Lane	*735
			Just upstream of Wyldwood Road	*757
		Slaughter Creek Tributary 1	Just upstream of Small Dam	*628
			Just downstream of Slaughter Creek Drive	*666
			Just upstream of Manchaca Road	*685
		Unnamed Tributary to Lake Austin.	Just upstream of Confluence with Colorado River	*493
		Waller Creek	Just upstream of Red River Street	*460
			Just upstream of 10th Street	*475
			Just upstream of San Jasinto Street	*531
			Just upstream of Harris Ave	*556
			Just upstream of Franklin Street	*645
			Just downstream of 55th Street	*649
			Just upstream of Denson Lane	*672
		Walnut Creek	Just upstream of Southern Pacific Railroad (downstream crossing)	*437
			Just upstream of Old Manor Road	*454
			Just upstream of Springdale Road	*501
			Just upstream of Dessau Road	*579
			Just upstream of North Lamar Blvd	*627
			Just upstream of Missouri-Pacific-Railroad	*702
		Walnut Creek Tributary 1	Just upstream of Nixon Drive	*446
			Just upstream of Southern Pacific Railroad	*466
		Walnut Creek Tributary 2	Just downstream of Manor Road	*508
			Just upstream of Highway 290	*524
		Walnut Creek Tributary 3	Just upstream of West Bound Highway 290	*506
			Just upstream of Springdale Road	*530
			Just upstream of Sansom Road	*545
		Walnut Creek Tributary 4	Just upstream of Confluence with Walnut Creek	*603
			Just upstream of Small Dam	*660
		Walnut Creek Tributary 5	Just downstream of Duval Road	*770
			Just upstream of Dorsett Road	*784
		Walnut Creek Tributary 6	Just upstream of Duval Road	*710
			Just downstream of Dorsett Road	*798
		Walnut Creek Tributary 7	Approximately 80' downstream of Highway 1325	*706
			Just upstream of Parmer Lane	*712

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Wells Branch	Just upstream of Cedar Bend Drive	*634
			Just upstream of Howard Lane	*732
		Williamson Creek—Part I	Just downstream of Confluence of Williamson Creek Tributary 4	*508
			Just downstream of Nuckles Crossing Road	*542
		Williamson Creek—Part II	Just upstream of Brodie Lane	*709
			Just upstream of Joe Tanner Lane	*806
			Just upstream of Old Bee Caves Rd	*835
			Just upstream of Highway 71	*880
		Williamson Creek—Tributary 1	Just upstream of Confluence with Williamson Creek—Part I	*508
			Just upstream of Nuckles Crossing Road	*567
		Williamson Creek—Tributary 2	Just upstream of Sunset Valley Corporate Limits	*679
			Approximately 800' downstream of Latta Drive	*745
		Williamson Creek—Tributary 3	Just upstream of Confluence with Williamson Creek—Part II	*811
		Williamson Creek—Tributary 4	Just upstream of State Highway 71	*860
			Just upstream of Oak Meadow Drive	*875
		Yaupon Creek	Just upstream of Duck Lake Drive	*747
			Just upstream of World of Tennis Blvd	*774
			Just upstream of Cold Water Lane	*786
			Just upstream of Rolling Green Drive	*807
			Just upstream of Lehmann Crossing Road	*838
Maps available for inspection at Travis County Courthouse Annex, 11th and San Antonio Avenue, Austin, Texas 78767.				
Send comments to Judge Mike Renfro or Mr. David Preble, County Engineer, County Courthouse, 11th and San Antonio Avenue, Austin, Texas 78767.				
Virginia	Colonial Heights, City	Appomatox River	Confluence of Swift Creek	*8
			Approximately 2 miles upstream of confluence of Swift Creek	*9
			Confluence of Old Town Creek	*11
			Approximately 1 mile upstream of confluence of Old Town Creek	*13
			Interstate Route 85	*17
			Approximately 0.22 mile upstream of Vepco Harvell Dam	*23
		Swift Creek	Confluence with Appomatox River (corporate limits)	*8
			Interstate Route 85	*13
			Approximately 3,700 feet downstream of Seaboard Coast Line Railroad.	*18
			Seaboard Coast Line Railroad	*26
			Boulevard	*37
			Filtration Plant Dam (downstream)	*42
			Filtration Plant Dam (upstream)	*65
			Branders Bridge Road	*68
		Old Town Creek	Confluence with Appomatox River	*11
			Conduit Road	*22
			Interstate Route 85	*27
			Seaboard Coast Line Railroad (downstream)	*35
			Seaboard Coast Line Railroad (upstream)	*39
			Boulevard	*49
			(Upstream crossing) Seaboard Coast Line Railroad (downstream)	*55
			(Upstream crossing) Seaboard Coast Line Railroad	*68
			Corporate Limits	*70
Maps available at the Colonial Heights Municipal Building.				
Send comments to Honorable Byron E. Haner, City Manager of Colonial Heights, Municipal Building, Colonial Heights, Virginia 23834.				
Virginia	Luray (Town)	Hawksbill Creek	Downstream Corporate Limits	*777
			Upstream side of U.S. Route 211 Bypass Bridge	*782
			Upstream side of U.S. Route 211 Bridge	*791
			Upstream side of U.S. Route 340 Bridge	*796
			Approximately 1,000' upstream of State Route 642 Bridge	*802
Maps available at the Municipal Building, 45 East Main Street, Luray, Virgina.				
Send comments to Honorable Donald Smith, Town Manager of Luray, Municipal Building, 45 East Main Street, Luray, Virginia 22835.				
Washington	Bucoda (Town), Thurston County	Skookumchuck River	Southwest corner of the intersection of Eighth Street and Nenant Street.	*247
			Intersection of Second Street and Nenant Street	*252
Maps available for inspection at Town Hall, 7th and Nenant, Bucoda, Washington.				
Send comments to Honorable George Godding, P.O. Box 10, Bucoda, Washington 98530.				
Washington	Gig Harbor (Town), Pierce County	Puget Sound	North end of Dorotich Street at Gig Harbor shoreline	*9
			North end of Soundview Drive at Gig Harbor shoreline	9
		North Creek	70 feet downstream from the center of Harborview Drive	*23
			70 feet upstream from the center of Harborview Drive	*24
Maps available for inspection at City Hall, 3105 Judson Street, Gig Harbor, Washington.				
Send comments to Honorable Ruth M. Boge, P.O. Box 145, Gig Harbor, Washington 98335.				

(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); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: November 21, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-38902 Filed 12-17-80; 8:45 am]

BILLING CODE 6718-93-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 12, 13, 30, 31, 35, 70, 90, 98, 105, 151, 153, 157

[CGD 79-116]

Tankerman Requirements

AGENCY: Coast Guard, DOT.

ACTION: Proposed Rules.

SUMMARY: The Coast Guard is proposing to issue regulations governing the qualifications of personnel in charge of and assisting in the handling, transfer, and transporation of oil and hazardous liquid cargoes in bulk aboard vessels. Human error and lack of awareness of the hazards involved on the part of personnel engaged in these operations has resulted in several recent marine casualties. Better qualified personnel in charge of these operations should lead to a reduction in similar casualties.

DATES: 1. Comments must be received on or before: March 18, 1981.

The Coast Guard will hold four public hearings beginning at 10 a.m. at the following locations:

1. January 21, 1981, St. Louis, Missouri.
2. February 4, 1981, New Orleans, Louisiana.
3. February 18, 1981, Long Beach, California.
4. February 25, 1981, Washington, D.C.

ADDRESSES: 1. Comments should be mailed to Commandant (G-CMC/24), (CGD 79-116), U.S. Coast Guard, Washington, D.C. 20593. Between the hours of 7 a.m. and 5 p.m., Monday through Thursday, comments may be delivered to and will be available for examination at the Marine Safety Council (G-CMC/24), Room 2418, 2100 Second Street SW, U.S. Coast Guard Headquarters, Washington, D.C. 20593. Copies of the draft regulatory analysis and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978, are also available for examination at this address.

2. The Coast Guard will hold four public hearings at the following locations:

a. January 21, 1981, Rooms 1 and 2, Holiday Inn Downtown, 2211 Market Street, St. Louis, Missouri 63103.

b. February 4, 1981, French Room, International Hotel, 300 Canal Street, New Orleans, Louisiana 70140.

c. February 18, 1981, King's Grill, Queen Mary Hotel, P.O. Box 8, Pier J, Long Beach, California 90802.

d. February 25, 1981, Room 2230, Nassif Building, 7th & D Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Cdr. W. R. Arnet, Jr., Office of Merchant Marine Safety (G-MVP-3/14), Room 1400, U.S. Coast Guard Headquarters, Washington, D.C. 20593, (202-426-2251).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written data, views or arguments. Written comments should include the docket number (CGD 79-116), the name and address of the person submitting the comments and the specific section of the proposal to which each comment is addressed and give reasons for the comment. Persons desiring acknowledgment that their comment has been received should enclose a stamped, self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

Interested persons are invited to attend the hearing and present oral or written statements on this proposal. It is requested that anyone desiring to make comments notify the Executive Secretary, Marine Safety Council (G-CMC/24), (CGD 79-116), U.S. Coast Guard, Washington, D.C. 20593, at least 10 days before the scheduled date of the public hearing and specify the approximate length of time needed for the presentation. It is urged that a written summary or copy of the oral presentation be included with the request. Comments at the public hearing will normally be heard in the order the requests to comment are received.

Drafting Information

The principal persons involved in drafting this proposal are Commander Richard T. Hess, Office of Merchant Marine Safety, Project Manager and Ms. Mary Ann McCabe, Office of the Chief Counsel, Project Attorney.

Background

During the winter of 1976-77 several tanker casualties occurred in or near United States waters which demonstrated a need for a global effort to improve the level of safety of tank vessels and decrease their pollution potential.

President Carter, in a March 17, 1977, message to Congress, proposed a series of initiatives on tank vessel safety and pollution prevention which should be taken nationally and internationally. The initiatives were broad in scope and covered three major areas:

1. Improved inspection and certification.
2. Improved crew standards.
3. Improved vessel construction and equipment standards.

The improvement of crew standards was the subject of the International Conference on Training and Certification of Seafarers held from June 14 to July 7, 1978 under the auspices of the Intergovernmental Maritime Consultative Organization (IMCO). At this conference, 72 nations agreed on the text of the world's first international convention establishing basic requirements concerning training, certification and watchkeeping for masters, officers and crews of seagoing merchant ships. The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978, will be applicable to the United States merchant marine once the convention is ratified by the United States Congress and one year after it is ratified by 25 signatory nations with combined merchant fleets of 50% of world shipping gross tonnage. The regulations in this proposal are in conformity with the provisions of the convention.

The Port and Tanker Safety Act of 1978 authorized crew training and qualification standards for tank vessels operating in United States waters. This act provides the authority for issuing the proposed regulations and, in fact, mandates that regulations dealing with this aspect of marine safety be issued.

The Coast Guard, in the April 25, 1977, Federal Register (42 FR 21190) published a Notice of Proposed Rulemaking which would have expanded certification requirements for persons in charge of oil transfer operations and persons involved in the handling, transfer and transportation of dangerous cargoes in bulk aboard ships and barges. This proposal was issued in response to the passage of the Port and Waterways Safety Act of 1972, the drafting of the International Marine Pollution Convention of 1973 and the Coast Guard's concern for tank vessel safety and protection of the marine environment. The proposal subsequently was withdrawn (April 30, 1979, 44 FR

25243) because it was inconsistent with the new requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 and the Port and Tanker Safety Act of 1978 and because of the numerous adverse comments received that would have necessitated major substantive changes in the rule as proposed.

Another reason for issuing this proposal is the increased commercial interest in liquefied gas cargoes. The energy crisis has now made the importation and transportation of liquefied energy gas (LNG and LPG) a profitable economic reality, indeed a necessity. The sophisticated technology involved in the handling of these cargoes has resulted in the need for highly trained personnel aboard these vessels.

Recognition of the need for personnel qualification improvement is documented in several National Transportation Safety Board (NTSB) reports. Comments concerning the lack of personnel qualifications in the handling of hazardous cargoes were incorporated in the NTSB casualty reports of the *SS Sansinena* (November 25, 1977), the *SS V.A. Fogg* (September 13, 1974), the *M/V Venus* (August 16, 1974) and the *SS Wm. T. Steele* (June 24, 1974).

The Coast Guard's on-going review of existing regulations has affirmed the validity of the NTSB's findings. Existing regulations address the qualifications of tankermen aboard tank barges but do not address criteria for tankermen aboard tankships. All tankermen should be trained in and capable of performing efficiently, the necessary operations on tankships or tank barges, as appropriate, which relate to the handling of oil and hazardous cargo. It is also recognized that the person in charge of cargo transfer operations on tankships must be an experienced individual who is knowledgeable in vessel stability, cargo loading, weather, tide conditions, port operations and vessel mooring, in addition to having formal shoreside and practical training in the handling of cargo. Since these latter qualifications are primarily requirements for a deck license, this proposal contains a requirement that the person in charge of transfer operations on tankships be a licensed deck officer.

In reviewing and revising these regulations the Coast Guard has informally consulted with many elements of the commercial shipping industry, labor organizations, maritime training schools and academies, other Federal agencies and concerned individuals. Further, there has been input from industry, labor organizations, governmental agencies and maritime training organizations at several meetings. These meetings include: Sessions of the Maritime Training Advisory Board, Marine Transportation Research Board Workshop on Reducing Tank Barge Pollution, a presentation at Maine Maritime Academy and a presentation at the Tanker Training Committee of the American Institute of Merchant Shipping. Representatives from the commercial shipping industry, labor organizations and other Federal agencies were also directly involved in developing the provisions of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978.

The actions and issues discussed above provide the impetus and authority for the proposed regulations.

Discussion of the Proposed Regulations

Other recent regulatory actions have been directed at vessel design, construction, repair and operational factors whose modification could result in reduction of pollution. This document addresses personnel requirements. Specific changes are being proposed to 46 CFR Parts 12, 30, 31, 35, 70, 90, 98, 105, 151, 153 and 157. A new 46 CFR Part 13 is also being proposed.

This proposal redefines and establishes more stringent qualifying critreria for individuals engaged in transporting and transferring various categories of oil and hazardous materials, including: Flammable/combustible liquid cargo in bulk, dangerous liquid cargo in bulk or liquefied gas cargo in bulk.

Under present regulations, most merchant marine officers are automatically certified as tankermen. The proposed regulations will require most officers on tankships to have the appropriate tankerman certification to ensure that licensed officers are available to serve as person in charge or tankerman or both. This certification will no longer be automatic; licensed officers must satisfy the new requirements to be certified as a tankerman.

Tankerman certification is now required only for persons involved in handling and transferring combustible or flammable products in the several grades. The Coast Guard proposes to extend the requirement for certification to all hazardous liquids and liquefied gases in bulk. For example, an obvious deficiency exists in the case of certain bulk dangerous cargoes regulated by 46 CFR Part 151 which an individual may now be authorized to handle, simply upon the attestation of an employer that the person is so qualified. No type of training or amount of experience is stipulated. A solution to this prolem is proposed by the new bulk liquid cargo categories and qualification standards found in this document.

The purpose of this proposal is to revise present regulations dealing with the handling and transfer of oil and other liquid hazardous cargoes. Present regulations primarily deal with the qualifications of persons aboard tank barges concerned with the handling and transfer of oil and petroleum products. Also, under present regulations, most licensed masters, mates, engineers and pilots are automatically qualified as tankermen through possession of a license. In recent years the transportation of hazardous or dangerous industrial chemicals in all segments of the U.S. merchant marine has increased dramatically. Presently there are no regulations dealing with the experience, training and qualifications of persons handling or transferring these hazardous cargoes. The proposed regulations will expand the definition of bulk liquid cargo to include a broad catagory of hazardous chemicals. Also, these regulations will expand the definition of tankerman and require the possession of a tankerman certificate, for all merchant marine personnel aboard tank vessels involved in the handling or transfer of hazardous liquid cargo in bulk.

The basic certificates will be "Tankerman-Flammable/Combustible", "Tankerman-Dangerous Liquids" and "Tankerman-Liquefied Gas". Based on the applicant's experience, each of these certificates may be restricted to service on tank barges.

The proposed regulations will require persons now possessing tankerman certificates to meet the new upgraded qualifications, both the classroom training or testing and the minimum experience criteria. Persons presently holding a tankerman certificate and persons who are currently licensed officers, will be permitted to serve under that certificate or authority for up to five years to allow time for development of new training facilities and approval of already existing training facilities to allow these persons time to acquire the training that will be required under the proposed regulations. However, a tankerman or licensed officer serving aboard a tank vessel carring liquefied gas cargo must have a Tankerman-Liquefied Gas certificate as required under the new regulations. The five-year transition period has not been permitted for the liquefied gas certificate because of the potentially greater dangers

inherent in this cargo and because training facilities are available that meet the requirements of the proposed regulations. The Coast Guard will accept training received at these facilities prior to the effective date of the final regulations if the course is substantially similar to the curriculum requirements of the proposed regulations. Hence, a transition period to allow time for training is unnecessary.

Incident to the requirements for specific experience and formal training, the proposed regulations provide for documentation of service experience, application for approval of courses of instruction and certificates of satisfactory completion of training. These reporting and record keeping requirements will be submitted to Office of Management and Budget for review and approval.

Through the requirement for formalized firefighting training and product training, the proficiency of crews handling hazardous materials should be substantially enhanced. Further, tankerman applicants will have an increased awareness and understanding of the dangers involved in the handling of hazardous materials. This increased awareness should translate into improved safety practices among holders of tankerman certificates. Improved safety and proficiency should result in a decrease in marine pollution incidents when handling hazardous materials.

Section 5 of the Port and Tanker Safety Act of 1978, as set out in 46 U.S.C. 391a(10), also specifies that the regulations include rovisions for manning foreign tank vessels engaged in transferring of hazardous materials in any port or place subject to the jurisdiction of the United States. This proposal does not address procedures for issuing certificates to crews aboard foreign flag vessels. Rather, the individual's government will issue certificates or their equivalent, in accordance with the provisions of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978. On April 7, 1980 (45 FR 23425) the Coast Guard issued an interim final rule detailing procedures for evaluating vessel personnel licensing programs of foreign countries having tank vessels that enter or operate in U.S. waters and ports.

Six months will elapse from the time the proposed regulations are published as a final rule before the provisions of the regulations become effective. This will allow for the establishment of courses, promulgation of guidelines and general public awareness of the provisions of the proposed regulations. However, courses may be approved and certificates issued before the effective date of the proposed regulations.

Draft Regulatory Analysis

This proposal has been reviewed under the Department of Transportation's "Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979). A draft regulatory analysis has been prepared by the Coast Guard and is available for examination in the public docket. A copy of the regulatory analysis may be obtained from: Commandant (G-CMC/24), (CGD 79-116), U.S. Coast Guard, Washington, D.C. 20593.

The draft regulatory analysis reviewed the proposed regulations from four major perspectives: background, need, impact and alternatives. The background and impetus for these regulations are primarily the result of the Presidential Initiatives, the Port and Tanker Safety Act of 1978 and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978. The need for these regulations centers around pollution resulting from Tankerman related incidents and from Tankerman related marine casualties.

The impact section of the draft regulatory analysis attempted to review benefits which may result from the proposed regulations. It was determined that almost all of the costs resulting from the regulations would be in the area of training Tankermen. It was determined that total training costs for the first ten years the regulations are in effect would be $38,308,516. In general categories, the costs were broken down as follows: $4,225,600 for Maritime Administration operating costs; $13,666,286 for product training costs; and $20,416,630 for firefighting training costs.

It was determined that benefits resulting from the proposed regulations woud fall under two categories: quantifiable and non-quantifiable benefits. Quantifiable benefits will accrue from reductions in vessel casualties, reductions in personnel injuries/deaths and reductions in pollution. The total economic benefit from quantifiable sources could be from $26,556,567 to $28,736,398. The proposed regulations will reduce the number of incidents and volume of accidental Tankerman related bulk liquid releases by 10% to 30%. The Coast Guard believes that there will be no adverse environmental effects resulting from the proposed regulations. Non-quantifiable benefits resulting from the proposed regulations will be improved qualifications of Tankermen and improved safety procedures, including firefighting procedures.

The draft regulatory analysis also discusses several alternatives to the proposed regulations. One alternative was to do nothing. This alternative was rejected for the following reasons: (1) The alternative would violate the mandates of the Port and Tanker Safety Act of 1978, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 and the Presidential Initiatives; and (2) This alternative would do nothing to alleviate a demonstrated need to reduce pollution resulting from Tankerman related errors.

A second alternative was to issue a new class of license restricted to Tankermen. This alternative was rejected based on the following reasons: (1) Such a license would be a radical departure from the concept of licensed officers and unlicensed personnel in the United States merchant marine. (2) The disruption of the relationship between supply of licensed personnel and the demand for these personnel could be severe. (3) Such a license would further specialize personnel in the merchant marine. (4) The expense to the Coast Guard and industry of such a license could be substantial.

A third alternative considered was that of expanding the quantity, scope and depth of tankerman related questions in all merchant marine examinations. All ocean license examinations currently contain some questions related to tank vessel operations. This alternative was rejected based on four factors: (1) It would unfairly require all applicants, whether or not desiring a Tankerman certificate, to become proficient in the subject; (2) It would place an expensive, long-term burden on the Coast Guard to develop examinaton questions for virtually all examinations given; (3) Examinations would rapidly become unwieldy due to the expanded number of questions; and (4) A change in teaching at maritime academies, labor organization schools, and industry sponsored schools would be necessary to effectively prepare virtually all students for a Tankerman certificate, in addition to their primary career paths.

The fourth alternative considered was to require more extensive training or service than required by the proposed regulations. This alternative was rejected for the following reasons: (1) The criteria developed for training and service follow that established by the International Convention on Standards of Training, Certification and

Watchkeeping for Seafarers 1978. It was the position of those who developed the convention criteria, including the United States delegation, that to require more extensive training and service would provide little in the way of improved safety or decreased pollution. (2) More extensive training requirements could impose substantial financial burdens on potential Tankermen.

The final alternative to the proposed regulations was to apply the proposed regulations to United States personnel only. This alternative was rejected for the following reasons: (1) The Port and Tanker Safety Act of 1978 specifically requires foreign tank vessels to have on board personnel certificated as Tankermen or equivalent and that the person in charge understand instructions in English; and, (2) Excluding foreign tank vessels would hamper realization of the two primary goals of the proposed regulations, pollution reduction and improved safety in United States waters.

The alternative selected, embodied in the proposed regulations, is considered the least burdensome and most effective. This alternative meets the various mandates to substantially alter Tankerman regulations. Further, this alternative meets these mandates with a minimal disruption in the operation of the United States merchant marine. Disruptions are minimized in two major areas: (1) The distinction between licensed personnel and certificated personnel. As discussed in the second and third alternatives other plans could prove to be a major burden to all segments of the United States merchant marine. (2) The proposed regulations meet increased training and experience requirements imposed by the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978. Further, the proposed regulations meet these requirements at a minimal cost.

In consideration of the foregoing, it is proposed to amend Chapter I of Title 46 of the Code of Federal Regulations as follows:

PART 12—CERTIFICATION OF SEAMEN

§ 12.01-5 [Amended]

1. By deleting paragraph (d) in § 12.01-5.

Subpart 12.20 [Removed]

2. By deleting in its entirety Subpart 12.20. (§§ 12.20-1, 12.20-3, and 12.20-5).

3. By adding a new Part 13:

PART 13—CERTIFICATION OF TANKERMAN

Subpart 13.01—General

Sec.
13.01-1 Purpose.
13.01-3 Definitions.
13.01-5 Tankerman certificates.
13.01-6 Tankerman certificates: Authorized cargoes.
13.01-7 Tankermen certificated under prior regulations.
13.01-9 Expiration date.
13.01-11 Original application for tankerman certificate: tankships.
13.01-12 Original application for tankerman certificate: tank barges.
13.01-13 Eligibility requirements: service.
13.01-14 Verification of service.
13.01-15 Eligibility requirements: firefighting training.
13.01-16 Eligibility requirements: cargo training or examination.
13.01-17 Renewal of certificate.

Subpart 13.05—Training Schools

13.05-1 Applicability.
13.05-2 Course approval.
13.05-3 General standards.
13.05-5 Firefighting training schools.
13.05-6 Firefighting (Ship) course curriculum.
13.05-7 Firefighting (Barge) course curriculum.
13.05-8 Firefighting course classroom training.
13.05-9 Firefighting training refresher courses.
13.05-10 Bulk liquid cargo training schools.
13.05-11 Flammable/Combustible and Dangerous Liquids course curriculum.
13.05-12 Liquefied Gas course curriculum.
13.05-13 Bulk liquid cargo refresher course.

Authority: R.S. 4417a (6) and (10) (46 U.S.C. 391a); 49 U.S.C. 1655(b)(1); 49 CFR 1.46(n)(4).

Subpart 13.01—General

§ 13.01-1 Purpose.

This subpart prescribes the requirements for obtaining a certificate as tankerman and describes the various tankerman certificates that are issued by the Coast Guard.

§ 13.01-3 Definitions.

As used in this part:

"Bulk liquid cargo" means any amount of oil or hazardous material as defined in the Port and Tanker Safety Act of 1978, (R.S. 4417a, as amended (46 U.S.C. 391a)) including liquefied gases carried as liquid cargo or cargo residue in integral, fixed or portable tanks except the following tanks or cylinders which are loaded or unloaded from vessels with their contents intact:

(a) Portable tanks of a capacity of 418 liters (110 U.S. gallons) or less.

(b) Portable tanks of a capacity of greater than 418 liters (110 U.S. gallons) conforming to a Department of Transportation (DOT) specificaion, or having a Coast Guard approval (i.e. Marine Portable Tank (MPT)).

(c) Cylinders conforming to Department of Transportation (DOT) specification having a water capacity of not more than 450 kilograms (1000 pounds).

"Dangerous Liquid Cargo" means the bulk liquid cargoes in table 13.01-6(a) of this subchapter that a Tankerman—Dangerous Liquids is authorized to handle and transfer.

"Flammable/Combustible Liquid Cargo" means the bulk liquid cargoes in table 13.01-6(a) of this subchapter that a Tankerman—Flammable/Combustible is authorized to handle and transfer.

"Liquefied Gas Cargo" means bulk liquid cargo that a Tankerman—Liquefied Gas is authorized to handle and transfer, which has a vapor pressure of 172 kPa gauge (25 psia) or more at 37.8° C (100° F). The cargoes included are noted in table 13.01-6(a).

"Tankerman" means a person holding a valid certificate issued by the Coast Guard that attests to the person's competency in the handling and transfer of oil and hazardous materials in one or more of the following categories:

(a) Flammable/Combustible liquid cargo in bulk;

(b) Dangerous liquid cargo in bulk; or

(c) Liquified gas cargo in bulk.

"Tankerman (Barge)" means a Tankerman whose certificate is restricted to service on tank barges.

§ 13.01-5 Tankerman certificates.

(a) If an applicant meets the requirements in §§ 13.01-11, 13.01-13 and 13.01-15 of this subpart, the applicant's merchant mariner's document is endorsed with one or more of the following Tankerman certificates:

(1) Tankerman—Flammable/Combustible.

(2) Tankerman—Dangerous Liquids.

(3) Tankerman—Liquefied Gas.

(b) If an applicant meets the requirements in §§ 13.01-12, 13.01-13 and 13.01-15 of this subpart, the applicant's merchant mariner's document is endorsed with one or more of the certificates in paragraphs (a) (1)-(3) of this section as "Tankerman (Barge)", thereby restricting the holder to service on a tank barge.

§ 13.01-6 Tankermen certificates: Authorized cargoes.

(a) A Tankerman certificate authorizes a person to handle and transfer the bulk liquid cargoes listed for the specific certificate in Table 13.01-6(a).

(b) No Tankerman certificate is required to handle or transfer the bulk liquid cargoes listed in Table 13.01-6(b).

Table 13.01-6(a) Bulk Liquid Cargoes Requiring Tankerman Certificates

Certificates [1] and Authorized Cargoes

Tankerman—Flammable/Combustible. Those cargoes listed in table 30.25-1 of Part 30 of this chapter with the exception of: Butane, Butylene (Butene), Ethane, Ethylene, Nethane, Propane, Propylene.

Tankerman—Dangerous Liquids. Those cargoes authorized for Tankerman—Flammable/Combustible and those cargoes listed in either Table 151.05 of Part 151 or Table 1 of Part 153 of this chapter with the exception of: Acetaldehyde, Ammonia, anhydrous, Butadiene, Chlorine, EthylChloride, Ethylene Oxide, Hydrofluoric Acid, Hydrogen Chloride, Hydrogen Fluoride, Sulfur Dioxide, Vinyl Chloride.

Tankerman—Liquefied Gas. Those cargoes listed in Table 4 of Part 154 of this chapter and Chlorine.

Table 13.01-6(b) Bulk Liquid Cargoes Not Requiring Certificated Tankermen

Ammonium Nitrate (34% or less)
Ammonium Nitrate, Urea, Water Solution (2% or less NH3)
Ammonium Phosphate Solution
Calcium Chloride in Water
2-Chloro-4-Ethylamino-6-Isopropylamino-5-Triazine, Water Solution
Hexamethylene Diamine Adipate
Kaolin Clay Slurry
Lignin Liquor (Calcium Ligno-Sulfonate, Water Solution)
Magnesium Hydroxide Suspensions in Water
Molasses
Pentasodium Salt of Diethylene Triamine Pentaacetic Acid, Water Solution
Poercholoroethylene
Sewage Sludge, if treated and monitored so as to prevent further decomposition and to prevent fire hazard.
Sludge (stable, non-corrosive, non-toxic and non-flammable)
Sodium Lignosulfonates, Sodium Hydroxide (not exceeding 1% by weight), Water Solution
Sodium Naphthenate Solution (unless the free alkali content is greater than 3%)
Sorbitol in Water
Tetrasodium Salt of Ethylene Diamine Tetraacetic Acid, Water Solution
1,1,1-Trichloroethane (Methyl Chloroform)
Urea in Water
Mixtures solely of the cargoes in this list.

§ 13.01-7 Tankermen certificated under prior regulations.

(a) A person who holds a tankerman certificate or is authorized to transfer bulk liquid cargoes before *(Effective Date)* may continue to serve under the tankerman certificate or transfer authority for five years from *(Effective Date)* except, effective *(Effective Date)*, a tankerman serving aboard a tankship or tank barge transporting liquefied gas cargo must have a Tankerman-Liquefied Gas certificate issued under the provisions of this part.

[1] Tankerman (Barge) if appropriate.

(b) Completion of a liquefied gas training course before *(Effective Date)*, will be accepted as meeting the training requirements of § 13.01-16(f) if the Commandant finds that the course is in substantial compliance with § 13.05-12 of this part.

(c) A person who holds a tankerman certificate or is authorized to transfer bulk liquid cargoes before *(Effective Date)* may, at any time during the five years ending *(Effective Date Plus Five Years)*, apply for and be issued a Tankerman-Flammable/Combustible or Tankerman-Dangerous Liquids certificate, as appropriate, under this subpart if the applicant:

(1) Presents a certificate of completion of an approved firefighting training course that is dated within five years of the date of application for the tankerman certificate; and

(2) Presents evidence of the following service on tankships or tank barges as tankerman or person in charge of transfer of the category of bulk liquid cargo for which application is made—

(i) Service before *(Effective Date)*; and

(ii) Service within three years of the date of application.

(d) Completion of a recognized marine firefighting training course during the five years preceeding *(Effective Date)* will be accepted as meeting the requirement of paragraph (c)(1) of this section if the Commandant finds that the course is in substantial compliance with §§ 13.05-6 or 13.05-7 of this part.

§ 13.01-9 Expiration date.

(a) A tankerman certificate is valid for five years from the date of issue.

(b) If a person holds more than one tankerman certifcate, the expiration date of each certificate is five years from the date of issue of the last certificate issued.

§ 13.01-11 Original application for tankerman certificate—tankships.

To qualify for a certificate not restricted to tank barges, the applicant must—

(a) Be at least 18 years of age;

(b) Appear, in person, before an Officer in Charge Marine Inspection;

(c) Apply in writing on Coast Guard Form CG-719B, Seaman's Certificate Application;

(d) Have uncorrected vision of at least 20/200 in each eye correctable to at least 20/30 in one eye and 20/50 in the other;

(e) Present evidence of service on tankships or on tank barges whose cargo containment, transfer, control and monitoring systems are similar to those on tankships, in accordance with § 13.01-13;

(f) Present evidence of satisfactory completion of an approved course in shipboard firefighting training in accordance with § 13.01-15; and

(g) Present evidence of successful completion of cargo training or examination, in accordance with § 13.01-16.

§ 13.01-12 Original application for Tankerman certificate: tank barges.

To qualify for a certificate restricted to tank barges, the applicant must—

(a) Be at least 18 years of age;

(b) Appear, in person, before an Officer in Charge Marine Inspection;

(c) Apply in writing on Coast Guard Form CG-719B, Seaman's Certificate Application;

(d) Have uncorrected vision of at least 20/200 in each eye correctable to at least 20/30 in one eye and 20/50 in the other;

(e) Present evidence of service required by § 13.01-13 that is predominately aboard tank barges that the Officer in Charge Marine Inspection determines are not similar enough to tankships in their cargo containment, transfer, control and monitoring systems to provide the experience necessary to qualify for service on a tankship;

(f) Present evidence of satisfactory completion of an approved course in tank barge firefighting training, in accordance with § 13.01-15; and

(g) Present evidence of successful completion of an approved training course for the appropriate category of cargo or pass a written examination as permitted by § 13.01-16(a)(2) or an oral exam as permitted by § 13.01-16(b).

§ 13.01-13 Eligibility requirements: service.

(a) Each applicant for a Tankerman-Flammable/Combustible certificate must have service under the supervision of a qualified tankerman including—

(1) At least 10 transfers, of which 2 are commencement operations and 2 are completion operations of flammable or combustible liquid cargoes, during the 3 years before application; or

(2) At least 5 transfers, of which 1 is a commencement operation and 1 is a completion operation of flammable or combustible liquids, if the applicant has a Tankerman-Liquefied Gas or a Tankerman-Dangerous Liquids certificate.

(b) Each applicant for a Tankerman-Dangerous Liquid certificate must have service under the supervision of a qualified tankerman including—

(1) At least 10 transfers of which 2 are commencement operations and 2 are completion operations of dangerous

liquid cargoes during the 3 years before application; or

(2) At least 5 transfers, of which 1 is a commencement operation and 1 is a completion operation of dangerous liquid cargoes, if the applicant has a Tankerman-Liquefied Gas or Tankerman-Flammable/Combustible certificate.

(c) Each applicant for a Tankerman-Liquefied Gas certificate must have service under the supervision of a qualified tankerman including—

(1) At least 10 transfers, of which 2 are commencement operations and 2 are completion operations of liquefied gas cargoes, during the 3 years before application; or

(2) At least 5 transfers, of which 1 is a commencement operation and 1 is a completion operation of liquefied gas cargoes, if the applicant has a Tankerman-Flammable/Combustible or a Tankerman-Dangerous Liquids certificate.

(d) In determining the service requirements of this section—

(1) Credit for one transfer operation is given for one complete work shift during the transfer operation or a partial work shift if the shift includes either the hooking up and commencement of transfer or the completion of transfer and disconnecting.

(2) Credit for a commencement operation is given only if the person participates in the pre-transfer inspection, connecting of hoses or arms and the starting of liquid flow in a loading port or the starting of cargo pumps in the case of a discharge port.

(3) Credit for a completion operation is given only if the person participates in the topping off operation in the loading port or stripping of cargo tanks and commencement of ballasting, if required, in the discharge port.

(4) Credit is not given for more than one transfer during a single operation even if work is performed in excess of one normal shift.

§ 13.01-14 Verification of service.

(a) Service shall be documented by a letter from—

(1) The owner, operator or agent of the vessel;

(2) The qualified person directly training and supervising the applicant; or

(3) The master of the vessel employing the applicant.

(b) The letter shall specify the applicant's dates of service and qualifications, including the products transferred referred to in table 13.01-6(a) of this subpart.

§ 13.01-15 Eligibility requirements: firefighting training.

(a) To be eligible for an original Tankerman certificate each applicant must—

(1) Present a certificate of completion of a firefighting training course that meets the requirements of §§ 13.05-6 or 13.05-7 of this part; and

(2) Have completed the course within two years of the date of application for the original Tankerman certificate.

(b) Completion of a recognized marine firefighting training course during the five years preceding (*Effective Date*) will be accepted as meeting the requirement of paragraph (a) of this section if the Commandmant finds that the course is in substantial compliance with §§ 13.05-6 or 13.05-7 of this part.

§ 13.01-16 Eligibility requirements: cargo training or examination.

(a) Each applicant for a Tankerman-Flammable/Combustible certificate shall—

(1) Satisfactorily complete an approved training course for the flammable/combustible cargoes in table 13.01-6(a) within two years of the date of application for the certificate; or

(2) Pass a written examination administered by the Coast Guard covering—

(i) Characteristics of flammable/combustible cargoes;

(ii) General arrangement of cargo tanks and venting;

(iii) Cargo pipelines and valves;

(iv) Cargo pumps, hose and loading arms;

(v) Operations connected with the loading and discharging of the cargo;

(vi) Rules and regulations pertaining to flammable/combustible cargoes;

(vii) Pollution prevention and control;

(viii) Emergency procedures;

(ix) Safety precautions including entering of tanks;

(x) Principles and procedures of Crude Oil Washing (COW) and Inert Gas Systems (IGS);

(xi) Tanker terminology.

(b) An applicant for a Tankerman (Barge)-Flammable/Combustible certificate may be examined orally in exceptional cases if the Officer in Charge, Marine Inspection finds it necessary and the applicant's overall service, coupled with letters of recommendation from past or present employers, clearly indicate this consideration is warranted.

(c) Each applicant for a Tankerman-Dangerous Liquid certificate shall satisfactorily complete an approved training course for the flammable/combustible and the dangerous liquid cargoes in table 13.01-6(a) within two years of the date of application.

(f) Each applicant for a Tankerman-Liquified Gas certificate shall satisfactorily complete an approved training course for the liquefied gas cargoes in table 13.01-6(a) within two years of the date of application.

§ 13.01-17 Renewal of certificate.

(a) To Renew a tankerman certificate, an applicant must—

(1) Appear, in person, before an Officer in Charge Marine Inspection;

(2) Apply in writing on Coast Guard Form CG-719B, Seaman's Certificate Application; and

(3) Meet the physical requirements in § 10.02-9(f) of this subchapter for renewal of a license as engineer officer.

(b) A tankerman certificate may be renewed within one year after the date of expiration of the certificate. However, after the date of expiration, the tankerman's certificate is not valid and the holder cannot engage in tankerman duties until the certificate is renewed. If the cetificate expired and the 1 year grace period passed while an applicant was serving in the Armed Forces or the merchant marine and there was no reasonable opportunity for renewal, the period of service in the Armed Forces or the merchant marine following the date of expiration is added to the one year period of grace.

(c) No certificate may be renewed more than 90 days before its expiration date, unless there are extraordinary circumstances that justfy an early renewal. The reasons for an early renewal must be submitted in writing by the applicant.

(d) An applicant for renewal of a Tankerman certificate must have served under the authority of the certificate during the three years immediately preceding the date of the application for renewal.

(e) An applicant for renewal of a Tankerman-Flammable/Combustible certificate must have completed an approved firefighting course or refresher course which meets the provisions of §§ 13.05-6, 13.05-7, 13.05-8, or 13.05-9 within 2 years of the date of application for renewal.

(f) An applicant for renewal of a Tankerman-Dangerous Liquids or Liquefied Gas certificate must have completed—

(1) An approved firefighting course or refresher course which meets the provisions of §§ 13.05-6, 13.05-7, 13.05-8, or 13.05-9 within 2 years of the date of application for renewal; and

(2) An approved bulk liquid cargo course or refresher course which meets the provisions of §§ 13.05-11, 13.05-12 or

13.05-13 for the specific certificate to be renewed, within 2 years of the date of application for renewal.

Subpart 13.05—Training Schools

§ 13.05-1 Applicability.

This subpart prescribes the requirements applicable to schools or other training facilities offering courses that must be completed before the issuance of a tankerman certificate.

§ 13.05-2 Course approval.

To have a course approved by the Coast Guard, a training school shall follow the procedures in §10.30-2 of this subchapter.

§ 13.05-3 General standards.

To maintain approval, each training school with an approved course shall meet the general standards outlined in § 10.30-3 of this subchapter.

§ 13.05-5 Firefighting training schools.

(a) A school that offers an approved firefighting training course that meets the requirements of this subpart shall issue the following certificates for successful completion of the course:

(1) Firefighting (Ship)—no limitation as to vessels.

(2) Firefighting (Barge)—limited to barges.

(b) The certificate shall be signed by the head of the training school and the local Officer in Charge Marine Inspection or by the designated representative of either.

(c) Each instructor of an approved firefighting training course shall—

(1) Have a Firefighting (Ship) or Firefighting (Barge) certificate; or

(2) Possess other appropriate qualifications acceptable to the Coast Guard.

(d) The names of schools conducting approved firefighting courses may be obtained from any Officer in Charge Marine Inspection.

§ 13.05-6 Firefighting (ship) course curriculum.

(a) The Firefighting (Ship) course shall include—

(1) At least 16 hours of classroom training; and

(2) At least 16 hours of field exercise training in class A, B and C fires using extinguishing agents and equipment commonly found on tankships.

(b) The classroom curriculum shall include:

(1) Fire hazards associated with the various categories of cargoes in table 13.01-6(a).

(2) Fire prevention

(3) Fire chemistry.

(4) Fire extinguising agents and equipment, including:

(i) Types of extinguishing agents.

(ii) The limitations, inspection and recharging of portable extinguishers.

(iii) Fire main systems, hydrants, hoses and nozzles.

(iv) Fog and foam applications and monitor systems.

(5) Fixed firefighting systems.

(6) Fire and smoke detecting systems.

(7) The limitations and use of breathing apparatus, including:

(i) Self-contained and Oxygen Breathing Apparatus (OBA).

(ii) Fresh air breathing apparatus.

(8) Firefighting procedures, including:

(i) Organization and team work.

(ii) Proper methods to combat various categories of fires including liquefied gas.

(9) Rescue operations.

(10) Basic first aid.

(c) The field exercise training shall include:

(1) The use of low and high velocity fog on the following fires:

(i) Machinery space bilge.

(ii) Flammable/combustible liquid tank.

(iii) Cabin.

(iv) Drip pan.

(v) Manifold flange.

(vi) Expansion trunk (ullage hatch).

(2) Use of foam on a flammable/combustible liquid fire.

(3) Use of portable extinguishers on the following fires:

(i) Galley.

(ii) Cabin.

(iii) Electrical.

(iv) Flammable/combustible liquid.

(v) Drip pan.

(vi) Manifold flange.

(vii) Liquefied gas.

(4) The limitations and use in smoke houses and during rescue operations of breathing apparatus, including:

(i) Self-contained and Oxygen Breathing Apparatus (OBA).

(ii) Fresh air breathing apparatus.

§ 13.05-7 Firefighting (barge) course curriculum.

(a) The firefighting (Barge) course shall include—

(1) At least 8 hours of classroom training; and

(2) At least 8 hours of field exercise training in class A, B and C fires using extingushing agents and equipment commonly found on tank barges.

(b) The classroom training shall include:

(1) Fire hazards associated with the various categories of cargoes in table 13.01-6(a).

(2) Fire prevention.

(3) Fire chemistry.

(4) Fire extinguishing agents and equipment, including:

(i) Types of extinguishing agents.

(ii) The limitations, inspection and recharging of portable and semiportable extinguishers.

(iii) Fire hydrants, hoses and nozzles.

(iv) Fog and foam applications.

(5) The limitations and use of breathing apparatus, including:

(i) Self-contained and Oxygen Breathing Apparatus (OBA).

(ii) Fresh air breathing apparatus.

(6) Fire fighting procedures, including:

(i) Organization and team work.

(ii) Proper methods to combat various catories of fires including liquefied gas.

(7) Rescue operations.

(8) Basic first aid.

(c) Field exercise training shall include:

(1) The use of low and high velocity fog on the following fires:

(i) Flammable/combustible liquid tank.

(ii) Drip pan.

(iii) Manifold flange.

(iv) Expansion trunk (ullage hatch).

(2) Use of foam on a flammable liquid fire.

(3) Use of portable extinguishers on the following fires:

(i) Galley.

(ii) Cabin.

(iii) Electrical.

(iv) Flammable/combustible liquid.

(v) Drip pan.

(vi) Manifold flange.

(vii) Liquefied gas.

§ 13.05-8 Firefighting course—classroom training.

(a) A school may offer a firefighting course that covers only the classroom portion of the course required by §13.05-6 or § 13.05-7.

(b) If a school provides classroom training only, the training must—

(1) Meet the curriculum requirements of § 13.05-6(b) or § 13.05-7; and

(2) Be completed within 60 days if the course if offered as a part of a broader program.

(c) A school that only provides classroom training shall issue a letter of completion to a student who successfully completes the classroom portion of the course.

(d) To obtain the firefighting certificate required before issuance of a tankerman certificate, a student who holds a letter of completion for the classroom portion of the course must—

(1) Present the letter of completion to an approved training school that offers the complete firefighting course or the field exercise portion of the firefighting course; and

(2) Successfully complete the field exercise training portion of the course at

that school within 30 days of completing the classroom portion.

§ 13.05-9 Firefighting training refresher courses.

(a) A school that provides the firefighting course curriculum may offer approved refresher courses required for renewal of tankerman certificates.

(b) Each refresher course shall include at least 8 hours of field exercise training following the curriculum in § 13.05-6(c) or § 13.05-7(c).

§ 13.05-10 Bulk liquid cargo training schools.

(a) A school that offers an approved bulk liquid cargo training course that meets the requirements of this subpart shall issue the following certificates for successful completion of the course:

(1) Flammable/Combustible (Ship).
(2) Flammable/Combustible (Barge).
(3) Dangerous Liquids (Ship).
(4) Dangerous Liquids (Barge).
(5) Liquefied Gas (Ship).
(6) Liquefied Gas (Barge).

(b) The certificate shall be signed by the head of the training school and the local Officer in Charge Marine Inspection or a designated representative of either.

(c) Each instructor of an approved bulk liquid cargo training course shall—

(1) Have a tankerman certificate for the category of cargo that the course covers; or

(2) Possess other appropriate qualifications acceptable to the Coast Guard.

(d) The names of training schools conducting approved bulk liquid cargo courses may be obtained from any Officer in Charge Marine Inspection.

§ 13.05-11 Flammable/combustible and dangerous liquids course curriculum.

(a) The Flammable/Combustible (Ship) and the Dangerous Liquid (Ship) courses shall include at least 48 hours of training. This may include both field and classroom training.

(b) The Flammable/Combustible (Barge) and the Dangerous Liquids (Barge) courses shall include at least 24 hours of training. This may include both field and classroom training.

(c) The curriculum for the Flammable/Combustible (Ship) and (Barge) and Dangerous Liquids (Ship) and (Barge) courses shall include the following:

(1) Characteritics, compatibility, reaction and safety precautions for the bulk liquid cargoes in table 13.01-6(a) of this part as follows:

(i) For Flammable/Combustible (Ship) and (Barge) courses, those cargoes under Tankerman Flammable/Combustible.

(ii) For Dangerous Liquid (Ship) and (Barge) courses, those cargoes under both Tankerman Flammable/Combustible and Tankerman Dangerous Liquids.

(2) General arrangement of cargo tanks and venting.

(3) Cargo piping systems and valves, including remote control, excess flow and pressure-vacuum valves.

(4) Operation of cargo pumps and hose and loading arms.

(5) Operations, stability and stress considerations connected with the loading and discharging of cargo.

(6) Rules and regulations (tankship, tank barge, International, Federal, State, local and port) pertaining to operational procedures and pollution.

(7) Pollution prevention and control.

(8) Emergency procedures for the following:

(i) Fire.
(ii) Collision.
(iii) Equipment failure.
(iv) Groundings.
(v) Leaks and spills.

(9) Safety precautions relative to:

(i) Entering cargo tanks and pump room.
(ii) Dangers of skin contact.
(iii) Inhalation of vapors.
(iv) Protective clothing and equipment.
(v) Hot work procedures.
(vi) Electrical and static electricity hazards and precautions.

(10) Oil and chemical tankship and tank barge terminology.

(11) Principles and procedures of Crude Oil Washing (COW) and Inert Gas Systems (IGS), including:

(i) Equipment and design.
(ii) Safety precautions.
(iii) Maintenance of plant and equipment.

§ 13.05-12 Liquefied gas course curriculum.

(a) The Liquefied Gas (Ship) course shall include at least 90 hours of training. The Liquefied Gas (Barge) course shall include at least 30 hours of training. This may include both field and classroom training.

(b) The curriculum for the Liquefied Gas (Ship) and (Barge) courses shall include:

(1) Characteristics and safety precautions of those liquefied gases and their vapors under Tankerman-Liquefied Gas in table 13.01-6(a) of this part.

(2) Physical phenomena of liquefied gas, including:

(i) Basic concept.
(ii) Compression and expansion.
(iii) Mechanism of heat transfer.

(3) Potential hazards of liquefied gas, including:

(i) Chemical and physical properties.
(ii) Combustion characteristics.
(iii) Results of gas release to the atmosphere.
(iv) Health hazards (skin contact, inhalation and ingestion).
(v) Control of flammability range with inert gas.
(vi) Thermal stresses in ship structure and piping.

(4) Cargo containment systems, including:

(i) Principles of containment systems.
(ii) Tank construction, materials, coatings and insulation.

(5) Boil-off disposal, including:

(i) System design.
(ii) Safety features.

(6) Cargo handling systems, including:

(i) Piping systems, valves, pumps and expansion systems.
(ii) Operating characteristics.

(7) Instrumentation systems, including:

(i) Cargo level indicators.
(ii) Gas detecting systems.
(iii) Hull and cargo temperature monitoring systems.
(iv) Automatic shut down systems.

(8) Auxiliary systems, including:

(i) Ventilation, inerting.
(ii) Valves:
(A) Quick closing.
(B) Remote control.
(C) Pneumatic.
(D) Excess flow.
(E) Safety relief.
(F) Pressure-vacuum.
(iii) Cofferdam and ballast tank heating systems.

(9) Operating procedures and sequence for the following:

(i) Inerting cargo tanks and void spaces.
(ii) Tank cool down and tank warm up.
(iii) Gas freeing.
(iv) Loaded or ballasted voyages.
(v) Discharging, including tank stripping.
(vi) Operations, stability and stress considerations connected with the loading and discharging of cargo.
(vii) Loading and topping off.

(10) Emergency procedures for the following:

(i) Leaks and spills.
(ii) Fires.
(iii) Collisions.
(iv) Groundings.
(v) Structural failures.
(vi) Emergency cargo discharge.
(vii) Entering cargo tanks.
(viii) Emergency shut down of cargo operations.
(ix) Emergency cargo valve closing systems.

(11) Rules and regulations (tankship, tank barge, International, Federal, State,

local and port) pertaining to operational procedures and pollution.

(12) Pollution prevention, including:

(i) Procedures to be followed to prevent air and water pollution.

(ii) Measures to be taken in the event of spillage.

(iii) Danger from vapor cloud drift.

(13) Tankship and tank barge terminology.

§ 13.05-13 Bulk liquid cargo refresher courses.

(a) A school may offer approved bulk liquid cargo refresher courses required for renewal of tankerman certificates.

(b) Each refresher course shall include at least 6 classroom hours in the subjects listed in § 13.05-11(c) (1), (6), (8) and (9) or § 13.05-12(b) (1), (10) and (11) of this subpart.

PART 30—GENERAL PROVISIONS

4. By revising § 30.10-71 to read as follows:

§ 30.10-71 Tankerman—TB/ALL.

(a) The term "tankerman" means a person holding a valid certificate issued by the Coast Guard that attests to the person's competency in the handling and transfer of oil and hazardous materials in one or more of the following categories:

(1) Flammable/Combustible liquid cargo in bulk;

(2) Dangerous liquid cargo in bulk; or

(3) Liquefied gas cargo in bulk.

(b) The term "tankerman (barge)" means a tankerman whose certificate is restricted to service on tank barges.

PART 31—INSPECTION AND CERTIFICATION

5. By revising paragraph (b) and adding paragraphs (c)-(f) in § 31.15-1 as follows:

§ 31.15-1 Licensed officers and crews—TB/ALL.

* * * * *

(b) In all cases, the Officer in Charge Marine Inspection shall enter in the certificate of inspection to any manned tankship or tank barge subject to the regulations in this subchapter, the number of the crew required to be tankermen, as follows:

(1) For seagoing tankships, the number of tankermen listed in the certificate of inspection shall not be less than four.

(2) For inland tankships and seagoing tank barges, if the total crew complement is—

(i) One or two persons, only one person need be a tankerman.

(ii) In excess of two, only two persons need be tankermen.

(c) The following personnel aboard seagoing oil tankships, chemical tankships and liquefied gas tankships shall possess tankermen certificates for the category of cargo carrried:

(1) Masters.

(2) Chief mates.

(3) Chief engineers.

(4) First assistant engineers.

(5) Licensed and unlicensed personnel directly assisting in the loading or discharging of cargo.

(d) The master of the vessel shall designate the person in charge of the bulk liquid transfer and before such designation shall verify that the person in charge—

(1) Holds a license authorizing service as a deck officer on that tankship except on an inland tankship where an unlicensed tankerman may serve as the person in charge;

(2) Holds the appropriate tankerman certificate under Subpart 13.01 of this chapter for the category of cargo being transferred; and

(3) Has served during the preceding two years aboard that tankship or another tankship with similar cargo containment, transfer, control and monitoring systems.

(e) The service required in paragraphs (d)(3) of this section shall consist of either—

(1) Acting as a person in charge of a cargo transfer operation; or

(2) Assisting the person in charge of the cargo transfer operation during at least two transfers of cargo.

(f) The person in charge on the tankship is responsible for the safe loading and discharging of the bulk liquid cargo.

6. By revising § 31.15-5 to read as follows:

§ 31.15-5 Tank barges—B/ALL.

Tank barges subject to the provisions of this subchapter need not be manned unless in the judgment of the Officer in Charge Marine Inspection, manning is necessary for the protection of life, property, the environment or the safe operation of the barge. However, a towing vessel, while towing a tank barge that is not required to be manned, shall have on board one tankerman certificated for the category of cargo involved.

PART 35—OPERATIONS

7. By revising § 35.35-1 to read as follows:

§ 35.35-1 Persons on duty—TB/ALL.

(a) The owner, master or person in charge of a United States documented tankship shall ensure that a sufficient number of tankermen certificated for the category of cargo carried are on duty to safely perform cargo transfer operations.

(b) On a United States tank barge—

(1) The owner or agent shall ensure that a sufficient number of persons are assigned to safely perform cargo transfer operations.

(2) The person in charge shall ensure that sufficient number of persons are on duty to safely perform cargo transfer operations.

(3) The person in charge of transfer operations shall be a tankerman certificated for the category of cargo being transferred and shall be on duty to supervise cargo transfer operations. However, in an emergency, cargo transfer operations may be supervised by a person other than a tankerman.

(4) Tank cleaning operations shall be supervised by a tankerman certificated for the category of cargo involved.

(c) On a foreign self-propelled tankship, the person in charge of oil transfer operations to or from the vessel or engaged in oil cargo tank cleaning, shall—

(1) Hold a license or certificate authorizing service as master, mate, engineer or operator on that vessel;

(2) Hold a certificate or other acceptable document issued by a foreign administration or its authorized agent attesting to the holder's competency to act as a person in charge of oil, chemical or liquefied gas transfer operations, and

(3) Be capable of clearly understanding, in English, all instructions relative to cargo and vessel operations.

(d) On a foreign tank barge, the person in charge of oil transfer operations to or from a barge or engaged in tank cleaning, shall—

(1) Hold a certificate or other acceptable document issued by a foreign administration or its authorized agent attesting to the holder's competency to act as a person in charge of oil, chemical or liquefied gas transfer operations; and

(2) Be capable of clearly understanding, in English, all instruction relative to cargo and tank barge operations.

PART 70—GENERAL PROVISIONS

8. By adding to § 70.05-30 paragraph (b) to read as follows:

§ 70.05-30 Combustible liquid cargo in bulk.

* * * * *

(b) The person in charge of the transfer of bulk liquid cargo, as defined in § 13.01-3, to or from a passenger vessel shall—

(1) Be designated as person in charge by the master;

(2) Hold a license authorizing service as a deck or engineer officer aboard that vessel; and

(3) Hold a Tankerman-Flammable/Combustible certificate.

9. By adding a new § 70.10-49 to read as follows:

§ 70.10-49 Tankerman.

The term "tankerman" means a person holding a valid certificate issued by the Coast Guard that attests to competency in the handling and transfer of oil and hazardous materials in one or more of the following categories:

(a) Fammable/combustible liquid cargo in bulk;

(b) Dangerous liquid cargo in bulk; or

(c) Liquefied gas cargo in bulk.

PART 90—GENERAL PROVISIONS

10. By adding to § 90.05-35 paragraph (b) to read to follows:

§ 90.05-35 Flammable and combustible cargo in bulk.

* * * * *

(b) The person in charge of the transfer of bulk liquid cargo, as defined in § 13.01-3, to or from cargo and miscellaneous vessels shall—

(1) Be designated as person in charge by the master;

(2) Hold a license authorizing service as deck or engineer officer aboard that vessel;

(3) Hold a Tankerman-Flammable/Combustible certificate.

11. By adding a new § 90.10-.40 to read as follows:

§ 90.10-40 Tankerman.

The term "tankerman" means a person holding a valid certificate by the Coast Guard that attest to the person's competency in the handling and transfer of oil and hazardous materials in one or more of the following categories:

(a) Flammable/Combustible liquid cargo in bulk;

(b) Dangerous liquid cargo in bulk; or

(c) Liquefied gas cargo in bulk.

12. By revising the heading for Part 98 to read as follows:

PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN BULK HAZARDOUS LIQUIDS

13. By revising § 98.30-17 to read as follows:

§ 98.30-17 Qualifications of person in charge.

(a) No person may serve as person in charge of the transfer of bulk liquid cargoes, as defined in § 13.01-3, unless the person is designated as person in charge by the master, owner, operator or agent of the tankship or tank barge.

(b) No person shall be designated as person in charge of the transfer of bulk liquid cargoes to or from portable tanks unless:

(1) On tank barges, the person holds a tankerman certificate authorizing that person to handle and transfer the particular cargo involved.

(2) On self-propelled tank, cargo and miscellaneous vessels, the person holds—

(i) A license authorizing service as a master, mate, pilot, operator or engineer aboard that vessel; and

(ii) A tankerman certificate authorizing that person to handle and transfer the particular cargo involved.

PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

Subparts 105.50 and 105.60 [Removed]

§ 105.45-1 [Amended]

14. By deleting in their entirety § 105.45-1(b) and Subparts 105.50 (§§ 105.50-1 and 105.50-5), and 105.60 (§§ 105.60-1, 105.60-5, and 105.60-10)

15. By revising the heading for Part 151 to read as follows:

PART 151—UNMANNED BARGES CARRYING CERTAIN BULK HAZARDOUS LIQUID CARGOES

16. By revising § 151.03-53 to read as follows:

§ 151.03-53 Tankerman.

(a) The term "tankerman" means a person holding a valid certificate issued by the Coast Guard that attests to the person's competency in the handling and transfer of oil and hazardous materials in one or more of the following categories:

(1) Flammable/Combustible liquid cargo in bulk;

(2) Dangerous liquid cargo in bulk; or

(3) Liquefied gas cargo in bulk.

(b) The term "tankerman (barge)" means a tankerman whose certificate is restricted to barges.

17. By revising § 151.45-3 to read as follows:

§ 151.45-3 Manning.

(a) Tank barges subject to the provisions of this subchapter need not be manned unless in the judgement of the Officer in Charge Marine Inspection, manning is necessary for the protection of life, property, the environment or for the safe operation of the tank barge.

(b) A towing vessel, while towing a tank barge subject to the provisions of this subchapter which is not required to be manned, shall have on board one tankerman certificated for the category of cargo being carried.

18. By revising paragraph (a) of § 151.45-4 to read as follows:

§ 151.45-4 Cargo handling.

(a) On a United States tank barge—

(1) The owner or agent shall ensure that a sufficient number of persons are assigned to safely perform cargo transfer operations.

(2) The person in charge shall ensure that sufficient number of persons are on duty to safely perform cargo transfer operations.

(3) The person in charge of transfer operations shall be a tankerman certificated for the category of cargo being transferred and shall be on duty to supervise cargo transfer operations. However, in an emergency, cargo transfer operations may be supervised by a person other than a tankerman.

* * * * *

PART 153—SAFETY RULES FOR SELF-PROPELLED VESSELS CARRYING HAZARDOUS LIQUIDS

19. By revising § 153.957 to read as follows:

§ 153.957 Person in charge of cargo transfer.

(a) The master of a United States tankship or foreign tankship shall ensure that cargo transfer operations are supervised by a person designated as a person in charge of cargo transfer under 33 CFR 155.710.

(b) The master shall ensure that the designated person in charge has studied and understands the responsibilities of a person in charge of cargo transfer as described in this subchapter.

PART 157—MANNING REQUIREMENTS

20. By revising § 157.10-80 to read as follows:

§ 157.10-80 Tankerman.

(a) The term "tankerman" means a person holding a valid certificate issued by the Coast Guard that attests to the person's competency in the handling and transfer of oil and hazardous materials in one or more of the following categories:

(1) Flammable/Combustible liquid cargo in bulk;

(2) Dangerous liquid cargo in bulk; or

(3) Liquefied gas cargo in bulk.

(b) The term "tankerman (barge)" means a tankerman whose certificate is restricted to barges.

(46 U.S.C. 391a, as amended by Pub. L. 95-474, 92 Stat. 1480; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(n)(4))

Dated: December 11,1980.

J. B. Hayes,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 80-39379 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-14-M

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM-166F; Advance Notice]

Limited Quantities of Radioactive Materials; Correction

Note.—This document originally appeared in the Federal Register for Tuesday, December 16, 1980. It is reprinted in this issue to meet requirements for publication on the Monday-Thursday schedule assigned to the Department of Transportation.

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

ACTION: Advance notice of proposed rulemaking; correction.

SUMMARY: This document corrects the comments period date contained in the advance notice of proposed rulemaking covering regulatory requirements applicable to the transportation of limited quantities of radioactive materials which were published on December 8, 1980, (45 FR 80843). The action is necessary to correct the date from March 13, 1980 to March 13, 1981.

DATE: Comments must be received on or before March 13, 1981.

ADDRESS: Send comments to: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590 (202-426-3148). Comments should identify the docket and be submitted, if possible, in five copies. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are 8:30 a.m. to 5:00 p.m., Monday thru Friday.

FOR FURTHER INFORMATION CONTACT: Richard R. Rawl, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-2311).

Issued in Washington, D.C., on December 10, 1980.

Joseph T. Horning,

Acting Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 80-39140 Filed 12-15-80; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039, 1300, 1301

[Ex Parte No. 346 (Sub-No. 3)]

Rail General Exemption Authority; Long and Short Haul Transportation

Service Date: December 9, 1980.

AGENCY: Interstate Commerce Commission.

ACTION: Second Notice of Proposed Rulemaking.

SUMMARY: The Commission is issuing this notice in light of the expanded exemption authority contained in the Staggers Rail Act of 1980 (Pub. L. 96-448). Our original notice proposed to exempt only certain categories of rates and charges for rail transportation from the long and short haul and aggregate of intermediates provisions of 49 U.S.C. 10726. We now propose an exemption which would apply to *all* rates and charges for rail transportation. The prejustification requirement of section 10726 would no longer be applicable, and section 10726 violations would not be considered under the investigation and suspension procedures of section 10707.

DATES: Comments must be received on or before February 2, 1981.

ADDRESS: An original and 15 copies of any comments should be sent to: Room 5340, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Martin E. Foley, (202) 275-7348.

SUPPLEMENTARY INFORMATION: 49 U.S.C. 10726 prohibits rail carriers from charging a higher rate for

(a) A shorter distance than for a longer distance over the same route in the same direction (where the longer route includes the shorter) or

(b) A through rate than the sum of the intermediate rates.

The Commission may grant relief from the requirements of this section "in special cases." Relief is now routinely granted (1) to allow carriers to meet rail competition or competition from carriers of other modes, (2) to remedy technical situations such as where group rates are published on an equal basis to or from all points within a certain area, and (3) to allow for the different costs between special types of service such as multiple car as opposed to single car service.

On October 29, 1979 [44 FR 61981], we published a Notice of Proposed Rulemaking and sought comments on a proposed rule to exempt certain categories of rates and charges from section 10726. Specifically, this rule would have exempted nine categories of rail rates and charges from the statute and certain Commission rules (49 CFR 1301.11 through 1301.85) which require carriers to file a special application for relief prior to the effective date of the rate. It would also have barred the filing of a verified complaint (protest) based solely on a violation of section 10726 against those nine types of rates.

The earlier proposal was based on the exemption authority of former section 10505, which allowed the Commission to grant an exemption for a person, class of persons, or a transaction or service from all or any part of the Act in matters related to rail carriers "because of the limited scope of the transaction or service." The Staggers Rail Act of 1980, however, has revised and expanded the Commission's exemption authority. Section 10505 now provides:

"(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under this subchapter, the Commission shall exempt a person, class of persons, or a transaction or service when the Commission finds that the application of a provision of this subtitle—

"(1) is not necessary to carry out the transportation policy of section 10101a of this title; and

"(2) either (A) the transaction or service is of limited scope, or (B) the application of a provision of this subtitle is not needed to protect shippers from the abuse of market power."

The Joint Explanatory Statement of the Committee on Conference explains the Congressional policy underlying these revisions to our exemption authority as follows:

The bill permits exemptions wherever regulation is not needed to prevent abuses of market power, regardless of the presence of effective competition. The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemptions from remaining regulation. The conferees anticipate that through the exemption process the Commission will eventually reduce its exercise of authority to instances where regulation is necessary to protect against abuses of market power where other federal remedies are inadequate for this purpose. Particularly, the conferees expect that as many as possible of the Commission's restrictions on changes in prices and services by rail carriers will be removed and that the Commission will adopt a policy of reviewing

carriers' actions after the fact to correct abuses of market power.

This policy is reinforced by the specific explanation of section 220, "Long and Short Haul Transportation." Although the Staggers Act repealed only that portion of section 10726 which limited a rail carrier's ability to increase a rate which had been previously decreased to meet water competition, the conferees made it clear that their decision to retain the existing provisions of section 10726 must not be "construed to indicate that the Commission is not to take steps consistent with the policy of this Act to reduce barriers to market-oriented pricing without the need for prior Commission approval."

Pursuant to this Congressional mandate, we are now proposing to (1) exempt all rates which depart from the long and short haul and aggregate of intermediates provisions of section 10726 from pre-justification requirements; (2) exempt these rates from the investigation and suspension procedures of section 10707; and (3) overrule our case law rule that a violation of section 10726 is prima facie evidence that a rate is unreasonably high. We believe that these statutory provisions and related rules and policies, are not necessary to, and are indeed inconsistent with, the national transportation policy. Further, as explained below, we think that these provisions are not necessary to protect shippers from the abuse of market power.

The original fourth section (now section 10726) reflected the concern of Congress that "intermediate points" should be treated fairly. In 1887, rail carriage was the dominant mode of transport. Congress was concerned that while there was often vigorous competition between railroads for shipments moving to and from major shipping points, shippers at intermediate points were often captive to a single rail carrier. Under these circumstances, the power to make freight rates was the power to turn a wilderness into a city or a city into a wilderness. Rates at the major shipping points would be decreased to meet competition, and rates at the intermediate points would be increased to cover shortfalls caused by those reductions. Shippers and receivers located at the intermediate points would be hard pressed to compete with shippers and receivers at major shipping points who received lower transportation rates.

Consequently, Congress required that longer hauls bear higher rates than shorter hauls and that through rates not be greater than the sum of intermediate rates over the same route. Subsequent structural and technological changes in the transportation industry have turned these requirements into burdensome anachronisms. No longer do intermediate points require protection and no longer are costs a function principally of length of haul.

As Congress pointed out in section 2 of the Staggers Act, "today most transportation in the United States is competitive" and "nearly two thirds of the Nation's intercity freight is transported by modes of transportation other than railroads." These sweeping changes in our Nation's transportation system have for the most part eliminated the problem which the long and short haul clause was intended to remedy. Shippers at intermediate points now have the protection of competitive pressures on transportation rates caused by the expanded motor carrier industry. In those exceptional circumstances where there is no competition, the maximum rate provisions of the Act remain available to assure that rates are reasonably related to cost. If a carrier has market dominance over a particular service then the Commission will determine whether the rate is unreasonably high. Shippers also have available a remedy for discrimination under section 10741 of the Act. Under these circumstances, the additional protections of section 10726 are not required to prevent an abuse of market power by carriers.

Strict enforcement of long and short haul principles may have been appropriate when costing was in its infancy, and competition from other modes was not as vigorous as it is today. When the long and short haul provision was originally enacted, rates were generally made on a mileage basis, and carriers had little idea of what were the exact costs of providing particular services. The Commission judged the maximum reasonableness of rates by rate comparisons, and not by the cost of service. The long and short haul provision was devised to impose a rough sense of equity upon the rate structure; it seemed only reasonable that a shipper should pay more to haul goods for a longer distance than for a shorter distance. In fact this seeming truism often turns out to be false. For example, a carrier may publish a multiple car grain rate for special movements between A and B, and this rate may be lower per ton than a rate paid by shippers located at an intermediate point between A and B, who are using single car service. Obviously, the cost of serving intermediate shippers in single car service bears no relationship to the cost of the multiple car shipment, and there is no valid reason for us to impose such arelationship. Yet the carrier must consider and cure a great number of possible section 10726 violations each time a rate adjustment is made, and before a new service can be offered. This impedes the carrier's ability to publish rates based on a growing variety of transportation services.

The new rail transportation policy set forth in section 101 of the Staggers Act states that we should "allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail." By requiring carriers to prejustify any tariff which deviates from long and short haul principles, we are defeating this objective. Competitive cost based ratemaking is hindered by unnecessary procedural barriers to the filing of rates. Therefore the proposed exemption is consistent with and necessary to implementation of the National transportation policy.

As previously noted, rail carriers may now publish rates which depart from the long and short haul and aggregate of intermediates provisions only after filing an application with the Commission for permission to do so. These applications are routinely granted to allow carriers to meet competition, to remedy technical problems, and to account for the different costs between single car service and special types of service. In fact, the circumstances where relief from the application of section 10726 is appropriate have become so prevalent that the exceptions have swallowed the rule, and relief is almost never denied. Despite this trend, applications must still be filed, and these applications are subject to protest. A notice informing the public of the application's filing must be published in the Federal Register; 15 days must be allowed for the filing of protests; and the Commission must then review the application and issue an appropriate order before the rate is allowed to become effective. These procedures serve no useful purpose, they impose an unnecessary financial burden upon carriers, shippers and the Commission, and we believe they should be eliminated.

Changes are required in the handling of complaint cases as well. If a formal complaint is brought, and there is no order authorizing departure from section 10726, a mere showing that a rate violates the section has been held to be sufficient to establish a prima facie case that the rate is unreasonably high. *Reconstruction Finance Corp.* v. *Akron, C. & Y. Ry. Co.*, 287 I.C.C. 353, 381 (1952) and *Iten Biscuit Co.* v. *Chicago, B. & Q.*

R. Co., 53 I.C.C. 729, 731 (1919). Although we propose that rail rates would continue to be subject to a review by the Commission when a complaint is filed, the complaint would be limited by the following considerations: (1) a mere showing of a section 10726 departure would no longer establish a prima facie case that a rate is unreasonably high; and (2) a finding that a rate violates section 10726 would not, absent a specific showing of damages, afford a basis for reparations. The prica facie evidence rule is inconsistent with the Act because we have no jurisdiction to find that a rate is unreasonably high unless the carrier has market dominance over the traffic to which the rate applies. If market dominance is shown, then we should judge the rate by the maximum reasonableness standards we apply to other rates, and not by the prima facie evidence test. With regard to the second limitation, this merely reflects the long-established policy that a shipper must show that it has been harmed by a violation and to what extent before damages can be recovered under this section. *Reconstruction Finance, Corp.* v. *A. C. & Y. Ry., supra,* at 381.

We are also proposing to eliminate the following provisions from the Code of Federal Regulations:

(1) § 1300.28 Tariff notations in connection with fourth section orders.

(2) § 1300.56 Reduction of rate to equal the aggregate of intermediate rates.

(3) § 1300.65 Fourth section departures resulting from changes in offical, Southern, Western, and Illinois classifications.

(4) § 1300.200 Alternation of through rates with aggregate of intermediate rates.

(5) Part 1301 Long and short haul and aggregate of intermediate rates—railroads.

These regulations were originally adopted to facilitate railroad compliance with the principles of the fourth section of the Interstate Commerce Act (now section 10726). Since the proposed rules would, if adopted, exempt all rates and charges for rail transportation from the application of those principles (except when a formal complaint is filed), retention of these regulations would no longer be necessary.

We appreciate the time and effort spent by the numerous parties which have already filed comments in connection with the limited exemption proposed in our first notice. Those comments will be retained as part of the record, and we encourage those parties to participate further in this proceeding.

This Second Notice of Proposed Rulemaking is issued under 5 U.S.C. 553 and 49 U.S.C. 10505.

It does not appear that this proposal will significantly affect the quality of the human environment or conservation of energy resources.

Dated: November 26, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

We propose to amend Chapter X of Title 49 of the Code of Federal Regulations as follows:

1. By adding § 1039.12 to read as follows:

§ 1039.12 Long and short haul transportation exemption.

(a) All rates and charges for rail transportation are exempt from the provisions of 49 U.S.C. 10726 to the extent that:

(1) Commission approval or consideration prior to effective dates of such rates and charges is not required; and

(2) Section 10707 will not apply to rates to the extent that they are challenged on the basis of alleged violations of Section 10726.

(b) This exemption does not extend to review by the Commission upon the filing of a formal complaint alleging a violation of section 10726. Commission review will, however, be subject to the following conditions:

(1) A showing that a rate violates section 10726 will not create a presumption that the higher rate is unreasonably high, and

(2) A finding by the Commission that a rate or charge violates the provisions of section 10726 will not, absent a specific showing of damages, afford a basis for an award of reparations.

§§ 1300.28, 1300.56, 1300.65, 1300.200 [Removed].

2. By removing §§ 1300.28, 1300.56, 1300.65, 1300.200.

PART 1301 [Removed].

3. By removing Part 1301.

[FR Doc. 80-39349 Filed 12-17-80; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 320 (Sub-No. 1)]

49 CFR 1109

Rail Market Dominance and Related Considerations

AGENCY: Interstate Commerce Commission.

ACTION: Withdrawal of proposed rules.

SUMMARY: The Commission withdraws its earlier notice of proposed rulemaking published at 45 Fed. Reg. 3353 (January 17, 1980), which proposed changes in the Commission's rules at 49 CFR 1109.1, which established standards and procedures for making determinations of market dominance. The proposed rules would have simplified the regulations by placing primary emphasis upon a variable cost test. The Staggers Rail Act of 1980 contains a cost-based jurisdiction threshold which preempts the need for our proposed regulations.

EFFECTIVE DATE: The earlier notice of proposed rulemaking is withdrawn effective December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall, (202) 275-7656.

SUPPLEMENTARY INFORMATION: On January 9, 1980 [45 FR 3353, January 17, 1980; as extended at 45 FR 14234, March 5, 1980], before passage of the Staggers Rail Act, we issued a notice of proposed rulemaking to modify our market dominance regulations. We proposed to eliminate the market dominance presumptions relating to market share and to substantial investment, and proposed a substantial change in the cost presumption.

We proposed to place greater reliance upon a modified cost presumption in making findings of market dominance. The revenue to variable cost ration would have become the sole specific test of market dominance. Rates with a variable cost ratio of 180 percent or above would have been prima facie evidence of market dominance. Rates generating revenues of 150 percent or less of variable cost would have been free from investigation or suspension.

The purpose of this revision was "to provide a simpler, less ambiguous test that will harmonize easily with other rail-policy initiatives." The standard was intended to be definite enough to allow the carriers to predict market dominance decisions in particular situations. We wanted to state explicitly that we would not interfere with carrier adjustments needed to bring rates into line with economic costs.

Under the Staggers Rail Act of 1980, as under the Railroad Revitalization and Regulatory Reform Act of 1976, our jurisdiction over the maximum reasonable level of rates is precluded unless the proponent carrier has market dominance over the transportation to which the rate applies. The Commisison is now required to find that the carrier does not have market dominance if the rate is below a designated revenue to

variable cost ratio. The ratios set forth in the amended statute are as follows:

(A) 160 percent during the period beginning on the effective date of the Staggers Act of 1980 and ending September 30, 1981;

(B) 165 percent during the period beginning October 1, 1981 and ending September 30, 1982;

(C) 170 percent during the period beginning October 1, 1982, and ending September 30, 1983;

(D) 175 percent or the cost recovery percentage, which ever is less, during the period beginning October 1, 1982, and ending September 30, 1984; and

(E) The cost recovery percentage, during each 12-month period beginning on or after October 1, 1984.

If a rate is below these threshold levels it is conclusively established that the carrier lacks market dominance.

The Staggers Rail Act of 1980 with its specific revenue to variable cost thresholds has preempted our program to revise the regulations. It has achieved the goals we sought in the Ex Parte No. 320 (Sub-No. 1) rulemaking by giving the carriers a greater degree of certainty and rate flexibility than we could assure administratively.[1]

In response to Section 202 of the Staggers Act of 1980, the Commission now withdraws the earlier notice of proposed rulemaking which proposed changes in the regulations establishing these standards and procedures. The Commission is considering changes in the existing regulations to make them consistent with the Staggers Act in Ex Parte No. 320 (Sub-No. 2), Market Dominance Determinations and Consideration of Product Competition.

The notice of proposed rulemaking published at 45 FR 3353 (1980), which proposed amendment to 49 CFR 1109.1 (g) and addition of 49 CFR 1109.2, is withdrawn effective on the date of publication of this notice in the Federal Register.

This decision does not significantly affect either the quality of the human environment or the conservation of energy resources.

(Section 202, Staggers Rail Act of 1980 (P. L. 96-448))

Decided: December 1, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-39272 Filed 12-17-80; 8:45 am]

BILLING CODE 7035-01-M

[1] On October 31, 1980, Allied Chemical Corp. filed a petition requesting termination of Ex Parte No. 320 (Sub-No. 1) and commencement of a new proceeding in harmony with the Staggers Act. In view of the steps we have taken, this petition is moot and will not be considered further.

Notices

Federal Register
Vol. 45, No. 245
Thursday, December 18, 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.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Official Agency Designation; Amendment to Assigned Geographic Area of the Fremont Grain Inspection Department, Inc.

AGENCY: Federal Grain Inspection Service.

ACTION: Notice.

SUMMARY: This notice announces an amendment to the assigned geographic area of the Fremont Grain Inspection Department, Inc., Fremont, Nebraska, to include portions of four counties in northwest Iowa for the performance of official grain inspection functions under authority of the U.S. Grain Standards Act, as amended.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-8262. Actions of this kind were anticipated under the provisions of Section 7 of the U.S. Grain Standards Act as amended (7 U.S.C. 79) are specifically considered in the Final Impact Statement prepared for and this notice. Thus, the Final Impact Statement describing the options considered in developing this notice and the impact of implementing each option is available on request from the Issuance and Coordination Staff, U.S. Department of Agriculture, Federal Grain Inspection Service, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant."

The May 16, 1980, issue of the Federal Register (45 FR 32569) contained a notice from the Federal Grain Inspection Service (FGIS) requesting applications for designation to provide official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), for the portion of the four-county area previously serviced by A. V. Tisher and Son, Inc., Fort Dodge, Iowa. Applications were to be postmarked by July 15, 1980. A total of three applications were received. The name of the applicants are as a follows: Fremont Grain Inspection Department, 603 East Dodge Street, Fremont, Nebraska 68025; Joe P. Jaimes, 9445 Connell Drive, Overland Park, Kansas 66212; and Sioux City Inspection & Weighing Agency, Inc., 310 South Floyd Boulevard, Room 302, Sioux City, Iowa 51101.

FGIS announced the names of the applicants and requested comments on the applicants in the September 4, 1980, issue of the Federal Register (45 FR 58777). No public comments were received.

After consideration of all information available in relation to the criteria for designation in Section 7(f)(1)(A) of the Act, the Administrator, in accordance with Section 7(f)(1)(B), has determined that Fremont Grain Inspection Department, Inc., is better able than any other applicant to provide official inspection services in the subject area in northwest Iowa. As a result, the geographic area previously assigned to Fremont Grain Inspection Department, Inc., on July 25, 1979 (44 FR 37964) is herein amended to include the following additional geographic areas for the performance of official inspection services:

Bounded: on the North by the Iowa-Minnesota State line east from U.S. Route 59 to U.S. Route 71;

Bounded: on the East by by U.S. Route 71 south to the southern Clay County line;

Bounded: on the South by the southern Clay County line west; and

Bounded: on the West by the western Clay County line north to B24; B24 west to U.S. Route 59, U.S. Route 59 north to the Iowa-Minnesota State line.

The Fremont Agency is currently providing services to this area under an interim authority.

Effective January 19, 1981, the geographic area indicated above will be assigned to the Fremont Grain Inspection Department, Inc., and the Agency will be responsible for providing inspection services under the Act to this area.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain a map of the assigned geographic area and a list of specified service points by contacting the Agency or the Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250; (202) 447-8525.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79))

Done in Washington, D.C., on December 11, 1980.

J. T. Abshier,
Director, Compliance Division.

[FR Doc. 80-39225 Filed 12-17-80; 8:45 am]
BILLING CODE 3410-02-M

Official Agency Geographic Area; Assignment of Geographic Area to the Los Angeles Grain Inspection Service, Inc., Montebello, California; Amendment to Assigned Geographic Area of the California Department of Food and Agriculture

AGENCY: Federal Grain Inspection Service.

ACTION: Notice.

SUMMARY: This notice announces assignment of the geographic area to the Los Angeles Grain Inspection Service, Inc., Montebello, California, for the performance of official grain inspection functions under the authority of the U.S. Grain Standards Act, as amended. Also announced is an amendment to the previously assigned geographic area of the California Department of Food and Agriculture, Sacramento, California.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250; (202) 447-8262. Actions of this kind were anticipated

under the provisions of Section 7 of the U.S. Grain Standards Act as amended (7 U.S.C. 79) and are specifically considered in the Final Impact Statement prepared for this notice. Thus, the Final Impact Statement describing the options considered in developing this notice and the impact of implementing each option is available on request from the Issuance and Coordination Staff, U.S. Department of Agriculture, Federal Grain Inspection Service, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant."

Los Angeles Grain Inspection Service, Inc. (the "Agency"), 1625 Bluff Road, Montebello, California 90640, was designated as an official agency under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), for the performance of official grain inspection functions on July 19, 1979. The designation also included an assignment of geographic area, on an interim basis, within which this Agency would operate. Geographic areas are assigned to each official agency pursuant to Section 7(f)(2) of the Act.

The Act provides that not more than one official agency shall be operating at one time within an assigned geographic area.

The proposed geographic area assigned on an interim basis to the Agency was announced in the November 8, 1979, issue of the Federal Register (44 FR 64853–64854). No comments were received during the comment period. However, the Agency notified the Federal Grain Inspection Service that the city of Irvine, California, had been inadvertently omitted from its area by specifying Interstate 5 as the boundary line between the Agency and the California Department of Food and Agriculture (State of California). The Agency had provided service to applicants in Irvine for many years and is currently doing so. The State of California has not provided service to the city of Irvine.

Both the Agency and the State of California have concurred in the following changes made in their respective geographic areas. In order to include the city of Irvine within the Agency's geographic area, the southern boundary of the Agency and the corresponding interior boundary of the State of California are hereby amended to correct this matter. In deleting Interstate 5 in the southern boundary, the new southern boundary description for the Agency and the new interior boundary description for the State of California are as follows:

State Route 74 west-southwest to Interstate 5; Interstate 5 northwest to *Interstate 405; Interstate 405 northwest to State Route 55; State Route 55 northeast to Interstate 5; Interstate 5 northwest* to State Route 91; State Route 91 west to State Route 11; (*underscoring* added to indicate the amended boundary in place of Interstate 5).

Accordingly, after due consideration of all information available to the U.S. Department of Agriculture, the geographic area assigned to the Agency is as follows:

Bounded: on the North by the Angeles National Forest southern boundary from State Route 2 east; the San Bernadino National Forest southern boundary east to State Route 79;

Bounded: on the East by State Route 79 south to State Route 74;

Bounded: on the South by State Route 74 west-southwest to Interstate 5; Interstate 5 northwest to Interstate 405; Interstate 405 northwest to State Route 55; State Route 55 northeast to Interstate 5; Interstate 5 northwest to State Route 91; State Route 91 west to State Route 11; and

Bounded: on the West by State Route 11 north to U.S. Route 66; U.S. Route 66 west to Interstate 210; Interstate 210 northwest to State Route 2; State Route 2 north to the Angeles National Forest southern boundary.

Further, the geographic area assigned to the State of California on February 28, 1980 (45 FR 13163), is amended as follows:

The entire State of California at other than export port locations not including the area within the above stated boundaries as assigned to the Los Angeles Grain Inspection Service, Inc.

A specified service points for the purpose of ths notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain a map of the assigned geographic area and a list of specified service points by contacting the Agency or the Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250; (202) 447–8525.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2870 (7 U.S.C. 79))

Done in Washington, D.C., on December 10, 1980.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 80-39224 Filed 12-17-80; 8:45 am]

BILLING CODE 3410-02-M

Soil Conservation Service

Johnson Creek Watershed, Washington

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of Authorization for Watershed Planning.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn A. Brown, State Conservationist, Soil Conservation Service, 360 U.S. Courthouse, W. 920 Riverside Avenue, Spokane, Washington 99201, telephone number (509) 456–3711.

NOTICE: The Washington State Conservationist of the Soil Conservation Service has been authorized to provide planning assistance to local organizations for the Johnson Creek Watershed. The State Conservationist may proceed with investigations and surveys as necessary to develop the watershed plan under authority of the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and in accordance with requirements of the National Environmental Policy Act of 1969, Pub. L. 91–190.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: December 8, 1980.

Norman A. Berg,

Chief, Soil Conservation Service.

[FR Doc. 80-39245 Filed 12-17-80; 8:45 am]

BILLING CODE 3410-16-M

Pepper Creek Flood Prevention and Drainage R.C. & D. Measure, Delaware

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of Availability of a Record of Decision.

FOR FURTHER INFORMATION CONTACT: Mr. Otis D. Fincher, State Conservationist, Soil Conservation Service, 204 Treadway Towers, 9 East Loockerman Street, Dover, Delaware 19901, telephone 302–678–0750.

NOTICE: Mr. Otis D. Fincher, responsible Federal official for projects administered under the provisions of

Section 102 of the Food and Agriculture Act of 1962 (Pub. L. 87–703), and the Soil Conservation Act of April 27, 1935 (16 U.S.C. 590 a-f), in the State of Delaware, is hereby providing notification that a record of decision is available for the Pepper Creek Flood Prevention and Drainage RC&D Measure. Single copies of this record of decision may be obtained from Mr. Otis D. Fincher at the above address.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87–703, 16 U.S.C. 590a–f, q.) (Office of Management and Budget Circular No. A–95 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: December 4, 1980.

James W. Mitchell,

Associate Deputy Chief for Natural Resource Projects.

[FR Doc. 80–39244 Filed 12–17–80; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

East-West Trade Advisory Committee; Renewal

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Renewal for the Advisory Committee on East-West Trade.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976) and Office of Management and Budget Circular A–63 (Revised), Advisory Committee Management, and after consultation with General Services Administration, the delegate of the Secretary of Commerce has determined that the renewal of the Advisory Committee on East-West Trade is in the public interest in connection with the performance of duties imposed on the Department by law.

SUPPLEMENTARY INFORMATION: The Committee was first established in 1974, and was last renewed on December 7, 1978. Its purpose is to advise the Deputy Assistant Secretary for East-West Trade on ways to promote, facilitate and coordinate the expansion of two-way trade with the Soviet Union, Poland, Hungary, the German Democratic Republic, Czechoslovakia, Romania, Bulgaria, the People's Republic of China and certain other areas of the world with similar economic/political structure, so as to contribute materially to a more positive balance of trade and payments situation; to provide the Deputy Assistant Secretary for East-West Trade with a back-up link with the cumulative expertise of the business and academic communities which would advise in the determination of future directions and policies for East-West trade, and to provide an evaluation of the efficacy of current East-West trade techniques.

The current state of trade and political relations between the United States and the countries with centrally-planned economies give continuing urgent need for the Deputy Assistant Secretary for East-West Trade to benefit from the most authoritative and expert advice available on a continuing basis in the formulation and evaluation of plans and policies. The Committee's function cannot be accomplished by any organizational element or other committee.

The Committee will continue with a balanced representation of not more than 25 members, who will be appointed by and serve at the discretion of the Secretary of Commerce. The Committee will continue to function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act.

Copies of the Committee's revised charter will be filed with appropriate committees of the Congress and copies will be forwarded to the Library of Congress concurrent with the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Committee Control Officer, Ronald G. Oechsler, Office of East-West Policy and Planning, International Trade Administration, Room 4816, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–3110 or Mrs. Yvonne Barnes, Committee Management Analyst, U.S. Department of Commerce (202) 377–4217.

Dated: December 5, 1980.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80–39327 Filed 12–17–80; 8:45 am]

BILLING CODE 7020–02–M

Office of the Secretary

National Voluntary Laboratory Accredation Program; Public Hearing on Preliminary Finding of Need to Accredit Laboratories That Provide Acoustical Testing Services

AGENCY: Assistant Secretary of Commerce for Productivity, Technology, and Innovation.

ACTION: Notice of public hearing on the preliminary finding of need to accredit laboratories that provide acoustical testing services.

SUMMARY: The Department of Commerce hereby announces that it will hold an informal public hearing on January 9, 1981 to provide interested parties an opportunity to express their views and concerns regarding the preliminary finding of need to accredit laboratories that provide acoustical testing services published by the Department in the Federal Register on November 10, 1980 (45 FR 74684–74686).

DATES: The hearing will be held on January 9, 1981. Requests to testify including intended statements should be filed by January 7, 1981.

ADDRESSES: The informal public hearing will be held on Friday, January 9, 1981, from 9:30 a.m. to 12:30 p.m., Eastern Standard Time (EST) in Room 6802, Main Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

Persons desiring to testify at this hearing should submit to the Deputy Assistant Secretary for Product Standards Policy (Room 3876, U.S. Department of Commerce, Washington, D.C. 20230) one copy of the statement they wish to make at the hearing, not later than Wednesday, 5:00 p.m., EST, January 7, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. Howard I. Forman, Deputy Assistant Secretary for Product Standards Policy, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202)377–3221; or Mr. John W. Locke, Office of Product Standards Policy, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202)377–2054.

SUPPLEMENTAL INFOMRATION: On November 10, 1980, the Department of Commerce published in the Federal Register a preliminary finding of need to accredit laboratories that provide acoustical testing services (45 FR 74684–74686). That notice established a 60-day comment period and indicated that written comments were due on or before January 9, 1981. That notice also established a 15-day period for making a request for an informal public hearing before November 25, 1980. Two such requests were received in a letter of November 19, 1980 from Mr. Donald J. Valsvik, President of INTEST Laboratories, Inc. and in a letter of November 25, 1980 from Mr. R. D. Hensel, Physics Research Unit Manager of Armstrong Cork Company. The Department, in response to these requests, will hold an informal public hearing for the purpose of giving Mr. Valsvik, Mr. Hensel, and other

interested parties an opportunity to comment on the preliminary finding of need.

The following procedures are established for the informal hearing:

1. *Purpose.* The purpose of the informal public hearing is to provide all interested persons with an opportunity to express their views and concerns regarding the preliminary finding of need to accredit laboratories that provide acoustical testing services.

2. *Conduct of Hearing.* (a) This hearing shall be an informal non-adversary proceeding at which there will be no formal pleadings, adverse parties or cross examination. Witnesses should submit a written statement of their presenatation for the record as indicated above.

(b) The presiding officer shall have the right to schedule the witnesses, to apportion in an equitable manner the time available to each witness for making presentations, and to terminate or shorten the presentation of any witness when, in his opinion, such presentation is repetitive of information previously presented or not relevant to the purposes of the hearing.

(c) The presiding officer shall have the authority to continue the hearing beyond 12:30 p.m. on January 9, 1981 if it appears that the scheduled witnesses cannot complete their testimony by that time.

(d) The presiding officer and other members of the Department of Commerce hearing panel shall have the right to question witnesses on their statements and other matters related to the preliminary finding of need.

(e) The presiding officer shall have the right to exercise such authority as may be necessary to insure the equitable and efficient conduct of the hearing and to maintain order.

3. *General Provisions.* (a) This informal hearing shall be open to members of the public whether or not such members wish to testify at the hearing.

(b) A written transcript of the hearing will be made. A copy of the transcript will be available for inspection and copying in the Central Reference and Records Inspection Facility, room 5317, Main Commerce Building, 14th Street between E Street and Constitution Avenue, NW., Washington, D.C. 20230. Copies of the transcript of the hearing will also be available for purchase directly from the commercial reporting service responsible for providing the transcript to the Department. Information concerning the availability of the transcript will be announced at the hearing.

(c) Copies of all written materials and comments on the preliminary finding will be made available for inspection and copying in the Central Reference and Records Inspection Facility identified above.

Dated: December 15, 1980.

Francis W. Wolek,

Acting Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 80-39331 Filed 12-17-80; 8:45 am]

BILLING CODE 3510-13-M

Minority Business Development Agency

Financial Assistance Application Announcement

The Minority Business Development Agency announces that it is seeking applications under its program to operate a General Business Service Center in Northern and Central Florida for a twelve month period beginning April 1, 1981. The total cost of the project will not exceed $406,000.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: The General Business Services Program (GBS) of the Minority Business Development Agency (MBDA) provides technical assistance to minority businesspersons and firms for the purpose of improving their stability by increasing their management and marketing capabilities. MBDA offers competitive grants to consulting firms (either non-profit or commercial entities). These firms must be capable of providing such services as:

preparation of business plans; financial packaging; industrial management assistance; personnel management services; marketing planning; and a broad range of other business services excluding legal services.

Applications are invited for the following project: One grant for a management and technical assistance project to operate in the Tampa-St. Petersburg, Jacksonville, and Orlando SMSAs in Hillsborough, Pinellas, Duval and Orange counties in Florida. The project will operate at a cost not to exceed $406,000. The Project I.D. Number is 04-10-80001-01.

This project will also include supplying specialized consulting services.

Eligibility Requirements: There are no restrictions. Any profit or non profit institution is eligible to submit an application.

Application Materials: An application kit for this project may be requested by writing the following address: U.S. Department of Commerce, Minority Business Development Agency, 1365 Peachtree Street, NE, Room 225, Atlanta, Georgia 30309.

In requesting an application kit, the applicant must specify its profit status; i.e., State or local government, federally recognized Indian tribal units, educational institutions, hospitals, or other type of profit or non-profit institution. This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be sumbitted to a panel for review and ranking. Specific criteria by which applications will be evaluated is included in the application kit.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of January 13, 1981. Applications received after this date will not be considered.

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

(This program is not subject to the requirements of OMB Circular A-95)

Dated: December 10, 1980.

Charles F. McMillan,

Regional Director.

[FR Doc. 80-39344 Filed 12-17-80; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice of correction.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its General Business Services Program (GBS) to operate one project for a 12 month period beginning April 1, 1981 in the Pittsburgh, Pennsylvania SMSA. The cost of the project is estimated to be $110,000. The Project I.D. No. is 03-10-67004-00.

CLOSING DATE: January 16, 1981.

ADDRESS: Minority Business Development Agency, Washington Regional Office, U.S. Department of Commerce, 1730 K Street, N.W., Suite 420, Washington, D.C. 20006

The pre-application conference for the above project has been re-scheduled at the following address on December 29,

1980 at 10:00 a.m.: Federal Building, Room 200, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

For further information, please contact Mr. Robert Boulden at (412) 722-5882.

Dated: December 15, 1980.

Luis G. Encinias,

Regional Director.

[FR Doc. 80-39350 Filed 12-17-80; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Discussion of Implementation of the Emergency Striped Bass Study; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss implementation of the Emergency Striped Bass Study as authorized by the amended Anadromous Fish Conservation Act (Pub. L. 96-118).

DATE: The meeting will convene on Monday, January 19, 1981 at 10 a.m. and will adjourn at approximately 5 p.m. The meeting is open to the public, however space is limited.

ADDRESS: National Marine Fisheries Service, Room 401, Page Building No. 2, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, State/Federal Division, Office of Resource Conservation and Management, National Marine Fisheries Service, Washington, D.C. 20235. Telephone: (202) 634-7454.

Dated: December 4, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-39367 Filed 12-17-80; 8:45 am]

BILLING CODE 3510-22-M

Announcement of Three Areas Off Puerto Rico as Active Candidates for Marine Sanctuary Designation

AGENCY: Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration, (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The waters around Mona and Monita Islands, the area off southwest Puerto Rico known as La Parguera and the waters around Culebra/Culebrita Islands and the Cordillera reef chain located off northwest Puerto Rico were included in the list of recommended areas published in the Federal Register (Vol. 44, No. 212, 10/31/79) and have been selected as active candidates for designation as one or more sanctuaries. An Issue Paper will be distributed and workshops scheduled. This announcement has no applicability to OMB Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects.

Discussion: The Department of Natural Resources, Commonwealth of Puerto Rico (DNR) recommended six sites off the coast of Puerto Rico for marine sanctuary status pursuant to Title III of the Marine Protection, Research and Sanctuaries Act of 1972 as amended, 16 U.S.C. 1431-1434, (the Act). The sites were the waters around Mona/Monito Islands, Culebra Island/Cordillera Reef, Vieques (Bioluminescent Bay), Caja de Muertas, La Parguera, Desecheo Island. These sites were reviewed by OCZM and were determined to have met the criteria for inclusion on the list of recommended areas (LRA) in accordance with Section 922.21 (Analyses of Recommendations) of OCZM's procedures for designating marine sanctuaries (15 CFR Part 922).

In accordance with § 922.23(b), preliminary consultation has taken place with relevant Federal agencies, Commonwealth of Puerto Rico officials, the Caribbean Regional Fishery Management Council, and other interested persons. In response to this consultation, the Acting Assistant Administrator for OCZM has selected three of the recommended sites as active candidates. The sites are the waters around the Islands of Mona/Monita, the waters of La Parguera, and waters around the Cordillera Reefs/Culebra/Culebrita Islands.

The sites meet the requirements of § 922.23(a) of the regulations and should be selected as Active Candidates for designation as marine sanctuaries on the basis of the following evaluation:

(1) *The significance of the ecological, geological, recreational, and research and educational resources identified during review for listing under 922.21(b) on the List of Recommended Areas* (922.23(a)(1)). All three sites, Mona/Monito, La Parguera, and Cordillera/Culebra/Culebrita represent marine ecosystems of exceptional productivity. The Cordillera reef chain is a fringing reef which has a high diversity of coral species including star coral (*Monastrea annularis*) and Elkhorn coral (*Acropora palmata*). The reef habitat supports a rich fish and shellfish population which significantly contributes to the fisheries of the region. The proximity of the San Juan metropolitan area makes the site an important recreational area.

La Parguera, located off the southwest coast of Puerto Rico, contains some of the most diverse and ecologically valuable marine habitats found in Puerto Rico. The area includes extensive coral reefs (including black coral), mangrove forest, shallow channels and lagoons, sandy beaches, seagrass beds, and two bioluminescent bays. The sunken reefs at Bahia Monsio Jose are considered one of the most spectacular reef systems in Puerto Rico. Margarita Reef is one of the few pseudo-barrier reefs in the Western Hempisphere. The waters around Mona and Monito are noted for their submarine landscape, and off the west and east coasts of the island are two large spur and groove coral systems. Mona is frequently described by scientists as the "mini-Galapagos of the Caribbean." South of Carabinero where the shelf drops precipitously from 10 to 76 m, are numerous caves and caverns which have been described as the most extensive and unusual coral cave formation in the world.

Over 270 species of fish are known to exist in the surrounding Mona waters. Numerous ship wrecks at Mona Island make the site an area of exceptional recreational value.

These three sites are also known to provide important habitats for several endangered species. The hawksbill turtle (*Eretmochelys imbricata*), the green turtle (*Chelonia mydas*), the hawksbill (*Eretmochelys imbricata*), and the loggerhead (*Careta careta*) are all found within the proposed sites. Mona Island and Culebrita have been proposed as Critical Habitat areas by the Fish and Wildlife Service. The Brown pelican (*Pelecanus occidentalis*) and the peregrine falcon (*Falco peregrinus*) are known to occur as visitors or breeders on Mona Island. Further studies may reveal existence of other endangered or threatened species.

(2) *The ability of the Sanctuary Programs Office to support full review within the time specified in Section 922.24* (922.23(a)(2)). OCZM can prepare an Issue Paper, hold workshops and undertake an Environmental Impact Statement (EIS) for the sites as required. OCZM and the Commonwealth DNR are ready to undertake the Issue Paper. A contract for an EIS has been arranged in the event that the proposal moves to the DEIS stage.

(3) *The following additional factors* (922.23(a)(3)). (i) *Existing and potential threats to the resources*—The major threat to the area is heavy recreational use and consequential damage to coral

and other resources from anchoring, fishing activities, and coral collecting.

(ii) *The ability of existing regulatory mechanisms to protect the value of the sanctuary*—The sites are all within the territorial jurisdiction of the Commonwealth. If fully implemented, existing Federal and Commonwealth regulatory mechanisms likely could protect the resources of the sites. However, designation will significantly increase protection for the area and ensure long term protection by making available additional management and enforcement funds and by providing a) a comprehensive management framework to monitor, assess and act on information concerning the cumulative effects of human uses; b) a mechanism to coordinate and encourage research to improve the effectiveness of management decisions; and c) a public education/interpretive program focused on understanding fragility, significance and wise use of these resources. These aspects of a conservation effort are not provided under existing mechanisms.

(iii) *The significance of the area to research opportunities on a particular type of ecosystem:*
All three sites offer exceptional, and in some cases unique, opportunities for research. The bioluminescent bays at La Parguera are a rare natural occurrence and the University of Puerto Rico operates the Institute of Marine Sciences at La Parguera. The isolated location of Mona/Monito presents an opportunity to conduct research in biologically unusual areas.

(iv) *The value of the area in complementing other areas of significance to public or private programs with similar objectives, including approved Coastal Zone Management programs.* The three sites are all adjacent to or a part of special planning areas or Natural Reserves as designated by the approved Puerto Rico Coastal Zone Management Plan.

(v) *The esthetic qualities of the area.* As indicated above, the sites offer unusual and unique aesthetic opportunities, particularly the submerged caves at Mona and the bioluminescent Bays at La Parguera.

(vi) *The type and estimated economic value of the natural resources and human uses within the area which may be foregone as a result of marine sanctuary designation;* and

(viii) *The economic benefits to be derived from protecting or enhancing the resources within the sanctuary.* Although a thorough analysis of economic impacts will not occur until a DEIS is developed, it appears unlikely that any significant economic impacts would result from potential designation. The preliminary consultation and discussions indicate that none of the sites is an area where major commercial fishing operations take place. Consequently, it is unlikely that this user group would be heavily impacted. On the other hand, it is probable that businesses oriented toward nonconsumptive water use recreation may derive economic gains from added resource protection and management.

An Issue Paper will be prepared by OCZM in conjunction with the Commonwealth of Puerto Rico, Department of Natural Resources, describing the distinctive resources of the potential sites, the present and prospective uses, existing government programs aimed at protecting those resources, alternative boundaries, management activities, and activities that might be regulated within a marine sanctuary. As required in § 922.24 (Review of Active Candidates), OCZM will conduct one or more public workshops in the area within 6 months of the effective date of this publication. The Issue Paper and the workshop(s) are designed to solicit views which will aid OCZM in determining whether any of the sites should be further considered for designation, and whether any modifications of the recommendation may be appropriate. The workshop(s) are in addition to the public hearings required under Section 302(e) of the Act should an EIS be prepared. These workshops are part of the scoping process to determine issues to be addressed in the event that an Environmental Impact Statement is subsequently issued.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster, Deputy Director, Sanctuary Programs Office, Office of Coastal Zone Management, NOAA, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, (202) 634-4236.

Dated: December 11, 1980.

Donald W. Fowler,

Acting Assistant Administrator for Coastal Zone Management.

[FR Doc. 80-39104 Filed 12-17-80; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Receipt of Application for General Permit

Notice is hereby given that the following application has been received to take marine mammals incidental to the pursuit of commerical fishing operations within the U.S. fishery conservation zone, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the regulations thereunder.

Hochseefischerei Nordstern AG, Bremerhaven, West Germany has applied for a Category 1: "Towed or Dragged Gear" general permit to incidentally take 60 Otariid seals, 60 Phocid seals, and 60 Cetaceans within the U.S. fishery conservation zone in 1981.

The application is available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.

Interested parties may submit written views on the application within 30 days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: December 8, 1980.

R. B. Brumsted,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 80-39246 Filed 12-17-80; 8:45 am]

BILLING CODE 3510-22-M

THE COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts will next meet in open session on Tuesday, January 13, 1981, at 10:00 a.m. in the Commission's offices at 708 Jackson Place, N.W., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington, D.C.

Inquires regarding the agenda and requests to submit written or oral statement should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

Dated in Washington, D.C., December 11, 1980.

Charles H. Atherton,

Secretary.

[FR Doc. 80-39250 Filed 12-17-80; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending the Import Restraint Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products From the Republic of Korea

December 12, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Applying swing, shift and carryforward, variously, to the levels of restraint established for textile products

in Categories 333/334/335 (Cotton Coats), 433 (Men's and boys' wool suit-type coats) and 640 (Woven shirts of man-made fibers), produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1980 an extends through December 31, 1980.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506)).

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea provides for percentage increases in certain specific category ceilings during an agreement year (swing), for the borrowing of designated percentages of yardage from the succeeding year's level (carryforward) with the amounts used being deducted from the level in the succeeding agreement year and for the shifting of yardage from one category into another.

EFFECTIVE DATE: December 12, 1980.

FOR FURTHER INFORMATION CONTACT: William Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On December 27, 1979 a letter dated December 20, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the Federal Register (44 FR 76573), which established import restraint levels for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported to the United States during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980.

In accordance with the terms of the bilateral agreement and at the request of the Government of the Republic of Korea, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs in the letter published below to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in Categories 333/334/335, 433 and 640, produced or manufactured in the Republic of Korea, in excess of the adjusted levels of restraint, during the twelve-month period which began on January 1, 1980.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 12, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury Washington, D.C. 20229

Dear Mr. Commissioner: On December 20, 1979, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, during the twelve-month period beginning on January 1, 1980 and extending through december 31, 1980 of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in the Republic of Korea, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11651 or January 6, 1977, you are directed, effective on December 12, 1980, to amend the twelve-month levels of restraint established for textile products in Categories 333/334/335, 433 and 640 to the following:

Category	Amended 12-mo level of restraint[2] (dozen)
333/334/335	[5]92,041
433	12,625
640 pt. [3]	4,212,645
640 pt. [4]	1,769,529

[2]The levels of restraint have not been adjusted to reflect any entries after December 31, 1979.
[3]In Category 640, only T.S.U.S.A. numbers 380.0455, 380.8431, and 380.8433.
[4]In Category 640, all T.S.U.S.A. numbers except those listed in footnote 3.
[5]Dozen of which not more than 49,407 dozen shall be in Cat. 333/334 and not more than 53,476 dozen shall be in Cat. 335.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool and man-made fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-39242 Filed 12-17-80; 8:45 am]

BILLING CODE 3510-25-M

[1]The term "Adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea, which provide, in part, that: (1) within the aggregate and applicable group limits, specific levels of restraint may be adjusted by designated percentages; (2) these same levels may be adjusted for carryover and carryforward up to 11 percent of the applicable category limit; (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

DEPARTMENT OF DEFENSE

Department of the Air Force

Finding of no Significant Impact Proposed Realignment of Air Force Communications Command

Date: November 10, 1980.

A. *Description of Proposed Action:* The United States Air Force proposes to realign Air Force Communications Command (AFCC). This realignment will improve the readiness of combat forces through improved communications support and will result in an estimated $5.3 million annual cost avoidance. The proposed action involves minor personnel adjustments at 12 stateside and five overseas installations (Attachment 1 is a summary of these adjustments). Authorizations and, in some cases, personnel will be transferred between these installations. The proposed action establishes units, consolidates components, and redesignates units within the manpower increases/reductions on Attachment 1. The proposed action will not require any major new construction.

The alternatives to this action are to take no action, (to continue the present AFCC management organization), or to partially implement by consolidating the warehouses that acquire, store, pack, and ship materials used to install communications—electronics facilities.

B. *Biophysical Environmental Impact Analysis:* The analysis of potential biophysical environmental impacts is documented in an Environmental Assessment (EA). The following is a summary of the most important findings in the EA:

1. *Personnel Reductions:* Eight installations will experience personnel

reductions varying from four at Norton Air Force Base, California, to 167 at Robins Air Force Base, Georgia. Each of the installations was evaluated for potential biophysical impacts due to these reductions. No significant impact on the physical environment of the areas affected is expected. The proposed reductions would cause minor decreases in waste water, solid waste, air pollutants, and any adverse socioeconomic impacts would be of minor significance. A substantial proportion of the personnel authorizations are presently unfilled, therefore, the actual envoronmental and socioeconomic impacts are even less than the apparent impacts.

2. *Personnel Increases:* Nine installations will have personnel increases varying from three at McClellan Air Force Base, California, to 47 at both Kelly Air Force Base, Texas, and Lindsey Air Station, Germany. The personnel increases in all of the affected areas should not have a significant impact on the existing biophysical environment. The minor increases of utilities requirements can be adequately provided from existing systems. The increases also, would not significantly affect the local communities' economics or adversely affect public service capabilities.

3. *Alternatives:* a. Partial Implementation—This alternative is limited to consolidating the communications warehouse functions from Griffiss and McClellan Air Force Bases to Tinker Air Force Base, Oklahoma. Griffiss and McClellan would be reduced by 47 and 31 civilians respectively, and Tinker would increase by 53 civilians. These minor reductions and increases would not significantly affect the biophysical environment.

C. *Finding of No Significant Impact:* After careful review of the EA, I have concluded that the realignment of the AFCC will not constitute a major Federal action having a significant impact on the quality of the affected human environments, nor is it likely to be controversial with regard to its biophysical environmental impacts.

Thus, the requirements of the National Environmental Policy Act, the Council on Environmental Quality regulations, and Air Force Regulation 19-2 have been complied with, and a draft environmental impact statement need not be filed.

Questions or comments concerning the proposed realignment should be directed to Lt. Col. Harold Reddish, Air Force Communications Command, Directorate of Plans and Programs, Scott AFB, Illinois, telephone 618-256-5493.

John J. Coughlin, LTC, USAF, Chairman, HQ USAF, Environmental Protection Committee.

Attachment 1

[Summary of Manpower Adjustments by Location]

Location	OFF	AMN	CIV	Total
Clark AB RP	+1	+32	0	+33
Griffiss AFB NY	−7	−33	+5	+37
Hickam AFB HI	−7	−10	−13	−30
Kelly AFB TX	−1	+47	+1	+47
Lindsey AS GE	+2	+45	+0	+47
McClellan AFB CA	−1	+37	−33	+3
McGuire AFB NJ	+1	+21	0	+22
Norton AFB CA	−2	−1	−1	−4
Oklahoma City AFSC OK	+20	−33	+40	−18
Patrick AFB FL	0	−30	−0	−30
Robins AFB GA	−6	−100	−61	−167
Scott AFB IL	−14	−35	−29	−79
Tinker AFB OK	−1	−27	+52	+24
Travis AFB CA	+1	+20	0	+21
Wheeler AFB HI	+1	+20	+11	+32
Wright-Patterson AFB OH	+33	−73	−23	−63
Yokota AB JA	−5	−75	−6	−86
Total savings	−25	−123	−57	−211

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 80-39247 Filed 12-17-80; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Alaska Natural Gas Transportation System—Western Leg; Conference

AGENCY: Office of International Affairs, DOE.

ACTION: Notice.

SUMMARY: Notice is hereby given that a public conference will be held on Tuesday, December 30, 1980, to discuss the size of pipe to be used for the Western Leg of the Alaska Natural Gas Transportation System (ANGTS), south of Stanfield, Oregon.

DATE: December 30, 1980.

FOR FURTHER INFORMATION CONTACT: Fred Dorey, Office of International Affairs, Tel. (202) 252-5893.

SUPPLEMENTARY INFORMATION: The conference is being held to assist the Secretary of Energy in carrying out his responsibility under the President's *Decision and Report to Congress.* Section 5.VI.1 of the Decision requires the Secretary to certify to the Federal Energy Regulatory Commission whether there has been any material change in the facts underlying the *Decision* that would warrant certification of pipeline facilities at a different rated capacity than authorized in the President's *Decision.* The specific area of inquiry at this conference will be whether the diameter of the pipe to be used in the segment south of Stanfield should be increased from the 36-inch size identified in the President's *Decision.* The conference will allow all persons the opportunity to make oral presentations relevant to this inquiry. Written comments will also be accepted at the conference.

This is the second conference dealing with certification of facilities to be built as part of the Western Leg of ANGTS. The previous conference was held at the Department of Energy on January 23, 1980 and involved a similar inquiry for the Kingsgate, British Columbia to Stanfield, Oregon segment.

The public conference will be held on Tuesday, December 30, 1980, at 9:30 a.m. in the Department of Energy Auditorium, Room GE-086, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585.

Issued in Washington, D.C., December 15, 1980.

Leslie J. Goldman,

Assistant Secretary for International Affairs.

[FR Doc. 80-39362 Filed 12-17-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Gibbs Oil Company's Petition for Permission To Use Multiple Allocation Fractions

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of petition withdrawal.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that on December 9, 1980, Gibbs Oil Company (Gibbs) withdrew its petition for permission to use multiple allocation fractions which the firm filed on May 19, 1980. Gibbs reserves its right to refile an application at a later date.

FOR FURTHER INFORMATION REGARDING THIS NOTICE, PLEASE CONTACT:

John A. Carlyle, Economic Regulatory Administration, Office of Petroleum Operations, Room 2104-I, 2000 M Street NW., Washington, DC 20461, Telephone: (202)653-4472

Joel M. Yudson, Office of General Counsel, Room 6A-127, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 252-6744.

Issued in Washington, D.C., on the 12th day of December 1980.

Paul T. Burke,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 80-39240 Filed 12-17-80; 8:45 am]

BILLING CODE 6450-01-M

Frank W. Michaux; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces notice of filing a Petition for the Implementation of Special Refund Procedures for refunds received pursuant to a Consent Order.

DATE: Petition submitted to the Office of Hearings and Appeals: December 11, 1980

FOR FURTHER INFORMATION CONTACT: Crude Producers Branch, Attn: John Marks, Office of Enforcement, Room 5002, 2000 M Street NW., Washington, D.C. 20461, Telephone Number (202) 653-3517.

SUPPLEMENTARY INFORMATION: On January 7, 1980, the Office of Enforcement of the ERA published notification in the Federal Register that it executed a Consent Order with Frank W. Michaux, (FWM) of Houston, Texas on December 19, 1979, 45 Fed. Reg. 1442 (1980). Interested persons were invited to submit comments concerning the terms, conditions or procedural aspects of the Consent Order. In addition, persons who believe they have a claim to all or a portion of the refund of overcharges paid by FWM pursuant to the Consent Order were requested to submit notice of their claims to the ERA.

Although interested persons were invited to submit comments regarding the Consent Order to the DOE, no comments were received. The Consent Order was therefore not modified.

Pursuant to the Consent Order, FWM refunded the sum of $147,482.14 by certified check made payable to the United States Department of Energy on December 28, 1979. This sum has been received by DOE and has been placed into a suitable account pending determination of its proper distribution.

The following person submitted a claim to the ERA: Defense Logistics Agency.

Action Taken

The ERA is unable readily to identify the persons entitled to receive the $147,482.14 or to ascertain the amounts of refunds that such persons are entitled to receive. The ERA has therefore petitioned the Office of Hearings and Appeals (OHA) on December 11, 1980 to implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, 10 CFR 205.280 *et seq.* to determine the identity of persons entitled to the refunds and the amounts owing to each of them. Persons who believe they are entitled to all or a portion of the refunds should comply with the procedures of 10 CFR Part 205, Subpart V.

Issued in Washington, D.C., on the 11th day of December 1980.

Robert D. Gerring,

Director, Program Operations Division.

[FR Doc. 80-39239 Filed 12-17-80; 8:45 am]

BILLING CODE 6450-01-M

Remedial Orders

Pursuant to 10 CFR § 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice that the following Proposed Remedial Orders have been issued. These Proposed Remedial Orders allege violations of applicable law as indicated.

A copy of the Proposed Remedial Orders, with confidential information deleted, may be obtained from Thomas M. Holleran, Program Manager for Product Retailers, 2000 M Street, NW, Washington, DC 20461, phone 202/653-3569. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW, Washington, DC 20461, in accordance with 10 CFR 205.193.

Issued in Washington, D.C., on the 11th day of December 1980.

Robert D. Gerring, Director,

Enforcement Program Operations Division, Economic Regulatory Administration.

Proposed Remedial Orders—Northern District

Station	Address	Date	Violation Amount	Cents per gallon in violation
French Creek Marina	Clayton, New York 13624	11/24/80	$972.14	17.4
Kaysee Marine	6 South End Place, Freeport, NY 11520	11/24/80	102.04	6.0

[FR Doc. 80-39238 Filed 12-17-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA81-1-1-001]

Alabama-Tennessee Natural Gas Co.; Notice of Proposed PGA Rate Adjustment

December 11, 1980.

Take notice that on December 1, 1980, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), P.O. Box 918, Florence, Alabama 35630, tendered for filing as part of its FPC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Thirty-Fourth Revised Sheet No. 3-A
First Revised Sheet No. 3-B
Second Revised Sheet No. 36-H
Alternate Thirty-Fourth Revised Sheet No. 3-A

These tariff sheets are proposed to become effective January 1, 1981.

Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the proposed changes in the rates of its suppliers, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. and Sun Gas Company. Alabama-Tennessee states that the rate changes have been made in conformity with the PGA and related provisions of its tariff. Alternate Thirty-Fourth Revised Sheet No. 3-A is proposed to be made effective in the event that the Commission rejects Thirty-Fourth Revised Sheet No. 3-A.

The tariff sheets provide for the following rates:

Rate Schedule	Rate after current adjustment	
	34th Rev. 3-A	Alternate 34th Rev.3-A
G-1:		
Demand	$2.34	$2.34
Commodity	289.15	289.40
SG-1:		
Commodity	306.25	305.50
I-1:		
Commodity	296.83	296.08

First Revised Sheet No. 3-B shows that no estimated incremental pricing surcharges are contemplated during the period the rates are to be in effect. The Second Revised Sheet No. 36-H contains a new paragraph (e) which, it is stated, will allow Alabama-Tennessee to eliminate the separate adjustment heretofore made under Section 22 of its FPC Gas Tariff as long as Alabama-Tennessee is not under curtailment from its suppliers and not receiving or giving

curtailment credits. Alabama-Tennessee states that unless the separate adjustment is eliminated, as provided in paragraph (e), it will serve only to create successive over and under adjustments of previous balances, *ad infinitum*.

Alabama-Tennessee further states that, in the event that the Second Revised Sheet No. 36-H is rejected by the Commission, Alabama-Tennessee has included with this filing Alternate Thirty-Fourth Revised Sheet No. 3-A plus the Section 22 adjustments which will be necessary in the event of the rejection of the Second Revised Sheet No. 3-A which will supersede the First Substitute Thirty-third Sheet No. 3-A. Alternate Thirty-Fourth Revised Sheet No. 3-A, contains the same Section 20 adjustments which are on the Thirty-Fourth Revised Sheet No. 36-H. Computations of the derivation of the Section 22 adjustments are also included.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 17, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-39260 Filed 12-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-117]

AVCO Corp.; Filing of Petition for Review

Issued: December 8, 1980.

Take notice that AVCO Corporation on September 11, 1980, filed a Petition for Review under 42 U.S.C. § 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before December 30, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before December 30, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-39261 Filed 12-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-35]

McKee Marathon Service Station; Filing of Petition for Review

Issued: December 8, 1980.

Take notice that McKee Marathon Service Station on April 18, 1980, filed a Petition for Review under 42 U.S.C. § 7194(b) (1977) (Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before December 30, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before December 30, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-39263 Filed 12-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA81-27-000]

J. C. Penney Co.; Filing of Petition for Review

Issued: December 8, 1980.

Take notice that J. C. Penney Company on November 28, 1980, filed a Petition for Review under 42 U.S.C. § 7194(b) (1977) (Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before December 30, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before December 30, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission

must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-39262 Filed 12-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. GP81-7-000]

USGS, South Central Region, Section 108 Determination, Jerome P. McHugh, Price No. 1 Well, USGS Docket No. NM-0242-79, FERC Control No. JD79-8397; Petition for Declaratory Order

Issued: December 11, 1980.

On February 4, 1980, EL Paso Natural Gas Company (El Paso) filed with the United Stated Geological Survey, South Central Region (USGS), pursuant to § 271.805 of the Federal Energy Regulatory Commission's (Commission) regulations, a purchasers's notice of disqualification of the Jerome P. McHugh (McHugh) Price No. 1 Well. Pursuant to § 271.805(b) of the Commission's regulations, McHugh filed a protest of the disqualification with USGS. The subject well was shut-in temporarily while El Paso repaired its transmission line. Pressure built up while the well was shut-in and upon reopening to the line, the well produced in excess of the 60 Mcf average per day stripper well ceiling during a 90-day production period. After a hearing, USGS declined to make a determination disqualifying the well and referred the issue to the Commission. The Commission will treat the USGS request as a petition for declaratory order pursuant to § 1.7(c) of the Commission's Rules of Pratice and Procedure.

USGS and McHugh request the Commission to declare that the subject well continues to qualify as a stripper well because, but for shutting-in for pipeline repairs beyond the well owner's control, it would not have exceeded the 60 Mcf average per day stripper well production limit.

Any person wishing to be heard or to make any protest to this petition should, on or before December 29, 1980, file with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with §§ 1.8 or 1.10 of the Commission's Rules of Practice and Precedure. The Commission will consider all protests filed in determining the appropriate action to be taken, but such filings will not make the protestants parties to the proceeding. Any person wishing to become a party or participate as a party in any hearing must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-39265 Filed 12-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP81-21-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

December 11, 1980.

Take notice that on December 2, 1980, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheet to its FERC Gas Tariff, Original Volume No. 2:

Original Sheet No. 2151-A constituting a reduction in rates pursuant to Article IX of Transco's Rate Schedule X-221, a transportation agreement dated March 30, 1979, between Transco and Northern Natural Gas Company (Northern).

Transco states that such tariff sheet reflects rate reductions as a consequence of reflecting the actual cost of facilities, as required by Article IX, Paragraph 5(a) of Rate Schedule X-221. The rates as so adjusted also reflect the cost components, including rate of return and depreciation, set forth in Transco's general rate case filing of June 30, 1980 in Docket No. RP80-117. Transco also states that such reduction in rates is consistent with the proposed treatment of similar transportation services for others utilizing the same facilities. Transco states that a copy of the instant filing has been served upon Northern.

The tariff sheet is proposed to become effective January 1, 1981.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 17, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-39264 Filed 12-17-80; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[ENFRL 1696-6]

Approval of Revised NPDES Memorandum of Agreement With Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of revised National Pollutant Discharge Elimination System (NPDES) memorandum of agreement (MOA) with Georgia.

SUMMARY: On December 12, 1980, the Administrator of EPA approved a revised NPDES MOA between the State of Georgia and EPA.

FOR FURTHER INFORMATION CONTACT: Joel G. Blumstein, Permits Division (EN-336), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-426-4793.

SUPPLEMENTARY INFORMATION: Under section 402(b) of the Clean Water Act (33 U.S.C. 1251, et seq.), States may be authorized to participate in the NPDES permit program if they satisfy certain minimum requirements. On June 28, 1974, the State of Georgia was approved to administer the NPDES program within its borders. At that time, a memorandum of agreement (MOA) was entered into between EPA and Georgia governing the administration of the NPDES program.

The Federal regulations governing NPDES programs were significantly revised and republished on June 7, 1979 (44 FR 32854, et seq.) and on May 19, 1980 (45 FR 33290, et seq.). On order for the State of Georgia's NPDES program to conform to the new Federal regulations, many changes in the existing MOA were mandated. On August 22, 1980, a notice appeared in the Federal Register (45 FR 56320) announcing a proposed revision of the MOA. Only one comment was received on the proposed revision, and it has since been withdrawn.

Since the MOA meets all current EPA requirements, I have today approved the revised MOA with Georgia. No changes have been made to the version of the MOA on which the August 22, 1980 Federal Register notice requested comments.

Dated: December 12, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-39303 Filed 12-17-80; 8:45 am]

BILLING CODE 6560-33-M

[EN FRL 1696-7]

Approval of Revised NPDES Memorandum of Agreement With Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of revised national pollutant discharge elimination system (NPDES) memorandum of agreement (MOA) with Mississippi.

SUMMARY: On December 12, 1980. The Administrator of EPA approved a revised NPDES MOA between the State of Mississippi and EPA.

FOR FURTHER INFORMATION CONTACT: Joel Blumstein, Permits Division (EN-336), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Telephone 202/426-4793.

SUPPLEMENTARY INFORMATION: Under Section 402(b) of the Clean Water Act (33 U.S.C. 1251, et seq.), States may be authorized to participate in the NPDES permit program if they satisfy certain minimum requirements. On May 1, 1974, the State of Mississippi was approved to administer the NPDES program within its borders. At that time, a memorandum of agreement (MOA) was entered into between EPA and Mississippi governing the administration of the NPDES program.

The Federal regulations governing NPDES programs were significantly revised and republished on June 7, 1979 (44 FR 32854, et seq.) and on May 19, 1980 (45 FR 33290, et seq.). In order for the State of Georgia's NPDES program to conform to the new Federal regulations, many changes in the existing Memorandum of Agreement were mandated. On August 22, 1980, a notice appeared in the Federal Register [45 FR 56320] announcing a proposed revision of the MOA. No comments were received on the proposed revision.

Since the MOA meets all current EPA requirements, I have today approved the revised MOA with Mississippi. No changes have been made to the version of the MOA on which the August 22, 1980 Federal Register notice requested comments.

Dated: December 12, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-39304 Filed 12-17-80; 8:45 am]

BILLING CODE 6560-33-M

[PP 7G1955/T259A; PH-FRC 16944]

Aldicarb; Renewal of a Temporary Tolerance; Correction

Correction

In FR Doc. 80-37967, published in the issue of Monday, December 6, 1980, on page 80901, the date above the signature in the first column, now reading "Dated: December 21, 1980." should read "Dated: December 2, 1980."

BILLING CODE 1505-01-M

[OPTS—59040A; TSH-FRC 1706-8]

Polyurethane; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On October 21, 1980, EPA received an application for a test marketing exemption (TM-80-45) from the premanufacturing notification requirements of section 5 of the Toxic Substances Control Act (TSCA). The manufacturer has claimed its identity confidential.

EPA has determined that the manufacturer's test marketing of this chemical substance will not present any unreasonable risk of injury to health or the environment. Therefore, the Agency has granted this manufacturer an exemption from the TSCA premanufacture reporting requirements for test marketing of the substance in the manner described in the application.

FOR FURTHER INFORMATION CONTACT: Carolyn C. Brown, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-221, Washington, DC 20460 (202-426-3980).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is one that is not on the Inventory of existing chemical substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "exemptions", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirement of section 5(a) or section 5(b), to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of its disposition in the Federal Register. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

The application was assigned test marketing exemption number TM-80-45; receipt of the application was announced in the Federal Register of November 10, 1980 (45 FR 74564).

The manufacturer claimed its identity, the specific chemical identity, and the specific use as confidential business information.

The substance is described generically as polyurethane; its generic use is as a component in industrial coatings. Two thousand five hundred to five thousand kilograms of the substance will be manufactured to be provided to six to ten customers during a test marketing period not to exceed six months. EPA has established that the test marketing of the substance described in TM-80-45, under the conditions set out in the application, will not present any unreasonable risk of injury to health or the environment for the reasons explained below. There were no significant health or environmental concerns for the TME substance. There was some concern about the possible health effects of exposure to two of the compenents of the TME substance. However, the Agency believes that exposure to these feedstocks will be minimal.

No significant worker exposure to the substance is expected. The product will be manufactured in a closed system. Three employees for 8 hours for 4 days during the test marketing period will be involved in the manufacture of the TME substance. Worker exposure during use is expected to be typical of the industry. Consumer exposure to the substance in TME-80-45 will be nil because the coatings in which it is present will be cured before the final product is sold.

Environmental release of the substance will be low and is not judged to be a concern.

Based on the facts and information obtained and reviewed, EPA grants the manufacturer a test marketing exemption for TM-80-45, effective on December 12, 1980, but subject to all conditions set out in the exemption application, and in particular those enumerated below:

1. This exemption is granted solely to this manufacturer.
2. The applicant must maintain records of the date(s) of shipment(s) to the customers specified in the application who will test market the substance, and the quantities shipped in each shipment, and must make these records available to EPA upon request.
3. Each bill of lading that accompanies a shipment of the substance during the test marketing period must state that the use of the substance is restricted to that described to EPA in the test marketing exemption application.
4. The production volume of the new substance may not exceed the quantity of 5,000 kilograms described in the test market application.
5. The test marketing activity approved in this notice is limited to a 6-month period commencing on December 18, 1980.
6. The substance will be manufactured in a closed system as specified in the application.
7. The number of workers should not exceed that specified in the application and the exposure levels and duration of exposure should not exceed that specified.
8. The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which indicates that the substance may present an unreasonable risk of injury to human health or the environment.

Dated: December 12, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-39305 Filed 12-17-80; 8:45 am]

BILLING CODE 6560-31-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. A-22]

AM Broadcast Applications Accepted for Filing and Notification of Cut-Off Date

Released: December 16, 1980.

Cut-Off Date: January 23, 1981.

It has come to the Commission's attention that the following applications listed as accepted for filing on AM cut-off list A-20 (Mimeo No. 04166, released November 28, 1980) were inexplicably omitted from the notice published in the Federal Register on December 10, 1980.

Therefore, for these ten applications only, the January 5, 1981 cut-off date previously announced is hereby rescinded, and a new cut-off date is announced. An application, in order to be considered with any application appearing on this list or with any other application on file by the close of business on January 23, 1981 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., not later than the close of business on January 23, 1981.

Petitions to deny any application on this list must also be on file with the Commission not later than the close of business on January 23, 1981.

BP-800813AB(WAGE), Leesburg, Virginia, Radio WAGE, Inc. Has: 1290 kHz, 1 kW, D. Req: 1200 kHz, 1 kW, 5 kW-LS, DA-N, U

BP-800819AC(new), Mt. Pleasant, South Carolina, East Cooper Communications. Req: 1500 kHz, 250 W, D

BP-800819AD(WSOQ), North Syracuse, New York, WSOQ, Inc. Has: 1220 kHz, 1 kW, D. Req: 1200 kHz, 1 kW, DA-N, U

BP-800911AF(WGUS), North Augusta, South Carolina, Broadcasting Associates of America, Inc. Has: 1380 kHz, 1 kW, D. Req: 1380 kHz, 5 kW, D

BP-800912AA(WDTM), Selmer, Tennessee, WDTM, Inc. Has: 1130 kHz, 250 W, D. Req: 1150 kHz, 1 kW, D

BP-800915AB(WFTO), Fulton, Mississippi, Itawamba County Broadcasting Co., Inc. Has: 1330 kHz, 2.5 kW, D. Req: 1330 kHz, 5 kW, D

BP-800918AA(KACJ), Greenwood, Arkansas, KACT Radio. Has: 1510 kHz, 1 kW (500 W-CH), D. Req: 1510 kHz, 2.5 kW (500 W-CH), D

BP-800922AC(new), Milan, Tennessee, Gibson County Radio Company. Req: 1360 kHz, 500 W, 5 kW-LS, DA-2, U

BP-800923AA(new), Alabaster, Alabama, Metrosouth Broadcasting, Inc. Req: 1500 kHz, 1 kW, D

BP-800929AD(WGEP), Webster, Massachusetts, Lakeview Broadcasting Co. Has: 940 kHz, 250 W, D. Req: 940 kHz, 1 kW, D

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-39340 Filed 12-17 80; 8:45 am]

BILLING CODE 6712-01-M

[Docket No. 80-339; Transmittal Nos. 2258, 2259, 2260, 2280, etc.]

ITT World Communications, Inc., et al.; Memorandum Opinion and Order

Adopted: December 5, 1980.

Released: December 11, 1980.

In the Matter of ITT WORLD COMMUNICATIONS, INC., CC Docket No. 80-339, Transmittal Nos. 2258, 2259, 2260, 2280; RCA GLOBAL COMMUNICATIONS, INC., Transmittal Nos. 4610, 4611, 4613, 4614, 4615, 4616, 4636; TRT TELECOMMUNICATIONS CORPORATION, Transmittal Nos. 909, 910, 911; WESTERN UNION INTERNATIONAL, INC., Transmittal Nos. 1430, 1431, 1447; WESTERN UNION INTERNATIONAL CARIBBEAN, INC., Transmittal No. 224; FTC COMMUNICATIONS, INC., Transmittal Nos. 69, 77; Revisions to tariffs for establishing separate charges for terminals, tielines, and transmission offered in connection with international telex service and implementing expanded gateways and additional domestic operating areas for international telecommunications service. See also 45 FR 78226, November 25, 1980.

1. Before the Chief, Common Carrier Bureau, are unopposed motions to intervene in the above captioned proceeding filed by Consolidated Terminal Systems, Inc. and by Tele-Techniques, Inc. Both companies are in the business of supplying telex terminals. We find that both parties have demonstrated sufficient interest in the outcome of the proceeding, and will therefore grant the motion.
2. Accordingly, it is ordered, pursuant to authority delegated in § 0.291 of the Commission's Rules, 47 CFR 0.291, That the motions to intervene filed by Consolidated Terminal Systems, Inc. and by Tele-Techniques, Inc. ARE GRANTED.
3. It is further ordered, That Consolidated Terminal Systems, Inc. and Tele-Techniques, Inc. may reply to the direct cases submitted by the International Record Carriers on or before January 7, 1981.
4. It is further ordered, That this order shall be published in the Federal Register.

Federal Communications Commission.

Thomas J. Casey,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 80-39338 Filed 12-17-80 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1262]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

December 11, 1980.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to 47 CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed on or before January 2, 1981. Replies to an opposition must be

filed within 10 days after the time for filing oppositions has expired.

Subject: Request amendment of Part 90 of the rules to eliminate the Antenna Height vs. ERP Table affecting stations in the Los Angeles Urbanized area. (RM-3451)

Filed by: Richard G. Somers, President for The National Mobile Radio Association on 12-2-80

Subject: Petition for Rule Making to Amend Television Table of Assignments to add New VHF Stations in the Top 100 Markets and to Assure that the New Stations Maximize Diversity of Ownership, Control and Programming. (Docket No. 20418, RM-2346, RM-2727)

Filed by: James A. McKenna, Jr., Thomas N. Frohock & Steven A. Lerman, attorneys for Ziff-Davis Broadcasting Company on 12-3-80. Edward S. O'Neill & Dennis Lane, Attorneys for South Central Broadcasting Corporation, (WTVK-TV) on 12-3-80. James A. McKenna, Jr. & Thomas N. Frohock, Attorneys for Forward Communications Corporation on 12-3-80. William T. Coleman, Jr., Donald T. Bliss & John H. Beisner, Attorneys for Organizing Committee For The Establishment of A Third VHF-TV Station For Knoxville on 12-4-80. James A. McKenna, Jr. & Robert W. Coll, Attorneys for Roy H. Parks Broadcasting of the Tri-Cities, Inc. on 12-4-80. Louis Schwartz, Robert A. Woods & Lawrence M. Miller, Attorneys for Mohawk-Hudson Council on Educational Television, Inc., (WMHT-TV) on 12-4-80.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-39341 Filed 12-17-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 80-590; File No. BRCT-79042LC; FCC 80-562]

RKO General, Inc., et al.; Designating Applications for Consolidated Hearing on Stated Issues

In re Applications of RKO GENERAL, INC., For Renewals of Licenses for Stations: WHBQ-TV, Memphis, Tennessee, BC Docket No. 80-590; File No. BRCT-79042LC; WHBQ, Memphis, Tennessee, BC Docket No. 80-591; File No. BR-79042CZ; WOR, New York, N.Y., BC Docket No. 80-592; File No. BR-177; WXLO (FM) New York, N.Y., BC Docket No. 80-593; File No. BRH-14; WRKO, Boston, Mass., BC Docket No. 80-594; File No. BR-953; WROR (FM), Boston, Mass., BC Docket No. 80-595; File No. BRH-617; KHJ, Los Angeles, Calif., BC Docket No. 80-596; File No. BR-22; KRTH (FM), Los Angeles, Calif., BC Docket No. 80-597; File No. BRH-25; WGMS, Bethesda, Maryland, BC Docket No. 80-598; File No. BR-1403; WGMS-FM, Washington, D.C., BC Docket No. 80-599; File No. BRH-789; KFRC, San Francisco, Calif., BC Docket No. 80-600; File No. BR-43; WAXY(FM), Ft. Lauderdale, Fla., BC Docket No. 80-601; File No. BRH-781002WR; WFYR (FM), Chicago, Illinois, BC Docket No. 80-602; File No. BRH-79081A3.

Memorandum Opinion and Order

Adopted: September 30, 1980.

Released: November 26, 1980.

By the Commission: Commissioner Lee dissenting and issuing a statement; Commissioners Quello and Washburn concurring and issuing separate statements.

1. The Commission has before it for consideration the question of what effect, if any, our decision denying the application of RKO General, Inc. (RKO) for renewal of its license for Station WNAC-TV, Boston, Massachusetts should have on RKO's remaining broadcast licenses.

I. Background and Summary

2. On June 4, 1980, the Commission concluded that RKO was not qualified to be the licensee of station WNAC-TV, Channel 7 in Boston.[1] This determination was made after a careful and thorough examination of the record in that proceeding and in related proceedings. The record clearly and convincingly demonstrated that RKO engaged in a variety of misconduct which rendered it unfit to be a Commission licensee for Channel 7 in Boston. We found RKO disqualified on the following separate grounds:

(a) RKO and its parent corporation, General Tire and Rubber Company (General Tire) engaged in reciprocal trade practices which were anticompetitive and possibly illegal. An intensive "trade relations" program was carried on throughout the 1960's, wherein companies were induced to advertise on RKO stations as a condition of doing business with the General Tire family. The purpose and effect of this scheme was, in part, to obtain advertising customers for RKO stations, not on the basis of those stations' advertising rates and demographics, but, instead, on the basis of the General Tire conglomerate's large scale buying power. We found that this reciprocity scheme (insofar as it involved or affected RKO) was designed to distort the normal free market process by which the demand for advertising time helps ensure that radio and television programming is responsive to public desires.[2]

(b) RKO knowingly filed with the Commission and certified as complete and accurate certain Annual Financial Reports when RKO knew that these reports contained entries which were materially false. The reports inaccurately stated the value of trades and barters received by RKO stations in exchange for advertising time. RKO misled the Commission into believing that the financial reports accurately reflected the state of facts known to it. In addition, RKO failed to exercise adequate control over its trade and barter record-keeping and the preparation of its financial reports.[3]

(c) RKO demonstrated a general lack of candor in its dealings with the Commission. On numerous occasions RKO withheld information that it knew or should have known to be relevant and material to matters pending before the Commission. At other times, RKO made statements to the Commission that RKO knew or should have known would have the tendency to mislead the Commission on relavant and material matters.[4]

Our conclusion that RKO lacked requisite qualifications was bolstered by our finding that RKO's parent corporation, General Tire, had engaged in a pattern of serious misconduct, including improper domestic political contributions, schemes which defrauded its affiliates, improper foreign payments and improper secret accounts designed to avoid foreign tax and currency exchange laws. While this misconduct was not directly related to RKO's broadcasting activities, the nature of the close relationship between RKO and General Tire required the Commission to scrutinize General Tire's practices insofar as they reflected parental tolerance (and sometimes encouragement) of improper behavior and fiduciary neglect that could affect its subsidiaries, including RKO. Moreover, such non-broadcast misconduct called into question the character qualifications of the licensee and its ability to serve the public interest.[5]

3. Based on these findings the Commission determined that RKO could not be trusted to conform its future behavior to proper standards in the public interest, and that it would not or could not carry out its responsibilities as a Commission licensee.[6] Consequently, we denied the license renewal application for Station WNAC-TV.

4. In addition to deciding that RKO was not qualified to serve as the licensee for Station WNAC-TV, we further held that RKO was not qualified to serve as the licensee of Stations WOR-TV, New York, New York, and KHJ-TV, Los Angeles, California. The New York proceeding was designated for hearing on April 10, 1974, and we specified at that time that the resolution of certain issues in the Boston proceeding involving Station WNAC-TV would be *res judicata* as to RKO in the

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[1] *RKO General, Inc. (WNAC-TV)*, 78 FCC 2d 1 (1980) [hereinafter *Decision*]. *On June 24, 1980, RKO filed a Notice of Appeal in the United States Court of Appeals for the District of Columbia Circuit directed to the Decision* (No. 80-1693).

[2] *Decision*, paras. 2, 59-92.

[3] *Id.*, paras. 2, 163-195.

[4] *Id.*, paras. 2, 196-221.

[5] *Id.*, paras. 2, 93-162.

[6] *Id.*, para. 243.

New York proceeding.[7] Subsequently, we granted renewal "subject to such action as the Commission may deem appropriate in light of its final decision in Docket No. 18759 [the Boston proceeding]." [8] The Los Angeles proceeding was first designated for hearing on June 8, 1966.[9] We ultimately granted KHJ-TV's renewal application "subject to whatever action may be deemed appropriate following resolution of the matters in Docket No. 18759." [10] The Court of Appeals, in affirming our decision, similarly conditioned renewal on the resolution of the Boston proceeding.[11] Thus, as a result of the Boston *Decision* and the interrelationships of these proceedings, we were constrained to conclude that RKO also lacked the requisite qualifications to be the licensee of both KHJ-TV and WOR-TV.[12]

5. The *Decision* left open for consideration what action, if any, the Commission should take with respect to the licenses which RKO holds for its remaining 13 broadcast stations.[13] Renewals of these licenses had been expressly conditioned on the outcome of the Boston, Los Angeles and New York proceedings.[14] We solicited comments from RKO and other interested parties on the matter of what impact, if any, our decision in the Boston case should have on those other RKO stations. This question included the issue whether the findings in the *Decision* were *res judicata* with respect to RKO's qualifications to hold these other licenses.[15] We have received comments and reply comments from a number of parties which are listed in Appendix A.[16] These submissions will be treated below in conjunction with our consideration of the various alternatives available to us.

6. We recognize that our action in the Boston case will have serious consequences for RKO. A number of commentators have suggested that RKO's loss of three stations as a result of the Boston *Decision* is sufficient to deter others from wrongdoing,[17] and that the loss of the three stations is sufficient punishment for RKO.[18] We recognize that our basic goal is to assure quality prospective broadcast service for the public and not to "punish" RKO for any misdeeds it or its parent corporation has committed.[19] We have considered the various alternatives available to us in this context.

7. After careful review of the *Decision* and the record on which it is based, as well as the comments and proposals before us, we believe that the public interest will best be served by reopening the renewal proceedings involving RKO's remaining stations and designating those stations' most recent renewal applications for hearing. There are a number of reasons for adopting this course of action. First, renewals of these licenses have been expressly conditioned on the findings and conclusions made in the RKO television proceeding in Boston. The basis on which we disqualified RKO was the licensee of station WNAC-TV in the Boston proceeding raises such serious questions about RKO's qualifications to hold any broadcast licenses that we are compelled now to re-evaluate those qualifications. If the act of conditioning a renewal is to have any significance, it means that we must revisit that renewal when an adverse determination such as the present one has been made. Such action is essential to preserve the integrity of the Commission's processes. Second, reopening the renewals will lead to the most efficient resolution of this matter consistent with the rights of the parties. It will result in each of RKO's stations being placed in qualified hands, i.e., by a finding at RKO is qualified, a ruling that grants RKO renewed licenses subject to the requirement that it transfer the licenses to qualified third parties, a disqualification of RKO and the choosing of other licensees, or by a distress sale. Third, this action will result in minimum disruption for RKO consistent with the public interest and RKO's right to seek judicial review of the Boston *Decision*. As a result of our *Decision* and RKO's conditional grants, RKO's stations presently are operating "under a cloud". By designating RKO's renewals for hearing and moving that additional step toward a determination of its qualifications, our action will produce greater certainty for RKO as well as the public, and, as a result, greater ultimate protection of the public interest.[20] However, we will direct that the hearing not commence until all court appeals of the Boston, New York, and Los Angeles cases have been completed. This will conserve administrative resources by permitting the parties to take into account any judicial decision in those cases.

8. We recognize that designation of RKO's prior renewal applications will have the incidental effect of keeping the door closed for the time being to challenges by prospective competing applicants. However, competing applicants had the opportunity to challenge RKO's previous renewal applications for the 13 stations at the time those applications were filed. None did so. As explained below,[21] RKO and the public will be better served by resolution of its qualifications in a non-comparative proceeding. At the conclusion of that proceeding there will

[7] 46 FCC2d 246, 249 (1974).

[8] 69 FCC 2d 461, 470 (1978).

[9] FCC 66-503.

[10] 44 FCC2d 123, 138 (1973).

[11] *Fidelity Television, Inc.* v. *FCC*, 515 F.2d 684, 703, n. 45, *rehearing denied*, 515 F.2d 703 (D.C. Cir. 1975), *cert. denied*, 423 U.S. 926 (1975).

[12] 78 FCC 2d 355; 78 FCC 2d 357 (1980). See *Decision*, paras. 252-53. On June 24, 1980, RKO filed Notices of Appeal in the United States Court of Appeals for the District of Columbia Circuit directed to the separate Orders affecting RKO stations KHJ-TV and WOR-TV. Station WOR-TV (No. 80-1696); Station KHJ-TV (No. 80-1697).

[13] These are KHJ, KRTH (FM), Los Angeles, California; WRKO, WROR (FM) Boston, Massachusetts; WOR WXLO (FM), New York, New York; WHBQ, WHBQ-TV, Memphis, Tennessee; KFRC, San Francisco, California; WGMS, Bethesda, Maryland; WGMS-FM, Washington, D.C.; WAXY (FM), Ft. Lauderdale, Florida; and WFYR (FM), Chicago, Illinois.

[14] Except for 2 licenses, all of the most recently granted renewals contained the following condition or language to similar effect: "This [renewal] grant is conditioned on, and without prejudice to whatever action, if any, the Commission may deem appropriate as a result of final action in the outcome of the proceedings in Docket Nos. 16679 [Los Angeles], 18759 [Boston] and/or 19991 [New York]." The license of Station WAXY (FM), Fort Lauderdale, Florida, was renewed on January 23, 1979 for the period 1979-82 with a referral to the early license, dated January 10, 1976. The 1976 license was conditioned on the outcome in Boston; the 1979 application was granted "on the same conditions and in accordance with the same provisions" as the 1976 license, and was valid only when posted with the earlier license. The most recent renewal of Station KFRC, San Francisco, California, was not conditioned due to administrative error. KFRC's earlier grants were conditioned, and nothing occurred during the license terms to change the condition. In view of this, plus the fact that the remainder of RKO's stations were subject to the same condition, and that two other licenses (KHJ, KRTH (FM)), were granted the same day subject to this condition, we do not believe that RKO was prejudiced by the error. Indeed, in its most recent filings with the Commission RKO does not protest or in any other way attach significance to the Commission's oversight in not expressly conditioning the most recent renewal of KFRC.

[15] *Decision*, paras. 4, 254.

[16] The National Black Media Coalition filed a petition to intervene on July 22, 1980. This petition will be dismissed as premature: at the time of filing there was no proceeding pending which would serve as a vehicle for permitting interested parties to participate in the Commission's processes. See 47 CFR 1.223. At the appropriate time NBMC may pursue its rights under the Act and our Rules.

[17] See, *e.g.* Comments of RKO General, Inc., (RKO Comments), filed July 3, 1980, at 9; Comments of National Association of Broadcasters (NAB Comments), filed July 7, 1980, at 9; Comments of Congressmen Seiberling, Addabbo, Regula and Hubbard, filed July 7, 1980, at 1.

[18] See, *e.g.*, NAB Comments at 10; Comments of Congressmen Seiberling, Adabbo, Regula and Hubbard at 2.

[19] See *Golden Broadcasting Systems, Inc.*, 68 FCC 2d 1099, 1107-08 (1978).

[20] See *Grayson Enterprises, Inc.*, FCC 80-739, para. 11 (released August 7, 1980).

[21] See paras. 40-41, *infra*.

be ample opportunities for interested persons to file competing applications.

9. Before going into further detail on this course of action we will examine the alternatives offered by those filing comments.

II. Alternative Courses of Action Available to the Commission

A. The RKO Spin-Off Proposal

10. RKO proposes that there be created a new, publicly-held company, NewCo., to which the licenses of RKO's remaining 13 broadcast stations will be assigned. NewCo.'s stock will be distributed to the approximately 45,000 shareholders of General Tire.[22] However, all present members of the General Tire and RKO board of directors [23] and all members of the O'Neil family who were found to have exerted positive control over General Tire will dispose of their NewCo. stock within two years of its receipt. All such persons who do not dispose of their NewCo. stock within 30 days following its issue to them will place their stock in a voting trust over which they will exercise no control. The trustee will be required to vote the NewCo. shares on all matters *pro rata* according to the vote on the remaining NewCo. shares voted (exclusive of shares voted by shareholders holding 5 percent or more of the NewCo. shares). Additionally, all past and present members of the RKO or General Tire boards will be excluded from participation on NewCo.'s board, with outside directors comprising a majority of that board. Further, officers who are also directors of RKO will be excluded from employment by NewCo. As a result, according to RKO, NewCo. will be wholly free and disassociated from General Tire, RKO, and all members of the O'Neil family.[24]

11. RKO offers three main arguments in favor of its spin-off proposal. First, RKO asserts that the proposal will meet the Commission's concern with prospective service, since NewCo. will operate as a new licensee, separate from and outside the range of potential influence by General Tire, RKO and the parties who control them.[25] Second, RKO argues that the proposal would be consistent with principles of fairness. In view of the magnitude of the sanctions already imposed upon RKO, it contends that deterrence has already been accomplished. Approval of the transfer would not encourage others to engage in similar conduct. Rather, according to RKO, taking away its other licenses would constitute a penalty wholly at odds with the rationale of the Commission's *Decision* as well as established precedent.[26] Finally, RKO states that approving the proposal would eliminate needless litigation. Should the spin-off proposal not be approved, further proceedings will be necessary. The spin-off proposal allegedly is more efficient than comparative proceedings as a means to resolve the questions raised by the *Decision* concerning RKO's stewardship of the 13 stations.[27]

12. RKO cites prior cases where the Commission has approved assignments or transfers in situations allegedly similar to the present.[28] In each of these cases, states RKO, the Commission's policy of deterrence had already been served by other means.

13. The National Association of Broadcasters (NAB) "strongly supports" approval of the RKO spin-off proposal. NAB finds the proposal to be "vastly superior" to withdrawing RKO's remaining licenses or deferring action and awaiting the filing of competing applications with resulting comparative proceedings.[29]

14. The Broadcast Bureau supports RKO's spin-off proposal, assuming that RKO can demonstrate that the new licensee will be *completely* insulated from RKO and General Tire. In the Bureau's view, an effective level of deterrence has already been achieved by the Commission's previous rulings. Moreover, the public interest would be served by obtaining a qualified licensee to operate RKO's remaining stations and by removing from the broadcast industry "a licensee [RKO] who has shown itself incapable or unwilling to fulfill the high standards expected." [30] However, the Bureau does not favor the proposal unless the new corporation will be completely independent from past and present RKO and General Tire management. Therefore, the Bureau suggests that all ties with present and former officers and directors of RKO and General Tire be severed. The Bureau advocates requiring these directors and officers to divest themselves of all stock in the new corporation within six months of the spin-off.[31] If any question remains as to the new corporation's purported independence from RKO and General Tire, a formal hearing will be necessary.[32]

15. Golden Gate Broadcasting Co. (Golden Gate) and Future Broadcasting, Inc. (Future) oppose the proposed spin-off. They view the proposal as inconsistent with Commission policy that licenses may not be assigned in the face of adverse character questions against the assignor-licensee. They assert that RKO has failed to offer a public interest justification for departing from this general policy. Golden Gate and Future strenuously object to the fact that the O'Neil family will be able to sell their large portion of stock at market price. They argue that by allowing these "substantial benefits" to "wrong-doers," the Commission's policy of deterrence will be undermined.[33] Golden Gate and Future also contest RKO's statement that approval of the spin-off proposal will eliminate needless litigation. First, they remind the Commission that comparative proceedings are not "needless" but instead are mandated by the Communications Act, and thus cannot be dispensed with in the name of expediency. Moreover, RKO's proposal would not avoid lengthy comparative proceedings since competing applications could be filed against the new licensee. Finally, the Commission would be required to designate the

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[22] RKO Comments at 4. A description of RKO's proposal is contained on pages four and five of its comments and in Appendix A to its comments.

[23] The present directors of General Tire are Thomas F. O'Neil, Michael Gerald O'Neil, John O'Neil, Tress E. Pittenger, R. B. Tullis, L. Garvin, D. Bruce Mansfield, David S. Henkel, L. D. Henry, J. T. Morley, and William B. Walsh. The present directors of RKO are Thomas F. O'Neil, John B. Poor, Sr., Frank Shakespeare, Hubert J. DeLynn and William M. Reagan.

[24] RKO imposes two conditions on the grant: receipt of an IRS ruling that the transfer of NewCo. stock to General Tire stockholders will be tax free to the shareholders; and a determination by the General Tire board that there has been no material change in circumstances which would make the distribution not in the best interest of General Tire, its stockholders or RKO. RKO also suggests that to satisfy the Commission's policy of diversification of local media ownership, NewCo., within one year after its stock is distributed to General Tire's stockholders, will submit an application for assignment of one of its Memphis stations, WHBQ(AM) or WHBQ-TV, to a qualified independent party.

[25] RKO Comments at 3, 6.

[26] RKO Comments at 2, 9; Reply Comments of RKO General, Inc., (RKO Reply Comments) July 22, 1980, at 4, 11. RKO relies principally on the following cases: *Steadman* v. *SEC*, 603 F.2d 1126 (5th Cir. 1979) *cert. granted*, 100 S. Ct. 1649 (1980); and *Churchill Tabernacle* v. *FCC*, 160 F.2d 244 (D.C. Cir. 1947).

[27] RKO Comments at 3, 10.

[28] See *Melody Music, Inc.*, 2 FCC 2d 953 (1968); *WMOZ, Inc.*, 3 FCC 2d 637 (1966); *TelePrompTer Cable Systems Inc.*, 40 FCC 2d 1027 (1973).

[29] NAB Comments at 3.

[30] Broadcast Bureau's Comments on impact of WNAC-TV Decision on Other Stations Licensed to RKO General, Inc. (Bureau Comments), filed July 7, 1980 at 8.

[31] As an alternative proposal the Bureau advocates prohibiting the distribution of stock in NewCo. to present and former officers and directors of RKO and General Tire. Bureau Comments at 8.

[32] Bureau Comments at 9.

[33] Reply Comments (Golden Gate Reply), filed July 22, 1980 at 11-12; Reply Comments (Future Reply), filed July 22, 1980 at 11-12. Golden Gate and Future have indicated an intent to file construction permit applications for certain frequencies now licensed to RKO.

NewCo. assignment application for hearing, in any event, to ensure that all of its officers and stockholders were not involved in prior RKO and General Tire misconduct.[34]

16. New South Media Corporation (New South) also opposes RKO's spin-off proposal. New South argues that there are questions which will have to be resolved before the Commission can find the new licensee qualified. First, it notes that there are no assurances that the RKO officials who participated in the prior improprieties and illegalities will not seek to retain their managerial positions with NewCo. Therefore, prior to approving the spin-off proposal, the Commission will meet to identify which RKO personnel were involved in prior corporate wrongdoing, so that the Commission can determine that NewCo.'s management will meet the Commission's standard of fitness.[35] Additionally, the Commission will have to answer questions concerning the nature and use of barter considerations by RKO stations.[36] Finally, New South notes that Gulf & Western Industries, Inc. (Gulf & Western) recently has acquired a significant amount of General Tire stock. In view of recent allegations of corporate misbehavior by Gulf & Western,[37] New South argues that a serious question is raised as to whether a licensee partially owned by such a company will itself be qualified.[38]

17. The National Citizens Committee for Broadcasting (NCCB) also opposes the spin-off proposal, labelling it a "sham." [39] It argues that RKO is precluded by Section 310(d) of the Communications Act from assigning its remaining licenses. According to NCCB, the same controlling stockholders of General Tire who were directly implicated in the prior improper activities will be allowed to profit from their misdeeds through their large ownership share of the proposed licensee. Irrespective of their lack of power to vote stock, they will still realize a profit both through the payment of dividends and the eventual sale of their stock. To allow these individuals to secure a profit from their abuse of the public trust would fail to further a policy of deterrence, as well as constitute a violation of the Communications Act. NCCB contends that since these stockholders will profit, the previous denial of three license renewals will fail to achieve a satisfactory level of deterrence.[40] Additionally, NCCB argues that the Commission has a duty to cleanse the airwaves of those licensees who cannot be trusted. This goal supersedes deterrence as a consideration of primary importance, according to NCCB.[41]

18. *Discussion.* In the present circumstances and on the limited information we have regarding the proposal, we cannot at this time give our approval in principle to RKO's spin-off proposal. At this point we cannot make a finding, as we must under Section 310(d) of the Act, that transfer of RKO's licenses is in the public interest. Moreover, even were we more favorably inclined toward a transfer proposal in theory, we think that RKO's proposal itself raises questions which would necessitate designation for hearing before we could approve it.

19. Before the Commission will approve a transfer of a license, the licensee must be shown to be qualified to hold the license.[42] As discussed previously, all of RKO's remaining licenses have been conditionally renewed subject to the outcome of the Boston proceeding. These conditions place the 13 stations in virtually the same posture as that of RKO's television stations in New York and Los Angeles—the fate of all of these stations was made dependent upon the conclusions and findings in the Boston *Decision.* The only factual distinction of any significance between the status of RKO's New York and Los Angeles television stations and the status of the remaining 13 RKO stations is that WOR-TV and KHJ-TV were involved in comparative proceedings with mutually exclusive applicants whereas the 13 remaining stations were not. The presence or absence of competing applications does not constitute a valid reason for according disparate treatment to these stations. Our *Decision* found RKO to have engaged in serious misconduct on a corporate level: the reciprocal trade practices reflected a corporate-wide policy designed to include all the broadcast stations (and in fact it did involve many stations); [43] the accounting practices which led to the filing of inaccurate financial reports were established at the corporate level, not at any one station; [44] RKO's lack of candor in its dealings with the Commission did not relate to any one station; [45] and the close relationship of General Tire and RKO and the non-broadcast misconduct of General Tire reflect on RKO's general qualifications to be a licensee, not on its operation of any one station.[46] In sum, the determination that RKO is unqualified to be the licensee in Boston rests on grounds that implicate its qualifications to hold licenses for all of its stations.

20. Furthermore, when we conditionally granted RKO's previous renewals, we did so in order to preserve our ability to revisit those renewals should our findings and conclusions in the Boston proceeding so warrant. Now that the Boston proceeding has been completed and our *Decision* released, we are constrained to reevaluate RKO's qualifications to operate these additional stations and consider, in light of the *Decision's* findings and conclusions, whether a grant of those earlier renewal applications would, in fact, serve the public interest. In other words, we must determine whether we would have unconditionally granted RKO's renewal applications for these 13 stations if we had the findings and conclusions made in the Boston *Decision* before us at the times we initially considered those renewal applications. On the basis of the information presently before us, we could not have found RKO qualified and granted its renewals. Since we would not then and, consequently, cannot at present find that approval of RKO's renewal applications would be in the public interest, we must designate RKO's applications for hearing to determine whether RKO is qualified to hold licenses for the 13 stations. Under long standing policy, any transfer application for those 13 stations must be deferred until we determine whether RKO is qualified to hold those licenses.[47]

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[34] Golden Gate Reply at 8-10; Future Reply at 8-10.

[35] Comments of New South Media Corporation Regarding 13 RKO General Broadcast Stations (New South Comments), filed July 7, 1980 at 15-16.

[36] New South Comments at 12-13. The Boston *Decision* left this matter unresolved. *Decision*, n. 377.

[37] On November 26, 1979, the Securities and Exchange Commission filed a Complaint for Permanent Injunction and Other Equitable Relief against Gulf & Western in the U.S. District Court for the District of Columbia, alleging numerous violations of securities laws and regulations. Civil Action No. 79-3201.

[38] New South Comments at 20-21.

[39] Comments Pursuant to the Commission's Request for Advice Regarding the Future Status of RKO General's Remaining Broadcast Licenses (NCCB Comments), filed July 7, 1980 at 25.

[40] NCCB Comments at 27-28; Reply Comments of NCCB, et al. (NCCB Reply Comments), July 22, 1980 at 3-4, 6, 10.

[41] NCCB Reply Comments at 11-12.

[42] See *Jefferson Radio Co.* v. *FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964). See also *Policy Statement on Qualifications of Broadcast Licensees*, 28 RR 2d 705 (1973).

[43] *Decision*, para. 83.

[44] *Id.*, paras. 167-77.

[45] *Id.*, paras. 196-218.

[46] *Id.*, para. 140.

[47] See *Jefferson Radio Co.* v. *FCC*, *supra*; *Policy Statement on Qualifications of Broadcast Licensees*, *supra*. It should be noted, moreover, that RKO has not yet formally submitted a transfer application.

21. RKO has cited exceptions to this general policy that the Commission will not consider an assignment of a broadcast authorization until the Commission has determined that the assignor is qualified to hold the authorization. In each of the instances cited, the Commission permitted the assignment of license despite adverse conclusions as to the licensee. In our view, however, none of the cases cited by RKO justifies approval of the spin-off proposal on the present record.

22. *Melody Music, Inc.* involved a situation where the Commission found that the licensee had engaged in serious misconduct which was unrelated to the operation of its station. After reviewing the evidence, the Commission concluded that nothing in the record required denial of the station's renewal. Thus unlike the present case, in *Melody Music* we specifically refrained from concluding that the licensee was unqualified to hold its license.[48] In the end, we granted the station's renewal application on the condition that the licensee assign its license to an unrelated qualified purchaser. We so conditioned the renewal because, while we did not disqualify the licensee, we retained some doubts as to future conduct arising out of the past misconduct.[49] On the other hand, here we have already found RKO disqualified to hold licenses.

23. *WMOZ, Inc.* involved a situation where the licensee had engaged in wrongdoing which the Commission initially found justified the non-renewal of one station license and the revocation of another uninvolved station license. The Commission later exercised its discretion and permitted the assignment of the uninvolved station to a qualified entity unconnected to the licensee. Our decision was premised upon the fact that the licensee's 99 percent stockholder was a seriously ill man with a limited life expectancy. We stated that while we would ordinarily deny the station's renewal because of the licensee's character deficiencies, due to the special circumstances present we would temper our decision.[50] These unusual and compelling circumstances are not present in the instant case.

24. In *TelePrompTer Cable Systems, Inc.*, the corporate licensee and its president were convicted of conspiracy and perjury resulting from the bribing of local officials to obtain cable television franchises. Immediately after the convictions—and before any Commission consideration (see para. 25, *infra*)—the company replaced the offending officers and directors and dismissed the offending employees.[51] The Commission later found that "the company ha[d] moved boldly to cleanse itself and that the public interest benefits from a healthy TelePrompTer seem[ed] assured."[52] We noted that, as a practical matter, the reorganization transformed the company into a different corporation from the one in existence when the unlawful acts occurred. We therefore found the licensee qualified.[53]

25. RKO's proposal is designed to achieve a similar result: transform the company sufficiently to gain Commission approval. However, we are unable to give that approval at this time. First, in *TelePrompTer*, the corporation's largest shareholder moved quickly to remove the wrongdoers from their positions and to elect a board that would be independent of their influence.[54] In contrast, as we noted in the *Decision*, there has been a general unwillingness on the part of General Tire to remove those officials involved in wrongdoing.[55] Second, we do not have enough information to make the finding that we did in *TelePrompTer* that the reorganization would serve the public interest. In *TelePrompTer*, the corporation showed that a new board was elected as expeditiously as possible, a special study was initiated by the board, and management began a "housecleaning" to purge itself of the misconduct in its past.[56] Thus, there was sufficient information before the Commission to determine that the taint had been removed. In addition, in *TelePrompTer* the Commission undertook an extensive investigation in order to determine whether the public interest would be served by granting its license.[57] In contrast, we have few details concerning RKO's proposal. We do not even have a transfer application for NewCo.

26. Nonetheless, even at this point it seems very likely that the questions raised by the other commentors would require further inquiry. First, RKO's proposal would not prevent present RKO and General Tire officials who are not also board members from leaving their positions to join NewCo. In order to ensure that the proposal meets our standards for qualification, we would have to identify the extent, if any, to which NewCo's proposed managers and officers participated in RKO's wrongdoing, as well as determined whether they should be prohibited from becoming part of NewCo. management.[58] Otherwise the spin-off would not necessarily isolate the wrongdoers and remove them from the management of the resulting Commission licensee. We would likely be required to designate RKO's transfer application, when it is filed, for a hearing to examine NewCo.'s officers' participation in the prior misconduct in order to ensure that NewCo.'s management was free of taint. Second, present members of the RKO and General Tire boards of directors will obtain stock in NewCo. Even though the stock will be held in trust pending divestiture, we question whether the trust will sufficiently insulate the management of NewCo. from these RKO and General Tire officials. These stockholders may still retain the potential to influence the licensee, particularly through their ability to sell their stock at any time within two years and thereby influence the price of the stock.[59] For example, RKO notes that sale of all of this stock within a short period "would almost certainly have an unnecessary adverse effect on the market value of the NewCo. stock held by some 45,000 shareholders."[60] The Commission has in the past been concerned that control of the timing of the sale of stock may permit stockholders to influence a corporation's affairs, in that they may threaten to sell the stock at a less than propitious time.[60a] On the other hand, the nature of

[48] See 2 FCC 2d at 965 (Dissent of Chairman Henry).

[49] 2 FCC 2d at 9962, 964. In *Melody Music*, we followed the precedent of *NBC, Inc.*, 37 FCC 427 (1964). In *NBC*, the Commission found that the network had engaged in anticompetitive misconduct. We conditioned the renewal of one of NBC's licenses upon the transfer of the station to another broadcaster. However, again, unlike the present case, we specifically refrained from finding the licensee unqualified. In *NBC* we concluded that the licensee was qualified.

[50] 3 FCC 2d at 639.

[51] 40 FCC 2d at 1027–31.

[52] *Id.* at 1030.

[53] *Id.* at 1035–1036.

[54] *Id.* at 1029.

[55] *Decision*, para. 235.

[56] 40 FCC 2d at 1029–31.

[57] *Id.* at 1028. TelePompTer had applied for a license in the Cable Television Relay Service.

[58] See *TelePrompTer, supra*, 40 FCC 2d 1028, wherein the Commission attempted to determine which persons were involved in the wrongdoing and whether they were still employed by the company before it would grant the license. The Boston *Decision* did not make a similar identification in RKO's case. See *e.g.*, *Decision*, para. 186, n.377.

[59] See *Bonneville International Corp.*, 43 RR 2d 863, 865 (1977) (beneficial owner's lack of voting control over the trust's shares, by itself, does not sufficiently insulate the beneficial owner from violation of the Commission's cross-ownership rules where the beneficial owner possesses the right to sell those shares).

[60] RKO Reply Comments at 8, n.8.

[60a] *Rust Craft Broadcasting Co.*, 68 FCC 2d 1013, 1018 (1978). (Trust agreement requiring the trustee's approval before any of the trust shares can be sold approved because the provision minimized the chance of the owner's attempting to exert influence over the corporations affairs by a threat to flood the market with part or all of its large block of shares.)

the trust arrangement may be entirely satisfactory. In any event, depending on the actual language of the trust arrangement, a hearing on this issue may be required.[61]

27. These considerations make it likely that any hearing on the NewCo. assignment application will be much more extensive than any inquiry we faced in *TelePrompTer* (and more extensive too than any inquiry we are likely to face if we designate RKO's renewal applications for hearing since, as explained below, that hearing will not involve a relitigation of the issues resolved in the Boston *Decision*).

28. Finally, since RKO has not filed a formal transfer application, its proposal has not yet been subject to full scrutiny. It is likely that the application would generate petitions to deny which would help contribute to more extended proceedings than we envision with the renewal proceedings. And, at the same time the transfer application is being reviewed, RKO's new renewal applications would be coming due.[62] The public interest will be better served by a proceeding designed simply to determine RKO's basic qualifications in light of the Boston *Decision* and any related court actions.

29. In sum, the exceptions cited by RKO to the general Commission policy approved in *Jefferson Radio Co.* v. *FCC, supra,* are inapposite to the facts here. We believe the public interest will be better served in this case by revisiting the conditioned renewals, rather than approving a transfer. Therefore, we do not believe that the public interest will be served by approval of the spin-off proposal at the present time.

B. Allowing Licenses to Come Up in Due Course

30. If no action is taken by the Commission at this time, RKO will continue to operate the stations until its licenses come due for renewal. At that time the Commission would consider RKO's stewardship in light of the Boston *Decision* on a case-by-case basis in the context of any competing applications or petitions to deny filed against individual RKO stations.

31. Future and Golden Gate argue that the Commission should take this course so that RKO's filing of its renewal applications will trigger the rights of other parties to file competing applications.[63] Other commenters argue against it, however. Reasons for opposing this second alternative vary. For example, RKO suggests that this course of action will lead to "a host of competing applicants," and should be rejected so that the Commission can retain reasonable control over its resources, dispatch its business in an orderly manner, and avoid chaos.[64] NAB agrees that deferring action will result in competing applications and comparative proceedings when the renewal applications are filed. It argues that such proceedings are ill-designed for the resolution of basic qualification questions at issue here, and that RKO would operate the stations under a cloud and a burden during the proceedings.[65] The Bureau argues that, in light of the findings in the *Decision,* unconditional renewal of RKO's licenses cannot be justified; at the least, hearings will be required before the Commission could determine that renewal will serve the public interest. It suggests, however, that the Commission need not wait for the license terms to expire before taking action, and that designating all of the conditional renewals would have procedural advantages. It further reminds the Commission that any action must be taken with due respect for the rights of those who desire to file competing applications.[66] NCCB argues that the public interest will not be served by awaiting review of RKO's qualifications in the ordinary course of the future renewal cycle, and that immediate review in a consolidated proceeding will lend to administrative economy.[67]

32. In our view, the findings in the *Decision* raise a serious question about RKO's qualifications to be a Commission licensee. Hence, it is highly unlikely that a determination can be made that renewal will serve the public interest without our holding a hearing on that question.[68] Yet holding individual hearings for each station will tax our resources unduly. Furthermore, waiting for the license terms to expire before taking action may prolong the proceedings unnecessarily, since the licenses expire at various times over the next two years. The last one, WFYR(FM), does not expire until December 1, 1982.[69] Finally, as stated above, reopening the prior renewals will preserve the integrity of the Commission's processes in that the Commission will be acting upon the conditions it placed on the renewals. Consequently, allowing the licenses to come up in due course would not adequately serve the public or RKO's interests.

C. Early Renewal Pursuant to 47 CFR § 73.3539(c).

33. Under Section 73.3539(c) of the Commission's rules the Commission can call for early applications for renewal of licenses "if essential to the proper conduct of a hearing or investigation.[70] This would permit us to consider all of RKO's licenses at the same time, rather than having to wait until applications are filed in due course. This alternative is favored by Future, Golden Gate, and NCCB, who view it as consistent with established Commission procedures.

34. We do not find it necessary to call for early renewal applications. RKO's qualifications to be a licensee can be determined as readily by designating the prior renewals. Moreover, as stated above, reopening the prior renewals will reinforce the integrity of the Commission's processes. Those renewals were conditioned in order to preserve our ability to take appropriate action if the findings in Boston so warranted. We cannot ignore those conditions. Since we need not call for early renewal applications in order to assess RKO's qualifications, we decline to do so.

D. National Black Media Coalition Proposal

35. The National Black Media Coalition (NBMC) has submitted a proposal that the Commission grant renewal of the licenses conditioned on RKO's agreement to transfer the licenses to a non-profit entity, assist the non-profit entity in training and developing minorities to successfully operate the stations, and subsequently transfer the stations to qualified minority owners within three years. This proposal would allegedly conserve administrative resources by avoiding hearings on the 13 stations, and, at the same time, promote diversity in broadcast station ownership by making licenses available to minorities.

36. Implementation of this proposal would require us to take several unusual and unnecessary steps. First, we would have to grant renewals to a licensee

[61] Questions have been raised as to Gulf & Western's qualifications to be a substantial stockholder of General Tire or NewCo. However, since there is no indication that Gulf & Western has or intends to exercise control or otherwise participate actively in these companies, there is no need to examine its qualifications in this proceeding at this point.

[62] For example, RKO's California licenses expire in December, 1980.

[63] 47 CFR § 73.3516(e). See Future Comments at 3–4; Golden Gate Comments at 3. They further argue that the Commission should expedite the processing of such applications.

[64] RKO Comments at 12–13.

[65] NAB Comments at 12–11.

[66] Bureau Comments at 3–4, 14–16.

[67] NCCB Comments at 9.

[68] Section 309(e) of the Communications Act, as amended, 47 U.S.C. 309(e).

[69] We anticipate that any court appeals will be completed before that time.

[70] 47 CFR 73.3539(c).

whose qualifications are in serious question. Second, we would have to place extensive and complex conditions on the renewals and monitor the conduct of the parties under those conditions. Third, we would have to impose an obligation on RKO to train and develop personnel to run the stations. Rather than fashion the extraordinary procedures encompassed by this proposal, we prefer to use our normal processes of examining licensee qualifications in the renewal context.

E. Reopening the Prior Conditionally Granted Renewals

37. The Commission also has available the option of reopening the prior renewal proceedings which resulted in conditional grants to RKO. After considering all of the alternatives, we believe that this is the most appropriate option.[71] As noted above, RKO's other licenses have been renewed without prejudice to any action we deem appropriate as a result of our action in the Boston proceeding. We therefore have served notice upon RKO and others that we might revisit RKO's renewals should our findings in Boston warrant such action. Additionally, reopening these renewals would be entirely consistent with our previous actions. RKO's renewals were conditioned to allow a later assessment by the Commission of the impact of any findings made in the Boston *Decision* on RKO's other stations. Thus, in conformity with our prior actions conditionally granting RKO's renewals, we must revisit these applications to determine whether, in view of the findings contained in the *Decision*, RKO is qualified and a grant of these renewals would serve the public interest.[72]

38. The conditions that we placed on RKO's license renewals were basically the same as those placed on RKO's New York and Los Angeles licenses. In each of these 13 cases, we stated (as we did in the New York and Los Angeles proceedings) that RKO's qualifications were to be determined on the basis of our findings in the Boston proceeding. It is true that the New York and Los Angeles cases were comparative proceedings, whereas the other 13 proceedings do not involve mutually exclusive applicants. But the absence of rival applicants would not justify our declining to perform our statutory responsibility to determine, on the basis of the Boston findings, whether RKO possesses the requisite qualifications for the 13 licenses conditionally granted to it. We deferred that responsibility when we awarded the conditional grants, but we cannot avoid our duty now that the Boston case has been decided. Nor does the pendency of RKO's spin-off proposal provide justification for not examining the relevance of the Boston proceeding. We cannot grant an assignment of those 13 licenses unless we first decide the ultimate qualification question that was postponed until now. Just as we must first decide whether to renew a license before the licensee has a license to assign,[73] so here, with the event upon which the licenses were conditioned having occurred, we must first decide whether RKO is entitled to unconditionally renewed licenses or not. Our duty to consider the impact of the Boston *Decision* on the 13 stations is reinforced by the fact (noted earlier), that the findings made in the Boston proceeding relate to corporatewide misconduct and are not limited to any one station.

39. Taking this action will indeed foreclose competing applications at this time because the "window" for filing such applications will not be opened. This effect is brought about by the fact that the cut-off dates for filing competing applications against RKO's prior renewal applications have long since passed. At the time those RKO's applications were filed, other persons had 90 days from the date of public notice that the RKO applications had been accepted for filing to file mutually exclusive construction permit applications.[74] None did so, despite the fact that most of the information upon which the Commission based its Boston *Decision* disqualifying RKO was already publicly available to potential competing applicants.[75] In addition, once a renewal application has been designated for hearing, the consistent Commission practice has been to place a moratorium on the filing of competing applications until the hearing matter is finally terminated—even if that hearing continues beyond the three-year license term applied for.[76] Thus, having designated RKO's prior renewal applications for hearing, the cut-off procedure in our rules, together with the moratorium on competing applications, will preclude filing of competing applications against RKO's 13 other stations.

40. While this affects potential competitors, our public interest obligation requires us to balance long-term interests with the immediate interest in assuring good broadcasting service to the community.[77] RKO has been operating under a cloud for many years, placing a burden on the corporation and its employees. Given the fact RKO's licenses have been conditionally renewed, fairness to RKO, to its employees, and to the communities in which it operates, as well as respect for the integrity of our processes, require that we address those conditional renewals before undertaking additional proceedings. We cannot simply ignore the Boston result and wait for RKO to file for new licenses as its old licenses come due over the next two years. We recognize that but for the extension of RKO's California renewal filing dates from August 1, 1980 to October 1, 1980, there might have been competing applications filed on top of these renewal applications. But, as we explained in the Boston *Decision*, the

[71] We also have available the option of designating RKO's remaining licenses for revocation pursuant to Section 312(a) of the Communications Act, 47 USC 312(a). The findings made in the Boston proceeding support such action. The choice of formal revocation or reopening the previously granted renewals is one for the Commission to make in its administrative discretion. Of the two alternatives, we prefer reopening the conditioned renewals, since those licenses were granted with the proviso that we might take such action should our findings in the Boston proceeding so warrant. To give effect to this conditional language it is appropriate to reopen the conditioned renewals.

[72] Subsequent to the pleading cycle established by the Boston *Decision*, RKO informed the Commission that it has received an examination report from the Internal Revenue Service proposing assessments of additional income tax and a civil fraud penalty against General Tire and its consolidated subsidiaries. The IRS report relates in part to the documentation of trade and barter transactions and the effect of those transactions on RKO's profit levels. Various commentators have suggested that these allegations should be examined to determine their impact on RKO's qualifications to be a broadcast licensee. Our decision in Boston did not rely on the effects of the trades and barters on RKO's profit levels, but rather on the inadequate accounting practices involving these transactions which led to the filing of inaccurate financial reports. Therefore, we do not rely on the IRS report for our decision to reopen the prior renewals based on the findings in Boston. However, if sufficiently specific information is presented at the hearing to raise a substantial and material question of fact, the Administrative Law Judge may entertain motions to enlarge issues to consider the IRS report and any other appropriate matters.

[73] See *Jefferson Radio Co.* v. *FCC, supra.*

[74] 47 CFR § 73.3516(e).

[75] The Report of General Tire's Special Review Committee was filed with the Commission in July 1977. See Boston *Decision*, 78 FCC 2d at 19. Allegations about RKO's filing of false 324 forms had been made even earlier. *Id.* at 18–19. The reciprocal trades issue, of course, has been developed in earlier proceedings. *Id.* at 43–44, n.156.

[76] See *Committee for Open Media* v. *FCC*, 543 F.2d 861, 872–73 (D.C. Cir. 1976). A somewhat different rule obtains when action on the application has been deferred rather than put in hearing status. *Carlisle Broadcasting Associates*, 59 FCC 2d 835,838 (1976).

[77] See *Grayson, supra*, para. 9. In *Committee for Open Media, supra*, the court of appeals recognized the difficulties the Commission faces in balancing the rights of various parties when proceedings become prolonged. However, since the question was not properly before it, the court did not decide how to strike that balance, leaving the question open for the Commission.

extension to October 1 was necessary in order "to afford the Commission an adequate opportunity to consider those comments and reply comments [regarding what action to take with respect to the 13 licenses] and to make a prompt, reasoned determination from the full universe of presently available options. . . ."[78] We believed it essential for a fair determination in the public interest that we have the additional time to study the parties' pleadings and to prepare an appropriate opinion and order. Any rush to judgment on such as issue would have been contrary to standards of fair and careful administrative decisionmaking.

41. In this light, the public interest need for clear resolution of RKO's qualifications outweighs the benefits of possibly having a choice of applicants at this stage for these 13 licenses. If RKO retains its licenses, competing applicants will have the opportunity to file at the next renewal time for these stations, just as they had the opportunity to compete when the previous renewal applications were filed. If RKO loses any or all of its licenses, there will be similar opportunities for the filing of competing applications.

42. Upon designation of its prior renewal applications, RKO will be permitted to present mitigating evidence. Such evidence may include but is not limited to information concerning "meritorious programming" which RKO has broadcast at individual stations. A finding of meritorious programming at a particular station would be relevant only to the license for that station. In addition, RKO may present other mitigating evidence with respect to its remaining licenses. Based on the eveidence developed at the hearing, there may be a number of courses of action available to the Commission. For example, we may determine: (1) that RKO is qualified and that the public interest would be served by a full three-year renewal, (2) that RKO is qualified but that the public interest would be served by a short-term renewal, (3) that RKO is not qualified and that its application(s) should be denied, or (4) that RKO is granted renewal conditioned upon its assigning or transferring the renewed licenses. Other outcomes may also be possible.

43. We believe that our action today is fully consistent with prior Commission decisions. the Commission must ensure that only dependable and trustworthy licensees operate broadcast stations even if the licensee is a multiple owner. In *Star Stations of Indiana*,[79] the Commission denied all five of the renewal applications of a multiple owner where the record demonstrated a "reprehensible course of misconduct" which involved the basic character qualifications of the licensee.[80] The pervasive and continuing misconduct demonstrated in the licensee's operations of its stations required the denial of each of its renewal applications. Likewise here, the record in the Boston proceeding demonstrates pervasive and continuing misconduct which clearly requires that each of RKO's renewal applications be considered in a renewal proceeding to determine whether RKO possesses the requisite qualifications to continue as a licensee of this Commission.

44. It should be emphasized here, though, that we are not taking any final action against RKO at this time. In order to ensure that any action taken with respect to the 13 stations is consistent with judicial action in the Boston, New York and Los Angeles cases, and thereby conserve administrative resources, we will direct that the hearing not commence until the court proceedings have been completed. Deferral will not significantly delay the final resolution of the proceedings. As discussed below, application of the principle of collateral estoppel will preclude relitigation of the findings and conclusions of the Boston *Decision*, especially since action by the courts will leave no doubt as to those findings and conclusions to which collateral estoppel applies. This will result in a simplified hearing proceeding and a clear and expeditious resolution of the question of RKO's qualifications to be a licensee.

45. In designating RKO's prior renewals, we do not seek to assess a penalty upon RKO for its past actions. Designation for hearing is not in itself a sanction. Instead, we are attempting to carry out our function under the Communications Act by ensuring that the privilege to act as a trustee of a scarce public resource is accorded only to those licensees who possess the necessary qualifications.[81]

46. Furthermore, contrary to RKO's argument, our action does not conflict with *Churchill Tabernacle* v. *FCC*.[82] In that case the Commission had regularly approved a contract provision between a broadcast licensee and a church for a period of several years. The Commission later reversed itself and ordered the contract provision cancelled. The appellant-church had made substantial non-recoverable investments during the time the contract had been in effect and, as a result, was faced with serious economic injury. The court reversed the Commission, stating that "valuable rights and investments made in reliance on a license of the Federal Communications Commission should not be destroyed except for the most compelling reasons.[83] It further said that the FCC "owes the duty to exhaust all possible avenues of compliance before requiring complete destruction of the private interest." Unlike *Churchill Tabernacle*, no reversal of a prior Commission determination is involved here.[84] The grants of RKO's renewals clearly were made contingent on our findings in the Boston proceeding. Thus, our action today is in complete conformity with our previous actions. In addition, whereas the church in *Churchill Tabernacle* made valuable investments in reliance upon favorable Commission considerations, RKO can make no such claim here. It has long been on notice that the impact of the Boston record would carry over to these licenses. Thus, it had no reason to treat these conditional renewals as anything more than what they stated on their face.[85]

III. Application of Collateral Estoppel

47. The last question to be decided now is the impact of our findings and conclusions in the Boston *Decision* on the proceedings to be held concerning the 13 other RKO stations. A number of parties, including RKO, have explicitly addressed the applicability of the doctrines of *res judicata* and collateral estoppel to those further proceedings.

48. *Res judicata* means that an issue has been decided finally. *Res judicata* takes effect when a final judgment has

[78] 78 FCC 2d at 118.

[79] 51 FCC 2d 95 (1975).

[80] *Id.* at 97.

[81] RKO cites *Steadman* v. *SEC*, 603 F. 2d 1126 (5th Cir. 1976), *cert. granted*, 100 S. Ct. 1849 (1980). In *Steadman* the SEC found an investment advisor guilty of violations of several securities laws and applied sanctions which had the effect of excluding him indifinitely from his profession. The court held that where the most severe sanctions are applied, the SEC has the obligation to explain why less drastic remedies would not suffice. 603 F. 2d at 1139. *Steadman* is inapplicable because we are not imposing sanctions or otherwise taking final action here. Any action taken as a result of the hearing will of course have to be fully explained and justified. Even if *Steadman* were to apply at this point, our action, designation for hearing, is indeed the least drastic course consistent with the public interest. The findings in the Boston *Decision* are so serious that we cannot avoid our duty to revisit the conditionally granted renewals and to determine whether RKO has the requisite qualifications to be a Commission licensee.

[82] 160 F.2d 244 (D.C. Cir. 1947).

[83] *Id.* at 247.

[84] *Id.* at 248.

[85] *Churchill Tabernacle* was distinguished on a similar basis in *Jefferson Radio Company* v. *FCC*, 340 F.2d at 783, n.4.

been entered by a competent authority on the merits of a cause of action. The result of its application is that the parties are precluded from re-litigating not only matters that were decided but also matters that could have been litigated as part of that action.[86] If, however, the second action is a different cause of action, the principle of collateral estoppel applies. In that case the prior judgment precludes re-litigation only of those matters which actually were in issue and upon which the decision was rendered.[87] As one commentator has observed, "The essence of collateral estoppel by judgment is that some question or fact in dispute has been judicially and finally determined by a court of competent jurisdiction between the same parties or their privies."[88]

49. The United States Supreme Court has held that *res judicata* principles are appropriately applied in administrative proceedings:

> When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose.[89]

Similarly, collateral estoppel applies in administrative proceedings where given issues or facts have been litigated and determined in a prior final decision.[90] It is well-settled, moreover, that FCC licensing proceedings are adjudications subject to the principles of *res judicata* and collateral estoppel.[91]

50. RKO does not dispute the general principle that under certain circumstances *res judicata* and collateral estoppel can apply to FCC licensing proceedings. However, RKO claims that it would be inappropriate to apply either *res judicata* or collateral estoppel to make the findings of the Boston *Decision* binding in any further proceedings concerning RKO's 13 other stations.

51. At the outset, it should be noted that we agree with RKO that collateral estoppel, and not *res judicata*, is the appropriate principle applicable here.[92] In rendering its decision in the Boston case the Commission did not purport to issue a final judgment on RKO's qualifications to retain the licenses to operate the 13 other stations. Since the cause of action was not identical, it would be inappropriate to apply *res judicata*. Agreement with RKO on that point, however, does not in any way undercut the binding effect of the Boston findings. It would be a waste of public and private resources for this Commission to initiate a hearing to examine matters that have been adequately litigated and decided in that earlier proceeding. RKO nonetheless argues in effect that collateral estoppel does not apply and that the Commission should initiate hearings to re-litigate those matters considered in the Boston case. None of RKO's arguments, either individually or collectively, has merit.

52. For collateral estoppel to be applied in cases involving the same parties, three elements must be present: (1) the issue must have been litigated by the parties; (2) the issue must be decided by the tribunal; and (3) the issue decided must be a necessary part of the tribunal's judgment.[93] RKO does not dispute the fact that the Commission's Boston *Decision* resolved issues concerning the General Tire and RKO reciprocal trade relations program, the filing of false financial data with the Commission, the lack of candor exhibited by General Tire and RKO in their dealings with the Commission, and the non-broadcast misconduct engaged in by General Tire. However, RKO seems to claim that some of the issues were not fully litigated and that, even if they were, they were not a necessary part of the Commission's decision. Each of these arguments will be considered separately.

1. Litigation of Issues

53. RKO argues that the matters in the Boston *Decision* have not been fully litigated because: (1) with the exception of the reciprocal trades issue, RKO did not have a full evidentiary hearing on the matters decided, and (2) the Boston *Decision* is still on appeal to the courts.

54. RKO is correct that, with the exception of the reciprocal trades issue, the Commission did not conduct a trial-type evidentiary hearing with respect to the other issues decided in the Boston case. The Commission concluded that further evidentiary hearings on those issues were unnecessary because its findings were based on admissions against interest by RKO, RKO's own pleadings, and affidavits submitted by RKO in its proffer of proof.[94] Thus, since RKO had a full opportunity to proffer any and all relevant evidence, and since the *Decision* relies on RKO's admissions and on matters as to which there is no dispute, further hearings on the matters decided in the Boston *Decision* are unnecessary. Therefore, RKO's reliance on *Nasem* v. *Brown*[95] is misplaced. That case involved the discharge of an employee who had filed a discrimination complaint against his employing agency. The question was whether the discharge was a retaliation against the employee. In sustaining the employee's complaint in the first proceeding, the deciding tribunal did not take any testimony from relevant agency personnel. Consequently, the court on appeal decided that the findings of that first judgment could not be binding on the employing agency in a second trial of the discharge issue. The court said that it was "particularly disturbed by the inability of the parties to present live witness testimony in a proceeding that *necessarily turns largely on retaliatory motivation and thus demands that the decision-maker weigh witness credibility.*"[96] In contrast, for the most part, motivation was not a factor in the Commission's *Decision*. The reciprocal trade practices, the filing of false financial forms, the lack of candor exhibited in RKO's pleadings, and the non-broadcast misconduct engaged in by General Tire—all these are matters of fact which exist independently of motivation and witness credibility.[97] Such misconduct in itself was sufficient to disqualify RKO, regardless of its motives for its behavior. More importantly, unlike the *Nasem* case, RKO had a full opportunity to develop the record on matters of decisional significance. We found in the Boston *Decision* that RKO had adequate notice of the issues to be considered, was accorded numerous opportunities to submit relevant information, and took

[86] *See Commissioner* v. *Sunnen*, 333 U.S. 591, 597 (1948).

[87] *Id.* at 598.

[88] 1B *Moore's Federal Practice*, ¶0.441[2], at 3777 (2d ed. 1974).

[89] *United States* v. *Utah Construction and Mining Co.*, 384 U.S. 394, 422 (1966).

[90] *See Nasem* v. *Brown*, 595 F.2d 801, 805 (D.C. Cir. 1979).

[91] *Gordon County Broadcasting Co.* v. *FCC*, 446 F.2d 1335, 1338 (D.C. Cir. 1971); *Sayger* v. *FCC*, 312 F.2d 352, 356 (D.C. Cir. 1962); *Tomah-Mauston Broadcasting Co.* v. *FCC*, 306 F.2d 811, 813 (D.C. Cir. 1962); *WIOO, Inc.*, 68 FCC 2d 127, 128 FCC 2d 127, 128 (1978).

[92] See *WIOO Inc.*, *supra*, 68 FCC 2d 128, n.3.

[93] F. James & G. Hazard, *Civil Procedure* § 11.16 (2d ed. 1977).

[94] *Decision*, paras. 141–161. The major part of the admissions consisted of the Special Report prepared by the General Tire Board of Directors. In the case of the proffered affidavits, the Commission's decision assumed their accuracy with one exception: the statement by John Fitzgerald, the comptroller of RKO, who stated that he was not aware of the false information in the financial reports until after the issuance of the Special Report in 1977. The Commission concluded that that statement was simply unbelievable in light of certain documents generated by RKO (most of which originated with Fitzgerald's office). *Id.* at paras. 168–179.

[95] 595 F.2d 801 (D.C. Cir. 1979).

[96] *Id.* at 807 (citation omitted, emphasis added).

[97] See *e.g.*, *Decision*, para. 187, n.379, wherein we stated, with respect to the filing of false financial reports, "we do not rely on RKO's motives as a basis for our Decision here. Whatever RKO's motive, the facts of a knowing misrepresentation remain unaffected."

advantage of those opportunities by proposing findings of fact and conclusions of law and participating in oral argument.[98] Indeed, as explained before—and unlike the *Nasem* case—most of the findings rely on documents generated by General Tire and RKO themselves.[99]

55. RKO also contends that the Commission cannot rely on the findings of the Boston *Decision* until the court appeals of that case have run their course. RKO apparently believes that the pendency of those appeals requires the Commission to re-litigate matters that have already occupied more than 11 years and untold resources of the Commission and private parties. RKO's contention plainly has no merit: "The federal rule is that the pendency of an appeal does not suspend the operation of an otherwise final judgment as *res judicata* or collateral estoppel, unless the appeal removes the entire case to the appellate court and constitutes a proceeding de novo.[100] In any event, by deferring commencement of the hearing until the court actions have been completed, we will be able to fully account for any judicial decision in the Boston case in any action we may take with respect to RKO's 13 other stations.

2. Necessity of Issues to Decision

56. The Commission's Boston *Decision* rests on numerous grounds, several of which provide an independent basis for judgment. RKO claims that reliance on alternative grounds for decision precludes application of collateral estoppel.[101] In support of its position RKO relies on two cases, *Halpern* v. *Schwartz*[102] and *AT&T* v. *FCC*.[103] Neither of those cases, however, is controlling here.

57. The *Halpern* case concerned the question of whether a party in bankruptcy had conveyed certain property with the specific intention of defrauding creditors. The first tribunal made three findings, one of which specifically found that the party had a fradulent intent. In a subsequent bankruptcy proceeding against the same party, the court said that the finding of fraudulent intent was not binding. The court expressed concern that the existence of alternative grounds "may not have been afforded the careful deliberation and analysis normally applied to essential issues. . . .[104] The court also said that the party in bankrupcy could not have anticipated the second proceeding and, accordingly, she would have been forced to be clairvoyant to know that she should have pursued each independent ground on appeal in order to avoid adverse affects in subsequent proceedings.[105] In *Williams* v. *Ward*, the Second Circuit Court of Appeals subsequently made it clear that the *Halpern* case was confined to "'the facts before (the *Halpern* court) . . .'"[106] *Williams* involved a suit by a state prisoner which was dismissed by the District Court on procedural and substantive grounds. Another related suit was filed in a different district court. The appellate court said *res judicata* would bar relitigation of the matters found by the first court even though there were alternative findings. The Court distinguished *Halpern* from *Williams* because in the latter case: (1) it was clear that both alternative findings had been given careful consideration by the court, and (2) the party involved recognized that the findings in one case could have an impact on another case in which the party was involved.[107]

58. The instant situation involving RKO is very much like *Williams*. It is quite clear that the Commission's decision in the Boston case reflects a very careful deliberation of all issues resolved. The matter had been in hearing for almost 11 years, the record is voluminous, all parties were given every opportunity to present evidence on all issues, and the Commission decision is a detailed 134-page analysis of the issues resolved. Moreover, and again like *Williams*, RKO fully recognized that the Commission's findings in the Boston case could have an impact on RKO's other 13 stations. The renewal applications for those 13 other stations had been repeatedly conditioned on the outcome of the Boston case. If the condition had any meaning at all, it signified that the Commission might take further action with respect to those renewal applications based on any findings the Commission made in the Boston case. The condition would have been a totally empty gesture if, as RKO implies, it meant only that the Commission could re-try all the matters decided in the Boston case in order to make a judgment whether RKO could operate its other broadcast stations.

59. The *AT&T* case cited by RKO here is equally inapposite. That case concerned Commission findings that certain rates contained in an AT&T tariff were anticompetitive. At the time of appeal, however, the rates had been replaced by the filing of a new AT&T tariff. AT&T asked the court to review the findings on the first tariff. The court dismissed AT&T's petition for want of jurisdiction since the rates involved were no longer in effect. In the course of its opinion, the court intimated in *dictum* that the Commission's findings in that first case "appear poor candidates for collateral estoppel" in part because the Commission's decision included alternative findings.[108] The court appeared to be concerned that the presence of alternative findings would not have assured AT&T of judicial review, particularly if an independent ground was not fully argued on appeal. Aside from the fact that the court's language is *dictum*, the factual basis of the court's concern isreadily distinguishable from the instant situation. Here, RKO has appealed the Boston *Decision* and will have a judgment as to whether the Commission's action denying RKO's Boston application is valid. RKO has a vital interest in challenging any alternative holding in the Boston *Decision* since each independently would disqualify it. We do agree with RKO that collateral estoppel will only apply to those grounds on which the

[98] See *Decision*, paras. 141–161, 193–195, 219–221.

[99] RKO suggests that there would be an inconsistency in the Commission's position if it relied on collateral estoppel or *res judicata* in the proceedings on its 13 other stations. RKO claims that the Commission did not let those principles bar it from reopening the question in the Boston proceeding of the reciprocal trade matters when that matter had been decided in the KHJ-TV proceedings. RKO Reply Comments at 12, n.14. RKO's suggestion is totally inapposite. The KHJ-TV proceeding looked at the reciprocal trades program *solely* in terms of how it affected KHJ-TV. The Boston proceeding, on the other hand, looked at the reciprocal trades practice from the much broader corporate-wide perspective. Moreover, the reciprocal trades issue was designated in the Boston case long before the Commission had issued its decision in the KHJ-TV proceeding. See *Decision*, paras. 6, 86, n.156. Finally, there was no final resolution of the issue in the KHJ-TV proceeding since the court expressly conditioned its decision on the outcome of the Boston proceeding. 515 F.2d at 703, n.45.

[100] 1B *Moore's Federal Practice*, ¶0.416[3], at 2252 (citations omitted).

[101] RKO Reply Comments at 17, n.24.

[102] 426 F.2d 102 (2d Cir. 1970).

[103] 602 F.2d 401 (D.C. Cir. 1979).

[104] 426 F.2d at 105.

[105] *Id.* at 105–06.

[106] 556 F.2d 1143, 1154 (2d Cir. 1977), *cert. dismissed*, 434 U.S. 944 (1977), quoting *Halpern*, 426 F.2d at 105. See 1B *Moore's Federal Practice*, ¶0.443[5], at 3920–21.

[107] 556 F.2d at 1154. Although the *Williams* Court chose not to rest its decision on the ground of *res judicata*, *id.* at 1155, we find its reasoning on the *res judicata* question and its treatment of *Halpern* persuasive. Another Second Circuit decision, *Winters* v. *Lavine*, 574 F.2d 46 (2d Cir. 1978), followed *Williams'* reasoning rather than *Halpern's*. Winters' claim for Medicaid reimbursement for Christian Scientist nursing services was denied by a state court on statutory and constitutional grounds. In a subsequent suit in federal court the court applied collateral estoppel to bar relitigation of those findings. The appellate court upheld this action even though the original decision rested on alternative grounds. 574 F.2d at 66–67.

[108] 602 F. 2d at 409, n. 48.

court bases its decision.[109] And, as explained earlier, deferring commencement of the hearing will enable the Commission to take any action it deems appropriate with respect to RKO's 13 other stations in light of any judicial decision rendered in the Boston case.

60. In sum, then, RKO has already had a full opportunity to litigate all the issues resolved in the Boston case. On this score it is important to emphasize—as we did in the Boston case—that RKO was allowed to proffer any evidence that it felt relevant to the issues.[110] Even now, RKO does not specify what additional evidence it wants to introduce that it did not have an opportunity to introduce previously. In this context, collateral estoppel clearly applies. RKO is therefore bound by the factual findings and conclusions issued in the Boston *Decision*. As RKO has requested, however, we will allow it to introduce evidence on meritorious programming with respect to the 13 other stations and any other mitigating evidence with respect to its remaining licenses.

IV. Conclusion

61. After careful consideration of the alternatives available to us, we have decided to reopen the renewal applications for RKO's 13 licenses which were conditionally granted pending the outcome of the Boston proceeding. The hearing will not begin until all court appeals in the Boston, New York, and Los Angeles cases have been completed. RKO will be estopped from relitigating the findings made in the Boston *Decision*. RKO may present evidence of meritorious programming on a station-by-station basis and other mitigating evidence with respect to its remaining licenses.

62. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, 47 USC Section 309(e), the applications for renewal of licenses for stations WOR, WXLO(FM), WRKO, WROR(FM), WGMS, WGMS-FM, WAXY(FM), WFYR(FM), WHBQ, WHBQ-TV, KFRC, KRTH(FM), and KHJ, filed by RKO General, Inc. are DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place and before an Administrative Law Judge to be specified in a subsequent Order, upon the following issues:

(1) to determine, in light of the Commission's findings and conclusions in the matter of *RKO General, Inc. (WNAC-TV)*, 78 FCC 2d 1 (1980), and any showing RKO makes in mitigation, whether RKO General, Inc., possesses the requisite qualifications to be a broadcast licensee of this Commission for the above-captioned stations; and

(2) to determine, in light of the findings and conclusions made with respect to the foregoing issue, whether a grant of the above-captioned applications for renewal of licenses would serve the public interest, convenience and necessity.

63. IT IS FURTHER ORDERED, That, to avail itself of the opportunity to be heard, the applicant herein shall, pursuant to Section 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.

64. IT IS FURTHER ORDERED, That the hearing shall not commence until the judicial appeals of *RKO General, Inc., WNAC-TV*, 78 FCC 2d 1, *KHJ-TV*, 78 FCC 2d 355, and *WOR-TV*, 78 FCC 2d 357, have been completed.

65. IT IS FURTHER ORDERED, That, in light of the unique circumstances of this proceeding, the provisions of Section 73.3594 of the Commission's Rules regarding local public notice of designation for hearing shall be waived until the subsequent order specifying the time and place of the commencement of the hearing has been released.

66. It Is Further Ordered, That this order shall go into effect immediately upon its adoption, September 30, 1980.

67. It Is Further Ordered, That the Petition to Accept Replies filed by New England Television Corporation IS Granted and the Petition to Intervene filed by National Black Media Coalition IS Dismissed.

Federal Communications Commission.[111]

William J. Tricarico,

Secretary.

Dissenting Statement of Commissioner Robert E. Lee; In Re: Licenses Held by RKO General, Inc., for 13 Broadcast Stations

I cannot agree that these stations should be set for hearing on the basis of the conclusions reached in the WNAC-TV decision. *RKO General, Inc. (WNAC-TV)*, 78 FCC 2d 1 (1980). As I said in my dissent there, 78 FCC 2d at 135, I do not believe that those conclusions withstand close scrutiny. However, I recognize my colleagues' dilemma because, if their considered view of the WNAC-TV record is the correct one, there really is no reasonable alternative to the action taken today. Only time—and the decision of the court of appeals—will tell us who was right. In the meantime, I applaud my colleagues' courage in making a decision which cannot be avoided in good conscience.

Concurring Statement of FCC Commissioner James H. Quello; Re: Disposition of RKO General, Inc.'s 13 Other Stations

I am reluctantly concurring because of the guarantees that hearings will not commence until court appeals are completed.

Without the provisions for an effective freeze on hearings, I would have vigorously dissented. Even with the provision, I strongly disagree with the conclusions advanced in the Commission's document reflecting improperly on RKO's character qualifications.

I believe the Commission is still perpetuating the gross injustice of the first RKO decision when the Commission overruled its Administrative Law Judge and its own Broadcast Bureau that resulted in denying the licenses of three major TV stations and jeopardizing thirteen other stations. This first decision already represents the harshest punishment in FCC history.

Today's decision designating the thirteen stations for hearing further emphasizes the *critical* need for more mature, objective Commission reasoning. It particularly calls for outright rejection of the unprecedented and preposterous "character is not divisible theory" which triggers a chain of draconian license denials—harsh inequitable punishment out of all proportion to the violations committed or for the punishment necessary to assure a proper deterrent effect.

Today the majority has again overruled its Broadcast Bureau which recommended approval of a spin-off proposal submitted by RKO. I favored the spin-off, but it was rejected by a majority vote of the Commission. The proposed spin-off would have protected the innocent stockholders and assure that future operations of the stations would be in compliance with Commission rules and in the public interest.

Concurring Statement of Commissioner Abbott Washburn; Re: Thirteen Applications of RKO General

September 30, 1980.

I am concurring in the result of today's action because it is the course which best preserves the *status quo* until the courts have ruled on the majority's decision not to renew the licenses for stations WNAC-TV, WOR-TV, KHJ-TV.

The evidentiary hearing on the 13 stations—called for in the Order—will not commence until the completion of the court appeals in the earlier decision. This preserves the 13 stations' *status quo*, since no application for the licenses may be filed by other parties in the meantime.

If RKO loses its court appeal, it will be able to "distress-sale" the properties before the hearing commences. Or, if it so chooses, it may come to the Commission with the spin-off proposal at that time, or proceed through the hearing.

If, on the other hand, RKO is successful in its court appeal, there will be no reason for the hearing to be held.

I dissented to the majority's earlier decision because I believed it not in the

[109] 1B *Moore's Federal Practice*, ¶0.443[5], at 3921, n.10.

[110] See, *e.g.* Boston *Decision*, paras. 158–160, 232.

[111] See attached statements of Commissioners Lee, Quello and Washburn.

public interest. I concur in the procedure established by today's action as not being inconsistent with my previous dissent. It preserves the *status quo* and thus reduces the possibility of even greater regulatory injustice to this licensee.

Spin-Off Motion Defeated

I had felt that the licensee should at least be given further opportunity to submit its spin-off proposal. To this end I offered a resolution, at today's meeting, designed to implement the position of the Broadcast Bureau in this regard and to allow us to give full and just consideration to the proposal. The motion would have permitted RKO to submit its spin-off application within 15 days (incorporating certain changes that might make it more acceptable to the Commission). The motion was defeated four to three.

Rejection of the spin-off proposal compounds the error of the majority's earlier decision in which it found that the parent corporation engaged in a variety of "broadcast related" misconduct and concluded that RKO was unfit to be a licensee. I neither subscribe to that decision nor do I believe that it precludes the Commission from approving the assignment of the remaining 13 stations.

Simply stated, Sections 310(d), 308 and 309(e) of the Act require a finding that an assignment serves the public interest. In cases such as this where an adverse finding has been made as to the assignor, that standard is met where (1) the assignee would be found qualified, and (2) the transfer would not undermine the Commission's deterrence policy.

Both prongs of this test would be met by allowing the spin-off proposal, if a perfected spin-off application were eventually submitted to the Commission. As examples of necessary changes: all contingency clauses preserving RKO's discretion to later abandon the spin-off would have to be eliminated and we would need a firm commitment identifying the new officers, managers and directors of NewCo. From the brief, broad outline of the proposal, it is clear to the Broadcast Bureau, Commissioners Lee, Quello and myself that to transfer *de jure* control of RKO from its parent, General Tire, to the individual stockholders of General Tire would produce a qualified assignee. If not, the Commission could deny final approval of the transfer.

Similarly, the deterrent effect of punishing General Tire has already been accomplished by stripping RKO of its Boston, New York and Los Angeles television stations. I cannot see how approval of the transfer could possibly encourage other broadcasters to engage in the alleged conduct on which the majority relied to deny RKO's renewals of WNAC-TV, WOR-TV and KHJ-TV. As the Broadcast Bureau correctly stated: "... an effective level of deterrence has already been achieved in RKO's loss of three major market television stations." See Broadcast Bureau comments filed July 7, 1980, paragraph 11.

Approval of the spin-off would fulfill the requirements of the Act as well as serve other equitable and public interest considerations. For instance, the Commission frequently exercises its discretion in fashioning equitable remedies. *Cathryn C. Murphy*, 42 FCC 2d 346 (1973); *Second Thursday Corp.*, 22 FCC 2d 575, *recon. granted*, 25 FCC 2d 112 (1970). Approval of the transfer to NewCo would be consistent with these precedents in that the adverse impact on General Tire's 45,000 innocent shareholders would be minimized.

Appendix A

In response to the Commission's invitation for comments concerning what action, if any, the Commission should take with respect to RKO's 13 licenses, the following submissions were received:

Comments

RKO General, Inc.
Broadcast Bureau
National Association of Broadcasters
American Federation of Television and Radio Artists
Congressmen John F. Seiberling, Joseph P. Addabbo, Ralph S. Regula and Carroll Hubbard
Senators Barry Goldwater and Bob Packwood
Multi-State Communications, Inc.
Golden Gate Broadcasting, Inc.
Future Broadcasting, Inc.
New South Media Corporation
National Black Media Coalition
National Citizens Committee For Broadcasting

Reply Comments

RKO General, Inc.
Multi-State Communications, Inc.
Golden Gate Broadcasting, Inc.
Future Broadcasting, Inc.
New South Media Corporation
National Black Media Coalition
National Citizens Committee for Broadcasting
New England Television Corporation[112]

[FR Doc. 80-39339 Filed 12-17-80; 8:45 am]
BILLING CODE 6712-01-M

Radio Technical Commission for Marine Services; Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 76, "Maritime Advisory Committee In Preparation for the 1982 Mobile Services World Administrative Radio Conference (1982 Mobile Services WARC)", Notice of 6th Meeting, Wednesday, January 7, 1981—9:30 a.m. to 4:30 p.m., 1st Floor Auditorium, Comsat Building, 940 L'Enfant Plaza SW., Washington, D.C.

Agenda

1. Call to Order; Chairman's Report.
2. Administrative matters.
3. Discussion of Proposals and review of work program.
4. Establishment of future meeting schedule.

Charles Dorian, Chairman, SC-76, Comsat Corporation, Washington, D.C., Phone: (202) 554-6756.

Special Committee No. 74, "Digital Selective Calling", Notice of 17th Meeting, Wednesday, January 14, 1981—9:00 a.m.; Thursday, January 15, 1981—9:00 a.m., Conference Room 9232/34, Nassif (DOT) Building, 400 Seventh Street, S.W. (at D Street), Washington, D.C.

Agenda

1. Call to Order; Chairman's Report.
2. Administrative Matters.
3. Meeting of Ship Station Safety Working Group and Coast Station Working Group.
4. Working Group Reports.
5. Future work assignments.

T. de Haas, Chairman, SC-74, National Telecommunications & Infor. Admn., 325 Broadway, Bldg. 22, Boulder, CO 80303, Phone: (303) 497-3728

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

Federal Communications Commission,
William J. Tricarico,
Secretary.

[FR Doc. 80-39342 Filed 12-17-80; 8:45 am]
BILLING CODE 6712-01-M

[112]New England Television Corporation filed a petition to accept replies which will be granted consistent with the objective to obtain as broad a cross-section of responses as possible.

FEDERAL RESERVE SYSTEM

Echo Bancshares, Inc.; Formation of Bank Holding Company

Echo Bancshares, Inc., Echo, Minnesota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Citizens State Bank of Echo, Echo, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should

submit views in writing to the Reserve Bank, to be received not later than January 9, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 10, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-39288 Filed 12-17-80; 8:45 am]

BILLING CODE 6210-01-M

Elston Corp.; Formation of Bank Holding Company

Elston Corporation, Crawfordsville, Indiana, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of the successor by merger to Elston Bank & Trust Company, Crawfordsville, Indiana. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 12, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 11, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-39289 Filed 12-17-80; 8:45 am]

BILLING CODE 6210-01-M

Mercantile Bancorporation, Inc.; Acquisition of Bank

Mercantile Bancorporation, Inc., St. Louis, Missouri, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Peoples Bank of Kansas City, Kansas City, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 8, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 11, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-39290 Filed 12-17-80; 8:45 am]

BILLING CODE 6210-01-M

Orient Bancorporation; Formation of Bank Holding Company

Orient Bancorporation, San Francisco, California, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Bank of The Orient, San Francisco, California. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 9, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 11, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-39291 Filed 12-17-80; 8:45 am]

BILLING CODE 6210-01-M

1st Southeast Banking Corp.; Acquisition of Bank

1st Southeast Banking Corp., Darien, Wisconsin, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 87 per cent or more of the voting shares of 1st Bank Southeast of Silver Lake, Silver Lake, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 9, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 10, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-39231 Filed 12-17-80; 8:45 am]

BILLING CODE 6210-01-M

1st Southeast Banking Corp.; Acquisition of Bank

1st Southeast Banking Corp., Darien, Wisconsin, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of 1st Bank Southeast of West Kenosha, Kenosha, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later that January 9, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 10, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-39232 Filed 12-17-80; 8:45 am]

BILLING CODE 6210-01-M

1st Southeast Banking Corp.; Acquisition of Bank

1st Southeast Banking Corp., Darien, Wisconsin, has applied for the Board's approval under Section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 62 per cent or more of the voting shares of 1st Bank Southeast, Kenosha, Wisconsin. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 9, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 10, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-39283 Filed 12-17-80; 8:45 am]

BILLING CODE 6210-01-M

1st Southeast Banking Corp.; Acquisition of Bank

1st Southeast Banking Corp., Darien, Wisconsin, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 88 percent or more of the voting shares of 1st Bank Southeast of Lake Geneva, Lake Geneva, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 9, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 10, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-39284 Filed 12-17-80; 8:45 am]

BILLING CODE 6210-01-M

1st Southeast Banking Corp.; Acquisition of Bank

1st Southeast Banking Corp., Darien, Wisconsin, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. section 1842(a)(3)) to acquire 88 percent of more of the voting shares of 1st Bank Southeast of Twin Lakes, Twin Lakes, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. section 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 9, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 10, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-39285 Filed 12-17-80; 8:45 am]

BILLING CODE 6210-01-M

Warren Bancorp, Inc.; Formation of Bank Holding Company

Warren Bancorp, Inc., Warren, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Citizens Bank & Trust Co., Warren, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 12, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 11, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-39292 Filed 12-17-80; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Open Meeting on Influenza Immunization

A meeting will be convened by the Surgeon General, Public Health Service, to review and discuss technical question pertinent to the composition and formulation of influenza vaccines for 1981–1982. Specific agenda items will include the review and discussion of: epidemiologic and laboratory studies; immunization activities, 1980–1981: adverse reactions to influenza vaccines; recent vaccine trials; vaccine standardization; and vaccine formulation, 1981–1982.

The meeting will be open to the public, limited only by the space available:

Date: January 27, 1981
Time 9:00 a.m.
Place: Building 2, Classroom 1, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333
Additional information may be obtained from: Walter R. Dowdle, Ph.D., Assistant Director for Science, Centers for Disease Control, Building 1, Room 2122, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephones: FTS: 236-3701, Commercial: 404/329-3701

Dated: December 12, 1980.

William H. Foege, M.D.,

Director, Centers for Disease Control.

[FR Doc. 80-39316 Filed 12-17-80; 8:45 am]

BILLING CODE 4110-86-M

Work Group on Alpha-Fetoprotein; Open Meeting

On January 8 and 9, 1981, the Centers for Disease Control will convene an open meeting of a work group to discuss the protocol for a study of alpha-fetoprotein prenatal screening. Persons invited to attend from outside CDC include geneticists, statisticians, epidemiologists, obstetricians, and laboratorians. The meeting is open to the public, limited only by space

available. Time will be set aside for public comment.

The meeting is scheduled to begin at 8:00 a.m., in Room 145, Building 1, Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia.

Additional information may be obtained from: Godfrey P. Oakley, M.D., Chief, Birth Defects Branch, Chronic Diseases Division, Bureau of Epidemiology, Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, Telephones: FTS: 236-4080; Commercial: 404-452-4080.

Dated: December 12, 1980.

William H. Foege, M.D.,

Director, Centers for Disease Control.

[FR Doc. 80-39315 Filed 12-17-80; 8:45 am]

BILLING CODE 4110-86-M

Work Group on Tuberculosis Therapy; Open Meeting; Correction

Notice of the open meeting of the work group on tuberculosis therapy was published in the Federal Register (45 FR 80906) on Monday, December 8, 1980. The year of the meeting, which is scheduled for January 8-9, should be corrected to read "1981".

Dated: December 12, 1980.

William H. Foege, M.D.,

Director, Centers for Disease Control.

[FR Doc. 80-39314 Filed 12-17-80; 8:45 am]

BILLING CODE 4110-86-M

Health Resources Administration

Filing of Annual Reports of Federal Advisory Committees

Notice is hereby given that pursuant to section 13 of Public Law 92-463, the Annual Reports for the following Health Resources Administration Federal Advisory Committees have been filed with the Library of Congress:

Graduate Medical Education National Advisory Committee
National Advisory Council on Nurse Training
National Advisory Council on Health Professions Education

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, S.E., Washington, D.C. or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, North Building, Room 1436, 300 Independence Avenue, S.W., Washington, D.C. 20201, Telephone (202) 245-6791.

Copies may be obtained from the following committee contacts:

Graduate Medical Education National Advisory Committee—Mr. Paul Schwab, Office of Program Policy Coordination, Room 10-27, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436-7170.

National Advisory Council on Nurse Training—Dr. Mary S. Hill, Bureau of Health Professions, Room 3-50, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436-6681.

National Advisory Council on Health Professions Education—Mr. Robert Belsley, Bureau of Health Professions, Room 4-27, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436-6564.

Dated: December 12, 1980.

Irene D. Skinner,

Advisory Committee Management Officer.

[FR Doc. 80-39325 Filed 12-17-80; 8:45 am]

BILLING CODE 4110-83-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Colorado; Coal Lease Offerings by Sealed Bid, Green River-Hams Fork Federal Coal Production Region

Department of the Interior, Bureau of Land Management, Colorado State Office, 700 Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202. Notice is hereby given that certain coal resources in the tracts described below in Moffat County, Colorado will be offered for competitive lease by sealed bid of $25.00 or more per acre to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437), as amended, and the Department of Energy Organization Act of August 4, 1977 (91 Stat. 565, 42 U.S.C. 7101). The sale will be held at 2:00 p.m., January 13, 1981, in Room 708 Colorado State Bank Building, Denver, Colorado. No bids received after 1:00 p.m., January 13, 1981, will be considered.

Coal Offered:

Empire Tract

C-30656

The coal resource to be offered includes all coal beds above the Trout Creek Sandstone (except the Q bed in Lots 5 and 8 of Sec. 5 which was previously leased as C-25948) in the following lands located approximately 8 miles southwest of Craig, Colorado:

T. 5 N., R. 91 W., 6th P.M.,
Sec. 5: Lots 5 to 12, inclusive;
Sec. 8: Lots 1 to 8, inclusive.
Containing 681.55 acres.

Resources have been calculated for seven underground mineable beds (B, C, LD, UD, E, F, and LH in ascending order). Total recoverable reserves from these beds are estimated to be 20.0 million tons.

The coal should average between 9,900 and 11,000 Btu/lb. with 5.0-10.0% ash and .41-.63% sulfur. This would classify the coal as subbituminous A to high volatile B bituminous.

Danforth Hills No. 1 Tract

C-29224

The coal resource to be offered is limited to coal recoverable by surface mining methods in the following lands located approximately 27 miles southwest of Craig, Colorado:

T. 3 N., R. 93 W., 6th P.M.,
Sec. 11: Lots 3, 5, 6, 8, 13, 14, and 16, NW¼, N½SW¼ and SW¼SW¼;
Sec. 14: Lots 4 and 5;
Sec. 15: Lots 1, 3, 5, 11, 12, and 14, NW¼ and W½SW¼.
Containing 876.20 acres.

Coal in the tract is contained in eight strippable coal beds (F, E, D, C, B2, B, A2, and X in ascending order). Total recoverable reserves are estimated to be 34.2 million tons.

The coal should average 10,785 Btu/lb. with 4.88% ash and .41% sulfur. This would classify the coal as high volatile C bituminous.

Rental and Royalty. Leases issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre and a royalty payable to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of coal produced by underground mining methods. The value of coal shall be determined in accordance with 30 CFR 211.63.

Notice of Availability. Bidding instructions for each tract offered are included in the Detailed Statement of Lease Sale. Copies of the Statements and of the proposed coal leases are available at the Bureau of Land Management, Room 700 Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202. Case file documents are available for public inspection in Room 701.

The Secretary of Interior's May 28, 1980 fair market value policy decisions for Federal coal leasing included a decision to make all non-proprietary economic and geologic data inputs to the discounted cash flow evaluation model, which is used to help determine the fair market value and minimum

acceptable bid for some Federal coal tracts offered for competitive lease sale, available for public review prior to the scheduled sale date. The policy decisions also included a decision that, except in certain exceptional cases, small tracts that clearly could not be operated profitably except as part of a larger mining unit would be offered for competitive lease sale at the regulatory minimum royalty rate and cash bonus bid and that a discounted cash flow analysis would not be conducted.

In accordance with these policy decisions, a discounted cash flow analysis was conducted for the Danforth Hills # 1 tract (C-29224). The non-proprietary data inputs to the discounted cash flow evaluation model for this tract are available upon request from the Central Region Conservation Manager, Central Division, U.S. Geological Survey, Box 25046, Denver Federal Center, Denver, Colorado 80225. The Empire tract (C-30656) was determined to be a small tract, and a discounted cash flow analysis was not conducted.

Andrew W. Heard, Jr.,

Leader, Craig Team Branch of Adjudication.

[FR Doc. 80-39257 Filed 12-17-80; 8:45 am]

BILLING CODE 4310-84-M

Colorado; Small Business Set-Aside Coal Lease Offering by Sealed Bid, Green River-Hams Fork Federal Coal Production Region

Department of the Interior, Bureau of Land Management, Colorado State Office, 700 Colorado State Bank Bulding, 1600 Broadway, Denver, Colorado 80202. Notice is hereby given that certain coal resources in the tract described below in Routt County, Colorado will be offered for competitive lease by sealed bid of $25.00 or more per acre to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437), as amended, and the Department of Energy Organization Act of August 4, 1977 (91 Stat. 565, 42 U.S.C. 7101). The sale will be held at 2:00 p.m., January 13, 1981, in Room 708 Colorado State Bank Building, Denver, Colorado. No bids received after 1:00 p.m., January 13, 1981, will be considered.Q04

Coal Offered:

Grassy Creek Tract

C-29221

The coal resource to be offered is limited to coal recoverable by surface mining methods in the following lands located approximately 10 miles southeast of Hayden, Colorado:

T. 5 N., R. 87 W., 6th P.M.

Sec. 20: S½NE¼, E½SW¼ and W½SE¼;
Sec. 29: NE¼NW¼, SW¼NW¼, N½SW¼ and SE¼SW¼
Containing 440 acres.

Three surface mineable beds (Pinnacle Rider No. 1, Pinnacle, and Pinnacle Rider No. 2) occur in the tract. Total recoverable reserves are estimated to be 1.8 million tons.

The coal quality is expected to average 11,400 Btu/lb. with 8.0% ash and .90% sulfur.

Rental and Royalty. A lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods. The value of coal shall be determined in accordance with 30 CFR 211.63.

Special Bidder Qualifications. This tract is being offered for competitive lease under the small business set-aside provision of the Federal Coal Management Program. Bidders must meet the small business qualification requirements established by the Small Business Administration in addition to meeting the Federal coal lease qualification requirements of the Federal Coal Management Program.

Notice of Availability. Bidding instructions and bidder qualifications are included in the Detailed Statement of the Lease Sale. Copies of the Statement and of the proposed coal lease are available at the Bureau of Land Management, Room 700 Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202. Case file documents are available for public inspection in Room 701.

The Secretary of Interior's May 28, 1980 fair market value policy decisions for Federal coal leasing included a decision to make all non-proprietary economic and geologic data inputs to the discounted cash flow evaluation model, which is used to help determine the fair market value and minimum acceptable bid for some Federal coal tracts offered for competitive lease sale, available for public review prior to the scheduled sale date. The policy decisions also included a decision that, except in certain exceptional cases, small tracts that clearly could not be operated profitably except as part of a larger mining unit would be offered for competitive lease sale at the regulatory minimum royalty rate and cash bonus bid and that a discounted cash flow analysis would not be conducted. In accordance with these policy decisions, the Grassy Creek tract was determined to be a small tract, and a discounted cash flow analysis was not conducted.

Andrew W. Heard, Jr.,

Leader, Craig Team Branch of Adjudication.

[FR Doc. 80-39258 Filed 12-17-80; 8:45 am]

BILLING CODE 4310-84-M

Las Cruces District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Public Law 94-579, that a meeting of the Las Cruces District Grazing Advisory Board will be held on Thursday, January 22, 1981.

The meeting will begin at 9:30 a.m. in the Las Cruces Room, Best Western of Las Cruces, 901 Avenida de Mesilla, Las Cruces, New Mexico.

The agenda for the meeting will include:

(1) Approval of Minutes.
(2) Election of Officers.
(3) Brief Orientation for New Board Members.
(4) Status of Stewardship Allotments.
(5) Southern Rio Grande EIS Briefing.
(6) Las Cruces-Lordsburg Resource Management Plan Briefing.
(7) Proposed McGregor Rangeland Management Program Document (RMPD).
(8) Range Improvements.
(9) Public Comment Period.

The meeting will be open to the public and interested persons may make oral statements to the Board during an allotted time period beginning at 2:00 p.m. and lasting for at least one-half hour. The District Manager may establish a time limit for oral statements depending on the number of persons wishing to make statements. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 1705 North Valley Drive (P.O. Box 1420), Las Cruces, New Mexico 88001, by January 15, 1981.

Summary minutes of the Board meeting will be maintained in the Las Cruces BLM District Office and will be available for public inspection and reproduction (during regular business hours) for 30 days following the meeting.

John E. Provine,

Acting District Manager.

December 10, 1980.

[FR Doc. 80-39243 Filed 12-17-80; 8:45 am]

BILLING CODE 4310-84-M

Minnesota Land Use Planning; Public Workshops

The U.S. Department of the Interior, Bureau of Land Management (BLM) has scheduled a series of four public workshops and one open house to discuss a management plan for public lands and resources, including mineral

interests, under BLM jurisdiction in Minnesota. Land transfer alternatives, resource management opportunities and possible planning decisions will be covered in an informal workshop setting. The plan covers the entire State of Minnesota, and encompasses 45,344 acres of public lands, including 1,171 islands located in 71 of the state's 87 counties; and nearly three million acres of Federal mineral ownership under other public or private surface ownership.

The workshops and open house are scheduled as follows:

Public Workshops

January 5, 1981—1:00 p.m. to 5:00 p.m., Rainy River Community College, Room S-108, Science Building, International Falls, Minnesota

January 6, 1981—1:00 p.m. to 5:00 p.m., Fergus Falls Community College, Room A-303, Administration Building, Fergus Falls, Minnesota

January 7, 1981—1:00 p.m. to 5:00 p.m., Brainerd Community College, Room 317, Brainerd, Minnesota

January 8, 1981—1:00 p.m. to 5:00 p.m., University of Minnesota, St. Paul Campus, Room 166, Earl Brown Center, Cleveland and Carter Avenue, St. Paul, Minnesota

Open House

January 13, 1981—1:00 p.m. to 5:00 p.m., Lake States Office, Bureau of Land Management, 125 Federal Building, Duluth, Minnesota.

The purpose of the public workshops and open house is to discuss informally the work completed to date, which includes comprehensive inventories of public lands and their related resources; analyses of their uses, condition and potential; and land management, transfer or disposal opportunities. The planning information has been prepared by members of an interdisciplinary team of resource specialists headquartered at Duluth, who receive assistance from BLM's Eastern States Office. Local and State government officials, group representatives and interested citizens are invited to participate in the meetings; and anyone who would like to learn more about the BLM planning process is welcome to attend and offer suggestions or comments. After the workshops, the next planning step calls for development of a draft Management Framework Plan (MFP) Decision by the Lake States Office Manager, which will be reviewed by the BLM Eastern States Director, then offered for formal public review and comment. The final MFP decisions will be made by the BLM Eastern States Director in March, 1981.

Additional Information

For information about BLM land use planning in Minnesota—to review planning maps and narratives, to obtain copies of the public participation plan, maps or other information; or to offer data or assistance—contact Jerome Heinz, Manager, Lake States Office, Bureau of Land Management, 125 Federal Building, Duluth, Minnesota 55802, telephone (218) 727-6692, Ext. 378 (FTS 783-9378).

Roger L. Hildebeidel,

Eastern States Director.

[FR Doc. 80-39320 Filed 12-17-80; 8:45 am]

BILLING CODE 4310-84-M

Fairbanks District Advisory Council; Meeting

A special Utility Corridor subcommittee meeting of the Advisory Council of the Fairbanks District of the Bureau of Land Management, Fairbanks, Alaska, will meet Thursday, January 22, 1981. Location of the meeting will be the BLM District training room, 2nd floor, Fairbanks District Office Building, Gaffney and Marks Road on Ft. Wainwright, Alaska. The meeting will convene at 7:00 p.m. and conclude at 9:00 p.m. the same evening. Public response on the findings or recommendations of the subcommittee will be called for during the meeting. Verbal public response may be limited by time and it is recommended that public comments be submitted in writing at the meeting.

The topic of the subcommittee meeting is to study the various issues of concern for the Utility Corridor and Haul Road and submit recommendations to the Advisory Council. Information may be obtained through: Public Affairs, (907) 356-2345, Bureau of Land Management, Box 1150, Fairbanks, Alaska 99707, Attn: Advisory Council (204).

Carl D. Johnson,

District Manager.

[FR Doc. 80-39297 Filed 12-17-80; 8:45 am]

BILLING CODE 4310-84-M

Fairbanks District Advisory Council; Meeting

The Advisory Council of the Fairbanks District of the Bureau of Land Management, Fairbanks, Alaska will meet Friday and Saturday, January 23 and 24, 1981. Location of the meeting will be in the BLM District training room, 2nd floor, Fairbanks District Office Building, Gaffney and Marks Road on Ft. Wainwright, Alaska. The Council will meet from 8:30 a.m. to 5:00 p.m. on both days. Public comments and recommendations will be received by the council from 2:00 p.m. to 3:00 p.m. on January 24. Verbal public response may be limited by time and it is recommended that public comments be submitted in writing at the meeting.

The initial portion of the first day will be the election of officers for 1981, followed by a report from the minerals and the Utility Corridor subcommittees. Short briefings will be given on Fairbanks District actions in the National Petroleum Reserve-Alaska, reindeer/caribou habitat management in western Alaska and on the impacts of the Alaska Lands Bill on BLM activities. The remainder of the meeting will be devoted to a discussion of issues concerning the Utility Corridor and Haul Road. Information may be obtained through: Public Affairs, (907) 356-2345, Bureau of Land Management, Box 1150, Fairbanks, Alaska 99707, Attn: Advisory Council (204).

Carl D. Johnson,

District Manager.

[FR Doc. 80-39298 Filed 12-17-80; 8:45 am]

BILLING CODE 4310-84-M

Fairbanks District Advisory Council; Meeting

A special minerals subcommittee meeting of the Advisory Council of the Fairbanks District of the Bureau of Land Management, Fairbanks, Alaska, will meet Tuesday, January 20, 1981. Location of the meeting will be the BLM District training room, 2nd floor, Fairbanks District Office Building, Gaffney and Marks Road on Ft. Wainwright, Alaska. The meeting will convene at 7 p.m. and conclude at 9 p.m. the same evening. Public response on the findings or recommendations of the subcommittee will be called for during the meeting. Verbal public response may be limited by time and it is recommended that public comments be submitted in writing at the meeting.

The subcommittee will study the language of the 43 CFR 3809 regulations and propose guidance and clarification to meet local situations. Information may be obtained through: Public Affairs, (907) 356-2345, Bureau of Land Management, Box 1150, Fairbanks, Alaska 99707, Attn: Advisory Council (204).

Carl D. Johnson,

District Manager.

[FR Doc. 80-39299 Filed 12-17-80; 8:45 am]

BILLING CODE 4310-84-M

Revision of Coal Lease Form

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of revision of coal lease, Form 3400-12 (formerly 3520-1).

SUMMARY: The statutory base for Federal coal leasing has been altered significantly over the last four years by passage of the Federal Coal Leasing Amendments Act of 1976, the Federal Land Policy and Mangement Act of 1976, the Surface Mining Control and Reclamation Act of 1977, the Department of Energy Organization Act of 1977, and the Act of October 30, 1978. Regulations (43 CFR Part 3400) implementing these statutes as they relate to the management of coal were published in the Federal Register on July 19, 1979, (44 FR 42584–42652).

As a further step by the Department of Interior in carrying forward a new Federal coal management program, the coal lease form, Form 3400–12 (formerly 3520–1 (July 1977)), is being revised to conform to these and other applicable laws and regulations. All tracts announced for sale after the revised form has been approved will be leased, utilizing the new lease form. When existing coal leases become subject to readjustment, they will be modified based on the terms and conditions of the approved version of Form 3400–12. The purpose of this notice is to solicit comments.

DATE: Comments by January 19, 1981.

ADDRESS: Comments should be sent to and copies of the form are available from: Director (160), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

Comments will be available for public review in Room 3618 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Marcia E. Rohn or Walter Rewinski (202) 343–6821.

SUPPLEMENTARY INFORMATION: Several revisions were made to distinguish the obligations and responsibilities of the various agencies involved, e.g., Sec. 10 has been revised to require the lessee to submit (1) exploration plans for leased lands covered by an approved mining permit to the Regional Director of the Office of Surface Mining and (2) exploration plans for leased lands not covered by an approved mining permit to the District Mining Supervisor, Geological Survey.

Significant revisions were made as to Sec. 14—Cultural Resources (formerly Section 13), setting forth the obligations of the lessee and the agencies for protection of cultural resource properties. A new provision, Section 15, was added for protection of paleontological resources of significant scientific interest.

Pursuant to Sec. 3 of the Federal Coal Leasing Amendments Act of 1976, a new provision, Section 32—Special Statutes, was added to specifically require compliance with the Federal Water Pollution Control Act and the Clean Air Act.

Dated: December 15, 1980.

Ed Hastey,

Associate Director.

[FR Doc. 80-39334 Filed 12-17-80; 8:45 am]

BILLING CODE 4310-84-M

[W-73117]

Wyoming; Application

December 10, 1980.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Cities Service Gas Company of Oklahoma City, Oklahoma, filed an application for a right-of-way to construct a 6⅝ inch, an 8⅝ inch and a 12¾ inch pipeline for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 17 N., R. 95 W.,
Secs. 4, 8 and 18.
T. 18 N., R. 95 W.,
Secs. 24, 26 and 34.
T. 17 N., R. 96 W.,
Secs. 22, 28 and 32.
T. 14 N., R. 97 W.,
Secs. 18, 19, 20, 21, 28, 29, 32 and 33.
T. 15 N., R. 97 W.,
Secs. 20, 29 and 30.
T. 16 N., R. 97 W.,
Secs. 4, 8 and 18.
T. 17 N., R. 97 W.,
Sec. 36.
T. 14 N., R. 98 W.,
Secs. 1, 11, 12, 13 and 14.
T. 15 N., R. 98 W.,
Secs. 2, 13, 14, 23, 24, 25 and 36.
T. 16 N., R. 98 W.,
Secs. 24, 26, 28 and 36.

The proposed pipelines will extend from the Monument Valley #1 and Twin Forks #1 Wells in sections 28 and 32, T. 14 N., R. 97 W., and Adobe Town #1 Well in section 20, T. 15 N., R. 97 W., to points of connection with existing pipelines in section 19, T. 18 N., R. 94 W., and section 29, T. 16 N., R. 98 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, P.O. Box 1869, Highway 187 North, Rock Springs, Wyoming 82901.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-39321 Filed 12-17-80 8:45 am]

BILLING CODE 4310-84-M

[W-73114]

Wyoming; Invitation for Coal Exploration License; Rocky Mountain Energy Company

December 12, 1980.

Rocky Mountain Energy Company hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning Federally owned coal underlying the following-described land in Sweetwater County, Wyoming:

Sixty Principal Meridian, Wyoming

T. 20 N., R. 92 W.,
Sec. 4, Lots 1–4, and S½;
Sec. 6, Lots 1–6, E½SW¼, and SE¼;
Sec. 8, All.
T. 21 N., R. 92 W.,
Sec. 4, Lots 1–4, S½N½, and S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8, All;
Sec. 18, Lots 1–4, E½, and E½W½;
Sec. 20, All;
Sec. 30, Lots 1–4, E½, and E½W½;
Sec. 32, All;
Sec. 34, All.
T. 20 N., R. 93 W.,
Sec. 2, Lots 1–4, and S½;
Sec. 4, Lots 1–4, and S½;
Sec. 6, Lots 1–6, E½SW¼, and SE¼;
Sec. 8, All;
Sec. 10, All;
Sec. 12, All;
Sec. 14, All;
Sec. 18, Lots 1–4, E½, and E½W½.
T. 21 N., R. 93 W.,
Sec. 2, Lots 1–4, S½N½, and S½;
Sec. 4, Lots 1–4, S½N½, and S½;
Sec. 8, All;
Sec. 10, All;
Sec. 12, All;
Sec. 14, All;
Sec. 20, All;
Sec. 22, All;
Sec. 24, All;
Sec. 26, All;
Sec. 28, All;
Sec. 32, All;
Sec. 34, All.
T. 20 N., R. 94 W.,
Sec. 12, All.
Containing 20,082.21 acres.

All of the coal in the above lands consists of unleased Federal coal within or adjacent to the Red Desert known recoverable coal resource area. In general, the exploration plan provides for the rotary drilling of 141 holes and the core drilling of 47 holes in the above-

described lands to varying depths with analysis obtained from such drilling.

A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number W-73114): Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001, and the Bureau of Land Management, 1300 Third Street, Rawlins, Wyoming 82301.

This notice of invitation will be published in this newspaper once each week for two (2) consecutive weeks beginning the week of December 29, 1980, and in the Federal Register. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Rocky Mountain Energy Company, no later than thirty (30) days after publication of this invitation in the Federal Register. The written notices should be sent to the following addresses: Rocky Mountain Energy Company, Attention: James D. Edgerley, 10 Longs Peak Drive, Box 2000, Broomfield, Colorado 80020, and the Bureau of Land Management, Wyoming State Office, Attention: Lands and Mining Section, P. O. Box 1828, Cheyenne, Wyoming 82001.

The foregoing notice is published in the Federal Register pursuant to Title 43 of the Code of Federal Regulations, Section 3410.2-1(d)(1).

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-39320 Filed 12-17-80; 8:45 am]

BILLING CODE 4310-84-M

Off-Road Vehicles, Use of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An Off-Road Vehicle Management Plan has been prepared in accordance with the approved Management Framework Plan for the Utility Corridor of Interior Alaska (as established by P.L.O. 5150). As per 43 CFR Part 8340, public lands are to be designated as open, limited, or closed to the use of off-road vehicles. The proposed Off-Road Vehicle Management Plan designates the public lands in the Utility Corridor between the Yukon River and Sagwon Bluffs as "limited" to the use of off-road vehicles.

DATES: Comments on this notice must be received on or before February 15, 1981.

ADDRESSES: Copies of the Proposed Off-Road Vehicle Management Plan are available for public inspection at the Bureau of Land Management Fairbanks District Office, on Fort Wainwright, P.O. Box 1150, Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Area Manager, Yukon Resource Area, Bureau of Land Management, P.O. Box 1150, Fairbanks, Alaska 99707, (907) 356-2025.

SUPPLEMENTARY INFORMATION: The 2.85 million acres of public lands in the Utility Corridor between the Yukon River and Sagwon Bluffs shall be designated a "Limited Use Area" for all vehicles. This designation is made to provide for off-road vehicle use under conditions that will protect cultural and natural resources, be less disruptive to activities of other uses, and promote safety.

Vehicle use will be permitted subject to the following limitations:

1. All vehicle use is limited to designated vehicle routes only, except that between October 15 and May 15, snowmachines weighing under 600 pounds gross vehicle weight and travelling on a minimum of ten inches of snow cover are permitted to travel cross-country.

2. A permit for vehicle use other than that specified in provision (1) above must be obtained from the authorized officer in advance. For example, permits are required to travel off designated vehicle routes for oil and gas exploration, development of lawful mining claims, or other authorized activities consistent with the Utility Corridor Land Use Plan.

3. Notwithstanding the provisions of (1) and (2) above, if the authorized officer determines that vehicle use is causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, wilderness suitability, other authorized uses, or other resources, the authorized officer shall immediately close the areas or trails affected to the type(s) of vehicle(s) causing the adverse effect until the authorized officer determines that the adverse effects have been eliminated and measures implemented to prevent its recurrence.

4. All vehicle use must conform to all applicable regulations governing vehicle use and operations (43 CFR Parts 8341 and 8343).

Dated this 11th day of December.

Carl D. Johnson,

District Manager, Fairbanks District Office, Bureau of Land Management, P.O. Box 1150, Fairbanks, Alaska 99707.

[FR Doc. 80-39337 Filed 12-17-80; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

[No. MC-C-10639]

AAACON Auto Transport, Inc., Petition for Declaratory Order—Definition of New and Used Automobiles

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Declaratory Order Proceeding.

SUMMARY: Petitioner seeks a declaration that automobiles moving from a dealer to the general public after sale or lease are "used" automobiles. It argues that a recent Commission decision declaring these vehicles to be "new" automobiles is contrary to past Commission precedent. We believe that a certain ambiguity does exist within our case law as to whether these vehicles are new or used, and that we should clarify their status.

DATE: Comments are due January 19, 1980.

ADDRESS: Send an original and, if possible, 6 copies of any comments, to: MC-C-10638, Room 5416, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Edward E. Guthrie, 202-275-7691, or David B. Gaynor, 202-275-7904.

SUPPLEMENTARY INFORMATION: By petition filed April 28, 1980, Aaacon Auto Transport, Inc., seeks a declaration that automobiles moving from a dealer to the general public after sale or lease should be considered as "used" rather then "new." Petitioner asserts that a recent decision of the Commission, No. MC-125985 (Sub-No. 4) M1F, *Auto Driveaway Co.—Petition to Modify Certificate* (not printed), decided February 14, 1980, affirmed by Division 2, June 5, 1980, is contrary to past Commission precedent on the difference between "new" and "used" automobiles. *Auto Driveaway* found that automobiles which have not been previously used by the public and are moving to members of the public from either the premises of a lessor or the premises of a dealer pursuant to purchase by a lessor are new automobiles. The decision rested on the fact that they have not been put into general public use, as required by the used automobile test of *United Transports Inc.* v. *Turner*, 72 M.C.C. 586 (1957).

We believe petitioner is correct that an ambiguity exists between existing precedent and shall exercise our discretion to issue a declaratory order to clarify the matter.

The ambiguity exists because *United* incorrectly expounds upon our original decision on the difference between new and used automobiles, *Maughan Transport, Inc., Extension—Three States*, 63 M.C.C. 611 (1955). *Maughan, supra*, at 622, declares new automobiles to be those passenger vehicles "which have not been used by members of the general public in the transportation of persons over the highways, and that their titles have not been held by persons other than dealers." *United*, at 588, reiterates this test but continues by stating that the converse of new automobiles, used automobiles, "are those [vehicles] which have actually been utilized for the bona fide transportation of persons, *and* the titles to which have been held by persons other than dealers or their agents"(emphasis supplied). In our view, this second statement is incorrect, because the true converse of the *Maughan* new car test is a disjunctive, not a conjunctive test, i.e., used automobiles are those vehicles which have actually been used by the general public in the transportation of persons or the titles to which have been held by persons other than dealers.

The conjunctive test of *United* is logically indefensible, since the true converse of "A *and* B" is "not A *or* not B", rather than "not A *and* not B." Not surprisingly, then, the application of *United* leads to anamolous results where title has vested in a person other than a dealer but the car has not been used by the general public for passenger transportation. It would be considered as used under *Maughan* because title has shifted from the dealer, while it would be considered as new under *United* because it has not been placed in service.

Applying a disjunctive test to the facts of *Auto Driveaway*, we, of course, would arrive at the opposite conclusion of that made. Thus, any passenger vehicle moving from a dealer after sale would be a used automobile, not a new one. Therefore, to prevent this problem from again arising, we believe we must declare that *Maughan* and its disjunctive converse are the proper tests to be applied when determining whether an automobile is new or used.

All interested persons are invited to comment about this clarification and its impact. This action does not appear to significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered: Pursuant to 5 U.S.C. 554(e) and in the sound exercise of our discretion, a declaratory proceeding is instituted.

Decided: December 8, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Gilliam concurring in the result. Commissioner Trantum dissenting with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Trantum, dissenting: I fear that the public may need to spend the comment period deciphering our Notice rather than responding to it. In addition, I do not see any public benefit in perpetuating the regulatory distinction between new and used cars.

[FR Doc. 80-39269 Filed 12-17-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-No. 30F)]

Chesapeake and Ohio Railway Company—Abandonment—Between Malden and Hy Tower, In and Discontinuance of Service Over Erie-Lackawanna Railroad at Griffith, IN; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided October 24, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the public convenience and necessity permit the abandonment of a segment of rail line known as the Wabash Subdivision between milepost 230.95 near Malden, IN, and milepost 260.62 at Hy Tower, IN, a distance of 29.67 miles, including .04 mile of trackage rights over property owned by Thomas F. Patton and Ralph S. Tyler, Jr., Trustees of the property of Erie-Lackawanna Railway Company, Debtor, all in Porter and Lake Counties, IN, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.-Abandonment Goshen*, 360 I.C.C. 91 (1979). A certificate of abandonment will be issued to the Chesapeake and Ohio Railway Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 15 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96-448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc.-39278 Filed 12-17-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 87F)]

Chicago and North Western Transportation Company, Abandonment Between Ellsworth and Lawn Hill, IA; Findings

Notice is hereby given pursuant to 49 U.S.C. § 10903 that by a decision entered November 26, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that the public convenience and necessity permit the abandonment by the Chicago and North Western Transportation Company of that portion of its line of railroad known as the Ellsworth-Lawn Hill line, extending from railroad milepost 65.4 near Ellsworth to railroad milepost 44.4 near Lawn Hill, a distance of 21.0 miles, in Hamilton and Hardin Counties, IA. The abandonment is subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.-Abandonment*

Goshen, 360 I.C.C. 91 (1979). A certificate of abandonment will be issued to the Chicago and North Western Transportation Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 15 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, D.C., 20423, no later than 10 days from publication of this Notice; and

(2) It is likely that such proffered assistance would: (a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96-448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenvich,

Secretary.

[FR Doc. 80-39271 Filed 12-17-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Decision-Notice

The following applications filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Pratice (49 CFR 1100.240). An interim proposed final Rule 240 reflecting changes to comport with the Motor Carrier Act of 1980 was published in the July 3, 1980, Federal Register at 45 FR 45529 under Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed by Motor Carriers Under 49 U.S.C. §§ 11344 and 11349.* These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements with 45 days after the date of notice of filing of the application is published in the Federal Register. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest include a request for oral hearing, the request shall meet the requirements of Rule 240(C) of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.240(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.240(A)(h).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance applications *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) 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, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grants or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Date: December 9, 1980.

By the Commission, Review Board Number 5, Members Krock, Taylor and Williams.

MC-F-14507, filed November 10, 1980, JONES TRANSFER COMPANY (Jones) (300 Jones Avenue, Monroe, MI 48161)—CONTROL AND MERGER—MULVENA TRUCK LINE, INC. (Mulvena) (400 West Chishom Street, Alpena, MI 49404). Representative: Walter N. Bieneman, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. Jones seeks to purchase all of Mulvena's outstanding capital stock and the capital stock of Mulvena's affiliate, Mulvena Equipment Company, which holds title to Mulvena's revenue equipment. Thereafter, these entities will be merged into Jones for ownership, management, and operation. Mulvena holds a certificate in No. MC-28817 (Sub-Nos. 1 and 3) generally authorizing the transportation of (A) general commodities (with the usual exceptions), over regular routes, serving all intermediate and certain off-route points, (1) between Detroit, MI and Glennce and Cooks Corners, MI and (2) between Alpena, MI and Gaylord, MI, and (B) general commodities, over regular routes, (1) between Rogers City, MI and Detroit, MI, serving certain intermediate and off-route points, (2) between Rogers City, MI and Mackinaw City, MI, serving all intermediate and certain off-route points, (3) between Alpena, MI and Oscoda, MI, serving all intermediate and certain off-route points, and (4) between Alpena, MI and

Onaway, MI, serving all intermediate and certain off-route points.

Mulvena also holds Certificates of Registration in No. MC-28817 (Sub-Nos. 5, 7, 8, and 9), authorizing the transportation of (A) general commodities (with the usual exceptions), over regular routes, (1) between Rogers City, MI and Detroit, MI, (2) between Oscoda, MI and Alpena, MI, (3) between Alpena, MI and Liskie, MI, (4) from Rogers City, MI to Mackinaw City, MI, (5) between the junction of U.S. Hwy 23 and Point Lookout Road and Point Lookout, MI, (6) between the junction of Cheboygan County Road 638 and U.S. Hwy 23 and Afton, MI, (7) between Rogers City, MI and Onaway, MI, (8) from Hawks, MI to Alpena, MI, (9) between Detroit, MI and Rogers City, MI, (10) between the junction of U.S. Hwy 23 and Michigan Hwy 55 and the junction of U.S. Hwy 23 and Michigan Hwy 65, (11) between Bay City, MI and Saginaw, MI, (12) between Alpena, MI and Gaylord, MI, (13) between the junction of U.S. Hwy 23 and County Road No. 211 and Cheboygan, MI, (14) between the junction of Michigan Hwys 32 and 65 and the junction of Michigan Hwys 171 and 72, (15) between the junction of Hubbard Lake Road and Werth Road and the junction of Werth Road and Michigan Hwy 65, (16) between the junction of Michigan Hwys 68 and 33 and Atlanta, MI, (17) between the junction of County Road No. 451 and Long Swamp Road and Hillman, MI, (18) between the junction of Beck Road and U.S Hwy 23 and a point on Beck Road on the east side of Long Lake, (19) from the junction of Michigan Hwy 171 (formerly U.S. Hwy 23) and County Road to Detroit, MI and Glennie, MI, (20) from the junction of Michigan Hwy 171 (formerly U.S. Hwy 23) and County Road to Cook's Store, (21) between the junction of Michigan Hwys 72 and 65 and Whitmore, MI, (22) between Glennie, MI and Curtisville, MI, (23) between the junction of Michigan Hwy 65 and Iosco County Road (known as River Road) and Oscoda, MI, (24) between the junction of River Road and Iosco County Road (known as Silver Creek Road) and East Tawas, MI, (25) from the junction of U.S. Hwy 10 and Michigan Hwy 58 (cut-off around Pontiac, MI) to Dearborn, MI, (26) between Gaylord, MI, and Afton, MI as follows: from Gaylord over Interstate Hwy 75 to junction with Michigan Hwy 68, then over Michigan Hwy 68 to Afton, (27) between Detroit, MI and Standish, MI via Interstate Hwy 75 and return over the same route, and (28) serving the plantsite of Ford Motor Company at Romeo, MI in connection with otherwise authorized service. (B) Artistic fencing, between Alpena, MI and Greenbush, MI, (C) papermill supplies, empty containers, and paper in lots of not less than 18,000 pounds, between Alpena, MI and various points, (D) household goods, store fixtures, and office furniture, between all points in Michigan. Hearing site: Washington, D.C.

Notes.—(1) Application for temporary authority has been filed, (2) A directly-related application to convert Mulvena's Certificates of Registration to a certificate of public convenience and necessity has been filed in No. MC-4966 (Sub-No. 25), published in this same Federal Register issue.

Decision-Notice

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). Special Rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application 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 warrants a grant of the application under the governing section of the Interstate Commerce Act. 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 in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Dated: December 9, 1980.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams.

MC 4966 (Sub-No. 25), filed November 10, 1980. Applicant: JONES TRANSFER COMPANY (Jones) (300 Jones Avenue, Monroe, MI 48161). Representative: Walter N. Bieneman, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48031. Authority is sought to convert Certificates of Registration in No. MC 28811 (Sub-Nos. 5, 7, 8 and 9), authorizing the transportation of (A) general commodities (with the usual exceptions), over regular routes, (1) between Rogers City, MI and Detroit, MI, (2) between Oscoda, MI and Alpena, MI, (3) between Alpena, MI and Liskie, MI, (4) from Rogers City, MI to Mackinaw City, MI, (5) between the junction of U.S. Hwy 23 and Point Lookout Road and Point Lookout, MI, (6) between the junction of Sheboygan County Road 638 and U.S. Hwy 23 and Afton, MI, (7) between Rogers City, MI, and Onaway, MI, (8) from Hawks, MI to Alpena, MI, (9) between Detroit, MI and Rogers City, MI, (10) between the junction of U.S. Hwy 23 and Michigan Hwy 55 and the junction of U.S. Hwy 23 and Michigan Hwy 65, (11) between Bay City, MI and Saginaw, MI, (12) between Alpena, MI and Gaylord, MI, (13) between the junction of U.S. Hwy 23 and County Road No. 211 and Sheboygan,

MI, (14) between the junction of Michigan Hwys 32 and 65 and the junction of Michigan Hwy 171 and 72, (15) between the junction of Hubbard Lake Road and Werth Road and the junction of Werth Road and Michigan Hwy 65, (16) between the junction of Michigan Hwys 68 and 33 and Atlanta, MI, (17) between the junction of County Road No. 451 and along Swamp Road and Hillman, MI, (18) between the junction of Beck Road and U.S. Hwy 23 and a point on Beck Road on the east side of Long Lake, (19) from the junction of Michigan Hwy 171 (formerly U.S. Hwy 23) and County Road to Detroit, MI and Glennie, MI, (20) from the junction of Michigan Hwy 171 (formerly U.S. Hwy 23) and County Road to Cook's Store, (21) between the junction of Michigan Hwys 72 and 65 and Whitmore, MI, (22) between Glennie, MI and Curtisville, MI, (23) between the junction of Michigan Hwy 65 and Iosco County Road (known as River Road) and Oscoda, MI, (24) between the junction of River Road and Iosco County Road (known as Silver Creek Road) and East Tawas, MI, (25) from the junction of U.S. Hwy 10 and Michigan Hwy 58 (cut-off around Pontiac, MI) to Dearborn, MI, (26) between Gaylord, MI and Afton, MI as follows: from Gaylord over Interstate Hwy 75 to junction with Michigan Hwy 68, then over Michigan Hwy 68 to Afton, (27) between Detroit, MI and Standish, MI via Interstate Hwy 75 and return over the same route, and (28) serving the plantsite of Ford Motor Company at Romeo, MI in connection with otherwise authorized service. (B) artistic fencing, betwen Alpena, MI and Greenbush, MI, (C) papermill supplies, empty containers, and paper in lots of not less than 18,000 pound, between Alpena, MI and various points, (D) household goods, store fixtures, and office furniture, between all points in Michigan. (Hearing site: Washington, D.C.) *Condition:* Applicant shall submit a plan for the redrafting of the above authority in line with current Commission practice.

Notes.—This application is directly related to No. MC-F-14507, published in this same Federal Register issue, in which Jones seeks ao acquire control of the above authority from Mulvena Truck Line, Inc., through purchase of all of the latter's stock.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-39276 Filed 12-17-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-No. 61F)]

Illinois Central Gulf Railroad Company—Abandonment—Between McRaven and Hermanville, MS; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided November 26, 1980, a finding, which is administratively final, was made by the Administrative Law Judge, stating that, the public convenience and necessity permit the abandonment by the Illinois Central Gulf Railroad Company of a segment of branch line extending from milepost 6.0 near McRaven, MS, to milepost 50.5 southwest, a distance of 44.5 miles, in Hinds, Copiah and Claiborne Counties, MS, subject to the conditions for the protection of employees discussed in Oregon Short Line R. Co.-Abandonment, Goshen, 360 I.C.C. 91(1979). A certificate of abandonment will be issued to the Illinois Central Gulf Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 15 days from the date of publication, the Commission further finds that: (1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice; and

(2) it is likely that such proffered assistance would: (a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96-448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-39270 Filed 12-17-80; 8:45 am]

BILLING CODE 7035-01-M

[Amdt. No. 6 to ICC Order No. 65 Under Service Order No. 1344]

Rerouting Traffic

To: All Railroads, Upon further consideration of I.C.C. Order No. 65, and good cause appearing therefor:

It is ordered, I.C.C. Order No. 65 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* The order shall expire at 11:59 p.m., February 15, 1981, unless otherwise modified, amended or vacated.

Effective date. This order shall become effective at 11:59 p.m., December 15, 1980.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 5, 1980.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 80-39275 Filed 12-17-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-39F]

St. Louis Southwestern Railway Company—Abandonment—Near Paragould and Blytheville, and Hornersville Junction and Caruthersville, in Greene and Mississippi Counties, AR, and Dunklin and Pemiscot Counties, MO; Findings

Notice is hereby give pursuant to 49 U.S.C. 10903 that by a decision decided November 13, 1980, a finding, which administratively final, was made by the Commission, Division 1, stating that the public convenience and necessity permit the abandoment by the St. Louis Southwestern Railway Company of 66.65 miles of branch line track consisting of (1) the Caruthersville Branch which extends from milespost "W"–99.04 at or near Hornersville Junction to milespost "R"–98.95 at or near Caruthersville, a distance of 29.32 miles in Dunklin and Pemiscot Counties, MO; and (2) the Blytherville Branch, whih extends from milepost "P"–103.00 at or near Paragould to milepost "P"–140.33 at or near Blytheville, a distance of 37.33 miles in Greene and Mississippi Counties, AR, and Dunklin County, MO, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.-Abandonment Goshen*, 360 I.C.C. 91 (1979). A certificate of abandonment will be issued to the St. Louis Southwestern Railway Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 15 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies ot Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later that 10 days from publication of this Notice; and

(2) It is likely that such proffered assistant would: (a) Covered the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a cetificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 says after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such agreement (including any extensions of modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96–448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-39293 Filed 12-17-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-20 (Sub-No. 3)]

Texas and Pacific Railway Company—Abandonment—Between San Martine and Rock House in Culberson County, TX; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided November 12, 1980, a finding, which is administratively final, was made by the entire Commission, stating that the public convenience and necessity permit the abandonment by the Texas and Pacific Railway Company of that portion of its line of railroad extending from milepost 686.3 near San Martine, TX, in a northerly direction to milepost 713.5, the end of the line at Rock House, TX, a distance of 27.2 miles located in Culberson and Reeves Counties, TX, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.-Abandonment Goshen*, 360 I.C.C. 91 (1979). A certificate of abandonment will be issued to the Texas and Pacific Railway Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 15 days from the date of publication, the Commission further finds that:

(1) A financially resposible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice; and

(2) It is likely that such proffered assistance would: (a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96-448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-39277 Filed 12-17-80; 8:45 am]

BILLING CODE 7035-01-M

Transportation of Government Traffic; Special Certificate Letter Notice(s)

The following letter notices request participation in a Special Certificate of Public Convenience and Necessity for the transportation of general commodities (except classes A and B explosives, radioactive materials, etiologic agents, shipments of secret materials, and weapons and ammunition which are designated sensitive by the United States Government), between points in the United States (including

Alaska and Hawaii), restricted to the transportation of traffic handled for the United States Government or on behalf of the United States Government where the government contractor (consignee or consignor), is directly reimbursed by the government for the transportation costs, under the Commission's regulations (49 CFR 1062.4), pursuant to a general finding made in Ex Parte No. MC-107, *Government Traffic*, 131 M.C.C. 845 (1979).

An original and one copy of verified statement in opposition (limited to argument and evidence concerning applicant's fitness) may be filed with the Interstate Commerce Commission on or before January 7, 1981. A copy must also be served upon applicant or its representative.

If applicant is not otherwise informed by the Commission on or before January 19, 1981, operations may commence subject to its tariff publication's effective date, of the filing of an effective tender pursuant to 49 U.S.C. 10721.

Note.—By an unprinted decision entered in the Ex Parte No. MC-107 on October 27, 1980, and served on November 10, 1980, the Commission voted to accept for filing the applications for transportation of Government Traffic *which were tendered for filing prior to the effective date of the Motor Carrier Act of 1980*, but were summarily rejected because they had not yet been submitted to the Federal Register for notice publication.

GT-1015-80 (special certificate—Government traffic), filed June 30, 1980. Applicant: JAMES M. BARNETT and MRS. JAMES M. BARNETT, d.b.a. BARNETT'S MOVING & STORAGE, 509 West Adams, Kosciusko, MS 39090. Representative: David Earl Tinker, 1000 Connecticut Ave., N.W., Suite 1112, Washington, DC 20036. Government agency involved: Department of Defense and General Services Administration.

GT-1016-80 (special certificate—Government traffic), filed June 30, 1980. Applicant: G&T TRUCKING CO., Route 1, County Rd. 2 & I-35, Elko, MN 55020. Representative: David Earl Tinker, 1000 Connecticut Ave., N.W., Suite 1112, Washington, D.C. 20036. Government agency involved: Department of Defense, General Services Administration, U.S. Bureau of Mines.

GT-1017-80 (special certificate—Government traffic), filed June 26, 1980. Applicant: FREEDOM TRUCKING, INC., 125 Vinita Rd., P.O. Box 68, Nowata, OK 74048. Representative: David Earl Tinker, 1000 Connecticut Ave., N.W., Suite 1112, Washington, DC 20036. Government agency involved: Department of Defense, General Services Administration.

GT-1018-80 (special certificate—Government traffic), filed April 30, 1980. Applicant: FRICK TRANSFER, INC., R.D. 2, Bushkill Drive, Easton, PA 18042. Representative: Francis W. Doyle, 323 Maple Ave., Southampton, PA 18966. Government agency involved: U.S. Naval Development Center, U.S. Army Depot.

GT-1019-80 (special certificate—Government traffic), filed June 30, 1980. Applicant: FREIGHT MASTERS, INC., 2828 Lafayette Rd., Indianapolis, IN 46222. Representative: Jim Yelverton, Vice President (same address as applicant). Government agency involved: General Services Administration, Departments of Defense, Energy, Commerce and Transportation.

GT-1020-80 (special certificate—Government traffic), filed July 1, 1980. Applicant: BALTIMORE TANK LINES, INC., P.O. Box 1028, 180 Eight Ave., Glen Burnie, MD 21061. Representative: Lawrence E. Lindeman, 425 13th St., N.W., Suite 1032, Washington, DC 20004. Government agency involved: Departments of Defense, Commerce, Agriculture, General Accounting Office, General Services Administration, and United States Government Printing Office.

GT-1021-80 (Special certificate—Government traffic), filed July 1, 1980. Applicant: FLORENCE N. SOBEL, INC., d.b.a. GENTRY FORWARDING CO., 3445 Paterson Plank Rd., North Bergen, NJ 07047. Representative: Lawrence E. Lindenman, 425 13th St., N.W., Suite 1032, Washington, D.C. 20004. Government agency involved: Departments of Defense, Commerce, General Accounting Office, General Services Administration, Internal Revenue Service, Maritime Administration, U.S. Government Printing Office, and U.S. Postal Service.

GT-1022-80 (Special certificate—Government traffic), filed May 12, 1980. Applicant: HENDERSON'S EXPRESS MOVING & HAULING, INC., 17536 Santa Barbara, Detroit, MI 48221. Representative: Howard Henderson (address same as applicant). Government agency involved: General Services Administration, Department of Defense and Army Corp of Engineers.

GT-1023-80 (Special certificate—Government traffic), filed June 30, 1980. Applicant: T & R RIGGING, 1801 Old Highway 8, New Brighton, MN 55112. Representative: David Earl Tinker, 1000 Connecticut Ave., N.W., Suite 1112, Washington, D.C. 20036. Government agency involved: Department of Defense and General Services Administration.

GT-1024-80 (Special certificate—Government traffic), filed June 30, 1980. Applicant: GILMORE MOVING & STORAGE CO., INC., 31 East Fairfield Drive, Pensacola, FL 32501. Representative: David Earl Tinker, 1000 Connecticut Ave., N.W., Suite 1112, Washington, D.C. 20036. Government agency involved: Department of Defense and General Services Administration.

GT-1025-80 (Special certificate—Government traffic), filed June 30, 1980. Applicant: CULLMAN BANANA SUPPLY TRUCKING CORP., INC., Rt. 2, Box 411, Hanceville, AL 35077. Representative: David Earl Tinker, 1000 Connecticut Ave. N.W., Suite 1112, Washington, D.C. 20036. Government agency involved: Department of Defense, General Services Administration.

GT-1026-80 (Special certificate—Government traffic), filed June 30, 1980. Applicant: ANTHONY W. DAUITO, d.b.a. DAUITO'S EXPRESS, 3526 Northwest Blvd. Vineland, NJ 08260. Representative: Wilmer B. Hill, 805 McLachlen Bank Bldg., 666 Eleventh St., N.W., Washington, D.C. 20001. Government agency involved: General Services Administration, Departments of Defense, Agriculture, Transportation, Energy, Interior; National Railroad Passsenger Service Corporation, Tennessee Valley Authority, National Aeronautics and Space Administration, U.S. Postal Service, and U.S. Government Printing Office.

GT-1027-80 (Special certificate—Government traffic), filed June 30, 1980. Applicant: JAMES H. HARTMAN & SON, INC., P.O. Box 85, Pocomoke City, MD 21851. Representative: Wilmer B. Hill, 805 McLachlen Bank Bldg., 666 Eleventh St., N.W., Washington, D.C. 20001. Government agency involved: General Services Administration, Departments of Defense, Agriculture, Transportation, Energy, and Interior; National Railroad Passenger Service Corporation, Tennessee Valley Authority, National Aeronautics and Space Administration, U.S. Government Printing Office.

GT-1028-80 (Special certificate—Government traffic), filed June 30, 1980. Applicant: HARRY L. YOUNG AND SONS, INC., 542 West Sixth South, P.O. Box 1104, Salt Lake City, UT 84110. Representative: Lon Rodney Kump, 333 East Fourth South, Salt Lake City, UT 84111. Government agency involved: Agencies listed in the U.S. Government Manual (1979-80 edition).

GT-1029-80 (Special certificate—Government traffic), filed June 19, 1980. Applicant: PEAKE, INC., 3200 Ruan Center, 666 Grand Avenue, Des Moines,

IA 50309. Representative: E. Check, P.O. Box 855, Des Moines, IA 50304. Government agency involved: Agencies listed in the U.S. Government Manual (1979–80 edition).

GT–1030–80 (Special certificate—Government traffic), filed July 1, 1980. Applicant: TIMOTHY D. SHAW, Stanton and Empire Streets, Wilkes-Barre, PA 18702. Representative: Lawrence E. Lindeman, 425 13th St., N.W., Suite 1032, Washington, D.C. 20004. Government agency involved: Departments of Defense, Commerce, Agriculture, General Accounting Office, General Services Administration, Internal Revenue Service, U.S. Government Printing Office, U.S. Postal Service.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-39267 Filed 12-17-80; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 320 (Sub-No. 2)]

Market Dominance Determinations and Consideration of Product Competition

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Policy.

SUMMARY: Section 202 of the Staggers Rail Ace of 1980 makes a number of important changes in the market dominance standards which limit the jurisdiction of the Commission to decide whether particular rates are unreasonably high. In this proceeding the Commission will interpret and implement these new provisions. In addition, the Act instructs the agency to institute a proceeding to determine whether and to what extent product competition should be a factor in determining whether rates are unreasonably high. Comments will be solicited on this issue. Certain existing regulations with regard to market dominance will be removed elsewhere in this issue; and specific rules proposed in Ex Parte No. 320 (Sub-No. 1) will be withdrawn by a separate notice to be published elsewhere in this issue.

DATES: An original and 15 copies of comments must be filed with the Commission on or before 45 days from the date of this publication in the Federal Register.

ADDRESS: Comments should be sent to: Room 5340, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall (202) 275–7656.

SUPPLEMENTARY INFORMATION:

Part I. Market Dominance

General Background. Under the Staggers Rail Act of 1980, as under the Railroad Revitalization and Regulatory Reform Act of 1976, our jurisdiction over the maximum reasonable level of rates is precluded unless the proponent carrier has market dominance over the transportation to which the rate applies. The Commission is now required to find that a carrier does not have market dominance if the rate is below a designated revenue to variable cost ratio. The ratios set forth in 49 U.S.C. 10709(d) are as follows:

(A) 160 percent during the period beginning on the effective date of the Staggers Rail Act of 1980 and ending September 30, 1981;

(B) 165 percent during the period beginning October 1, 1981, and ending September 30, 1982;

(C) 170 percent during the period beginning October 1, 1982, and ending September 30, 1983;

(D) 175 percent or the cost recovery percentage, whichever is less, during the period beginning October 1, 1982, and ending September 30, 1984; and

(E) the cost recovery percentage, during each 12-month period beginning on or after October 1, 1984.

The cost recovery percentage may not be less than 170 percent or more than 180 percent of variable costs. If a rate is above the threshold level, we propose to continue to make market dominance determinations based on an evaluation of all the relevant evidence submitted, without the use of the presumptions previously promulgated.

The 4R Act in effect placed the burden of proving market dominance on the shipper in most circumstances. In a rate protest filed before the rate adjustment is effective, the shipper must persuade the Commission that there is market dominance and that there is a substantial likelihood that a rate is unreasonably high before a rate will be suspended or investigated. Similarly, in a formal complaint case filed after the rate is effective, a shipper must demonstrate market dominance as a part of proving its case. The Staggers Act, however, places the burden of proving that a rate is below the jurisdictional threshhold upon the carrier. Section 10709(d)(3) specifies that a carrier may meet this burden by establishing the Rail Form A variable costs of the movement. Other valid costing approaches will be admissible, but not required. Once a carrier has made a prima facie case by showing Rail Form A variable costs, a shipper will have to demonstrate, either by restating the carrier's costs in a manner which is more accurate or by presenting a more reliable overall costing methodology, that a rate generates revenues in excess of the jurisdictional threshold. Otherwise, we will find that market dominance does not exist.

Even where it is established that a rate is above the jurisdictional threshold, however, the question of market dominance is not resolved. The shipper still must show that it has no significant transportation alternatives available to it. In an investigation under section 10707, the Commission must make a finding on this question within 90 days or it must dismiss the case. These findings are currently based on the standards and procedures promulgated in Ex Parte No. 320, *Special Proc. For Findings of Market Dominance,* 353 I.C.C. 874 (1976), and 355 I.C.C. 12 (1976).

On January 9, 1980, before passage of the Staggers Rail Act, we issued a notice of proposed rulemaking to modify these regulations in Ex Parte No. 320 (Sub-No. 1), *Rail Market Dominance and Related Considerations.* Comments on that notice have been received and considered. In that proceeding we proposed to eliminate the market dominance presumptions relating to market share and to substantial investment. Further, we proposed a substantial change in the cost presumption. Our analysis of each presumption based upon the new statutory framework and upon the comments received in Ex Parte No. 320 (Sub-No. 1) follows. In general, we believe that the cost standards established by the Staggers Act substantially obviate the need for maintaining market dominance presumptions.

(1) *The Cost Test.*

A rebuttable presumption of market dominance will arise where the rate in issue exceeds the variable cost of providing the service by 60 percent or more.

Clearly our original cost presumption is at odds with the rate threshold created by new section 10701a of the Act. First, rates below the designated level (160 percent for 1980) are now conclusively removed from our jurisdiction, whereas under the presumption there was an open question as to market dominance. Second, section 10709(d)(4) provides that rates above the threshold level can not be presumed to be set by market dominant carriers,[1]

[1] Section 10709(d)(4). "(4) A finding by the Commission that a rate charged by a rail carrier results in a revenue-variable cost percentage for the transportation to which the rate applies that to equal to or greater than the applicable percentage under paragraph (2) of this subsection does not establish a presumption that (A) such rail carrier has or does not have market dominance over such transportation, or (B) the proposed rate exceeds or does not exceed a reasonable maximum.

while under the old rule they are so presumed. Thus because it is in direct conflict with the statute, the existing cost presumption must be repealed.

We proposed in Ex Parte No. 320 (Sub-No. 1) to place greater reliance upon a modified cost presumption in making findings of market dominance. The revenue to variable cost ratio would have become the sole specific test of market dominance. Rates with a variable cost ratio of 180 percent or above would have been prima facie evidence of market dominance. Rates generating revenues of 150 percent or less of variable cost would have been free from investigation or suspension.

The purpose of this revision was "to provide a simpler, less ambiguous test that will harmonize easily with other rail-policy initiatives." The standard was intended to be definite enough to allow carriers and shippers to predict market dominance decisions in particular situations. Further, we wanted to state explicitly that we would not interfere with carrier adjustments needed to bring rates into line with economic costs. Our concerns in revising the cost presumption have been mooted by the Staggers Act.

The Staggers Act has preempted our program to revise the regulations. It has achieved the goals we sought to advance in the Ex Parte No. 320 (Sub-No. 1) rulemaking by giving the carriers a greater degree of certainty and rate flexibility than we could assure administratively.

(2) *The Substantial Investment Test.*

A rebuttable presumption of market dominance will arise where affected shippers or consignees have made a substantial investment in rail related equipment which prevents or makes impractical the use of another carrier or mode.

This presumption was designed to assure reasonable rates for shippers that had committed themselves to rail transportation by making a large fixed investment in rail-related facilities. As we explained in our August, 1976 decision:

If a market is to be truly competitive, shippers must be able to respond quickly to changes in transportation charges. They must be in a position to shift their demand from one rail carrier to other rail carriers or carriers of other modes. Such a shift in demand requires not only the availability of carriers ready to provide a comparable service, but also the ability of the shippers to take advantage of that service. Shippers must be able to make the choice to use an alternative service without absorbing substantial economic loss. The greater the cost of making a shift in carriers, the greater the chance that the carrier will be in a position to extract substantial premiums without fear of diverting traffic to other carriers.

As we noted in Ex Parte No. 320 (Sub-No. 1), a correct use of this presumption requires the application of sophisticated economic concepts to individual fact situations. It is very difficult to isolate pertinent elements of a carrier's investment in plant or facilities and to determine whether that investment makes the use of another carrier or mode impossible or impractical. Thus, while this evidence can be relevant, it has proved to be insufficiently significant to merit a presumption and it is preferable to consider it as one element of the question of whether the shipper has adequate transportation alternatives.

Furthermore, the substantial investment presumption, promulgated in 1976, reflected the Commission's concern that shippers might not be able to protect themselves contractually before making a substantial long term commitment to using rail service. This problem was substantially remedied by the issuance of Ex Parte No. 358, *Railroad Contract Rates,* in notices issued November 9, 1978 [45 FR 58189, Dec. 13, 1980], April 10, 1979, and February 21, 1980 [45 FR 21719, April 2, 1980]. More importantly, Congress has now given express statutory approval of rail contract rates under section 208 of the Staggers Act, 49 U.S.C. § 10713. With regard to investments made subsequent to our February 21, 1980 policy statement, we do not think that a shipper should be able to invoke our jurisdiction merely because it has made a bad business decision—that is, an investment decision by which it in effect binds itself to rail service without taking advantage of the contractual protection it could have secured.

Nevertheless, the substantial investment concept has continuing validity in the context of investments made prior to February 21, 1980. In such cases, shippers should be able to submit evidence that they are not in a position to take advantage of a particular service because they have made a substantial investment in rail related equipment which is not substantially depreciated and which they cannot dispose of without suffering a significant loss. We invite comments on this proposal.

(3) *Long Term Supply Contracts.* A corollary to the substantial investment presumption has been advanced by shippers in numerous coal cases. These shippers, like shippers that have made substantial investments in rail-related equipment, have argued that long term coal supply contracts into which they have entered legally or economically preclude them from using coal moving from alternative sources. They argue that they are therefore captive to a particular railroad. We believe such contracts are relevant information. However, in order for the Commission to decide whether a particular shipper is captive, the supply contract must be in evidence. It is essential to know such information as the duration of the contracts, possible escape clauses, purchase requirements, and the presence and terms of a liquidated damages clause. It has been our experience that shippers have been reluctant to submit supply contracts, or even the essential terms, into evidence. Nevertheless, we will not make findings that a shipper is captive solely because it has entered into a long term coal supply contract without specific knowledge of the terms of the contract.

We also wish to make clear that we will be disinclined to find market dominance merely on the basis of a coal supply contract executed after October 1, 1980. A shipper should not tie itself to a long-term supply contract without assurances regarding the accompanying transportation rate. The supply contract should be made contingent upon a satisfactory transportation contract, or vice versa. This would not preclude a finding of market dominance where a single carrier serves all feasible sources of supply. By "feasible", we mean coal which, because of boiler design and environmental requirements, meets necessary sulphur and fly ash specifications and has approximately the same heating value as coal from the origin in question. We do not include coal which, in an emergency, could be used for short periods to change the coal "mix" but which, over time, would lead to slagging or boiler damage.

(4) *Market Share Test.*

A rebuttable presumption of market dominance will arise where the proponent carrier has handled 70 percent or more of the involved traffic or movement during the preceding year; the market share of the proponent will be deemed to include the share of any affiliates, and of any carriers with whom the proponent carrier has discussed, considered or approved the rate in issue.

As we noted in Ex Parte No. 320 (Sub-No. 1), both the Commission and the parties have experienced great difficulty in applying the market share test. The test, which was derived from the antitrust laws, requires the application of sophisticated economic concepts to highly complex factual situations. Market share analysis is designed to set out the meets and bounds within which a consumer can look for alternative producers of a service or product. The

problem of defining the proper transportation market is a particularly complex one which does not readily lend itself to a precise percentage analysis. Many different factors may have some actual or potential effect upon a particular carrier's ability to set prices. Given the imprecision and complexity of market share analysis, the manipulation of market share evidence by the parties was inevitable. Some transportation alternatives will be excluded by one party and not by another. Widely divergent market definitions and market shares have been the rule rather than the exception. What is needed is a qualitative analysis of the various alternatives available to the shipper not a quantitative calculation of a market share percentage. We believe this presumption has not proven helpful in making this qualitative analysis and that, therefore, it should be eliminated.

Nevertheless, we continue to believe that evidence of market share, and more importantly, evidence of available transportation alternatives, is crucial to our market dominance determinations, and we will continue to consider it. A further discussion of the procedure for treating this evidence is contained in Part II of this notice.

(5) *Rate Bureau Test.*

In any proceeding involving a determination as to market dominance wherein the evidence adduced establishes that the rate in issue has been discussed, considered, or approved under a rate bureau agreement filed with the Commission, pursuant to section 5a or 5b of the Interstate Commerce Act, a rebuttable presumption will arise that a carrier participating in the rate or, in such discussion, or consideration, does not provide effective competition to the proponent rail carrier for the involved traffic or movement.

This test, of course, was never intended to be a presumption of market dominance; rather it is an evidentiary tool. It is merely a presumption that carriers who discuss a rate under rate bureau procedures are not competitors as to that rate. We continue to believe that where competition is lessened by rate bureau activity, that fact must be accounted for in our market dominance determinations.

Two events may soon reduce the need for a specific presumption regarding this issue. First, our decision in *Western Railroads Agreement Section 5b Application No. 2,* 364 I.C.C. 1 (1980) would limit the scope of rail rate bureau activity. The rules adopted in that case are now scheduled to go into effect on January 15, 1981. These include a prohibition of voting on single line rates and a limitation of voting on joint line rates to the actual interline partners. Section 219 of the Staggers Act also embodies these restrictions, but gives the Commission discretion as to when to implement them. When these rules become effective, competitors will not be able to make rates under protection of the rate bureau. Until the new rate bureau rules become effective, however, we propose to retain the limited rate bureau presumption.

Conclusions

In summary, we do not believe that there is any need for specific market dominance presumptions or regulations other than the limited rate bureau presumption. We expect that the focus of market dominance decisions will be upon two issues. First, has the carrier presented sufficient valid cost evidence to establish that the proposed rate is below the statutory threshold? And, if not, has the shipper presented sufficient evidence to show that it does not have available transportation alternatives which amount to effective competition? We think that the statute is clear as to the first issue, and that the second issue is so complex that the specific rule we have formulated in the past are more misleading than helpful. Nevertheless, interested parties are invited to comment as to whether or not specific regulations should be adopted and the content of these regulations.

II. Product Competition

Section 205 of the Staggers Act directs the Commission to consider "whether and to what extent product competition should be considered in proceedings . . . to determine the reasonableness of rail carrier rates." Product competition is defined as:

The availability to a consignee, at a competitive delivered cost and in sufficient quantities, of products or commodities which are of the same type as the commodity or product to which the rate in question applies, without regard to whether such products or commodities are available from the same or a different origin as those to which the rate applies.

It is out initial impression that while product competition is relevant to the question of whether shippers have adequate transportation alternatives and hence whether rates are likely to be reasonable, it is preferable to consider product competition as a factor in our market dominance determinations. This has been our practice in the past.

While product competition was specifically excluded from calculation of the market share percentage presumption formulated in Ex Parte No. 320, we have always been receptive to a wide range of evidence bearing on the question of whether the shipper has adequate transportation alternatives. Carriers have been free to submit evidence of product competition to rebut the market share presumption or to rebut any other evidence of market dominance. This evidence has been critical to our decisions in several cases. In our decision in Ex Parte No. 320 on remand from the United States Circuit Court of Appeals for the District of Columbia [2], we clarified this point as follows:

While certain evidence is not germane to computing market share, proponents of a rate may introduce evidence of potential competition, competition from private carriage, alternative product competition or geographic competition to show that effective competition exists.[3]

Product competition is relevant to the jurisdictional question because it limits the degree of market power a rail carrier can exert over prices and therefore the need for regulation. Whether that competition is truly effective depends upon the shipper's ability to substitute one source or product for another. This, in turn, depends on the delivered price of the alternative product or the same product from an alternative source. For example, assume a particular electric utility is receiving coal from source A. Coal is also available from sources B, C, and D. Coal from B and C has similar specifications to that received from A. The delivered price from B is twice as high as that from A because it is moving from a distant mine. The delivered price of coal moving by another railroad from C, however, is only slightly higher than the delivered price from A. The potential for moving coal from C will thus have a significant impact on the carriers inclination to raise rates from A. If the carrier raises rates from A and the market for the sale of coal is competitive, it may move no traffic at all since its shipper will be unable to sell its product. Such a situation is detrimental to the carrier and the shipper.

We propose to continue to handle questions of product competition in the context of our market dominance considerations. Evidence of product competition, like other evidence relating to market dominance, should be qualitative, not just quantitative. A carrier arguing that product competition is effective in a given circumstance would have to demonstrate that the alternate product or source is fully substitutable. For an alternative to be substitutable, it must be price competitive, and the evidence should

[2] Atchison, T & S F Ry. Co. v. I.C.C., 580 F. 2d 623 (D.C. Cir. 1978).

[3] Special Proc. For Findings of Market Dominance, 359 I.C.C. 735, 736 (1979).

show that the substitutability has not occurred only because the price of the original good has been raised above a competitive level. If the delivered price of the original good gets to be high enough, a competitive alternative will always be available. But that situation would not be an indication of effective competition at reasonable price levels. Evidence submitted should address this issue.

Comments are solicited on these issues and on the question of whether product competition should also or instead be treated as a factor in determining whether rates are unreasonably high. By this we mean should product competition be added as another in the many factors the Commission considers when it determines whether a rate is reasonable. Parties are also requested to submit comments as to how this could be accomplished.

It should be noted that section 205 contains certain specific directions for considering product competition in determinations of maximum reasonableness. If we decide to consider product competition in this context rather than in the context of market dominance, these provisions will be incorporated into our procedure:

Section 205(a)(2)(B) In determining the availability of alternative sources of a particular commodity for purposes of this subsection, such commodity must be capable, by reason of similar specifications, of being effectively utilized by the consignee.

(C) In determining the availability of alternative souces of coal for purposes of this subsection, such coal must be capable by reason of similar specifications such as Btu's, sulfur content, and ash content, of being effectively utilized by the consignee.

(D) For purposes of this subsection, any coal imported in the United States for the generation of electricity by utilities shall not be taken into account in the determination of whether coal is available to a consignee from another source.

It does not appear that this action will affect significantly the quality of the human environment or conservation of energy resources. However, comments on this issue are also invited.

Authority: 5 U.S.C. 553, 49 U.S.C. 10709, and P.L. 96-448, section 205.

Decided: December 1, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis and Gilliam. Commissioner Clapp concurring with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Clapp, concurring: Unfortunately, this notice fails to provide clearly integrated guidelines that will allow carriers and shippers to know what factors the Commission will consider relevant to the market dominance issue. While the discussion of various criticisms and specific flaws of the prior regulations is important, it is more important—indeed it is essential—to set forth the factors the Commission will consider as indicative of the presence or absence of effective competition. Is it possible to develop either an exhaustive or a generally applicable list of points that should be addressed by the parties in particular cases?

One also must question whether it is wise to propose issuance of a mere policy statement, which theoretically is subject to change without notice, when adoption of specific rules would avoid this uncertainty. The replacement of our current regulations with guidelines which would not change without public notice is preferable to the policy statement approach. If we are unable to develop specific tests, we should at least codify the factors that will be considered.

I question why the majority has chosen the February 21, 1980 cutoff date for considering substantial shipper investments. It would seem more logical to use either the October 1, 1980 effective date of the Staggers Act, the November 9, 1978 service date of our first policy statement in Ex Parte No. 358, or the effective date of the proposed policy statement (or rule).

The section on product competition is unclear on one significant point: the role of foreign source competition. The majority apparently does not wish to apply Section 205(a)(2)(D) of the Staggers Act and would consider coal imported by domestic utilities for generation of electricity as "effective" competition. If the transportation price of domestic coal is raised so greatly that there is no other choice but to depend upon foreign coal, the Commission might be unable to take any action to enhance domestic energy needs. This is more likely if product competition is considered in the context of the market dominance jurisdictional test rather than as a factor in a determination of rate reasonableness. The result could be inconsistent with the express language in new 49 U.S.C. 10707a(e)(2)(B)(iii) that the Commission give due consideration to the impact of certain rate increases "taking into account the railroads' role as a primary source of energy transportation and the need for a sound rail transportation system in accordance with (statutory) revenue adequacy goals." The notice suggests that foreign competition would not be effective competition if "the price of the original goods has been raised above a competitive price level." Since that phrase is somewhat cryptic, it could be read to alleviate this concern. Again, the need for clear guidelines is manifest.

Another question is whether there are a significant number of situations where alternative foreign, but not domestic, sources are available. It stands to reason that proof of use of foreign coal is an indication that a utility is not necessarily tied to a single domestic source. However, feasible (as that term is defined in the notice) domestic alternatives would have to be available. If there is effective domestic competition then the existence of foreign alternatives is not a crucial factor. Public comments will help determine the relative importance of these matters and the proper context for considering product competition.

[FR Doc. 80-39274 Filed 12-17-80; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication 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, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able 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 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 in the form of verified statements filed on or before February 2, 1981 (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 notice that the decision-notice is effective. On or before February 17, 1981, an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be

construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP1-100

Decided: Dec. 11, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 35320 (Sub-622F), filed December 1, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), serving Amarillo, TX as an off-route point in connection with applicant's otherwise authorized regular-route operations, restricted to traffic originating at or destined to the facilities of Levi Strauss & Co.

MC 47171 (Sub-192F), filed December 2, 1980. Applicant: COOPER MOTOR LINES, INC., P.O. Box 2820, Greenville, SC 29602. Representative: Harris G. Andrews (same address as applicant). 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 points in VA, on the one hand, and, on the other, points in GA, NC, and SC.

MC 105350(Sub-33F), filed December 3, 1980. Applicant: NORTH PARK TRANSPORTATION CO., a corporation, 5150 Columbine St., Denver, CO 80216. Representative: Leslie R. Kehl, Suite 1600, Lincoln Center Bldg., 1660 Lincoln St., Denver, CO 80264. Transporting *general commodities* (except household goods as defined by the Commission), between points in CO and WY. CONDITION: To the extent that the certificate in this proceeding authorizes the transportation of classes A and B explosives, it will expire 5 years from the date of issuance.

MC 113651(Sub-344F), filed December 5, 1980. Applicant: INDIANA REFRIGERATOR LINES, INC., 10838 Old Mill Rd., Suite 4, Omaha, NE 68154. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114. Transporting *plastic articles,* and *materials, equipment, and supplies* used in the manufacture and distribution of plastic articles, between points in Lorain County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 115730(Sub-89F), filed November 28, 1980. Applicant: THE MICKOW CORP., 531 S.W. Sixth St., P. O. Box 1774, Des Moines, IA 50306. Representative: Cecil L. Goettsch, 1100 Des Moines Bldg., Des Moines, IA 50307. Transporting (1) *roofing and insulting materials, and floor coverings,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between Kansas City, Mo, on the one hand, and, on the other, points in IA, KS, NE, and OK.

MC 119641(Sub-187F), filed December 4, 1980. Applicant: RINGLE EXPRESS, INC., 450 E. Ninth St., Fowler, IN 47944. Representative: Michael D. McCormick, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting (1) *material handling equipment, containers, skids, and pallets,* and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, (a) between points in Benton County, IN and Trumball County, OH, and (b) between Benton County, IN and Trumball County, OH, on the one hand, and, on the other, points in the U.S.

MC 121080(Sub-7F), filed December 3, 1980. Applicant: COLUMBUS MOTOR LINES, INC., P.O. Box 26741, Charlotte, NC 28213. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. Transporting (1)(a) *textile mill products,* as described in item 22 of the Standard Transportation Commodity Code Tariff, and (b) *chemicals or allied products* (except commodities in bulk, in tank vehicles), as described in item 28 of the Standard Transportation Commodity Code Tariff from points in Rowan County, NC, to points in GA, and SC, and Colbert, Jackson, Limestone, Madison, Marshall, and Morgan Counties, AL, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction.

MC 121811 (Sub-3F), filed December 1, 1980. Applicant: McCLELLAN'S ENTERPRISES, INC., Highway 41 South, Tifton, GA 31794. Representative: Arthur L. McClellan (same address as applicant). Transporting *lumber,* between points in AL, FL, GA, NC, SC, and TN.

MC 123391 (Sub-17F), filed December 5, 1980. Applicant: MACHINE INTERSTATE TRANSPORTATION CO., INC., 500 N. Egg Harbor Road, Hammond, NJ 08037. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *commodities in bulk,* between points in DE, MD, NJ, NY, and PA.

MC 129900 (Sub-2F), filed December 2, 1980. Applicant: F. P. NIELSON & SONS TRUCKING COMPANY, a corporation, P.O. Box 7041, Murray, UT 84107. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. Transporting *building materials,* between points in the U.S., under continuing contract(s) with Multimax, Inc., of Murray, UT Ogden Supply, Inc., of Ogden, UT, and Claron Bailey, of Salt Lake City, UT.

MC 135760 (Sub-25F), filed December 3, 1980. Applicant: COAST REFRIGERATED TRUCKING CO., INC., P.O. Box 188, Holly Ridge, NC 28445. Representative: Herbert Alan Dubin, 818 Connecticut Ave., N.W., Washington, DC 20006. Transporting *food or kindred products* as described in Item 20 of the Standard Transportation Commodity Code Tariff, between points in the U.S., under continuing contract(s) with Heinz USA, Division of H. J. Heniz Company of Pittsburgh, PA.

MC 138941 (Sub-474F), filed December 2, 1980. Applicant: COUNTRY WIDE TRUCK SERVICE, INC., 1110 South Reservoir St., Pomona, CA 91766. Representative: K. Edward Wolcott, P.O. Box 872, Atlanta, GA 30301. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Fiber Chem, Inc., of Seattle, WA.

MC 143280 (Sub-9F), filed December 1, 1980. Applicant: SAFE TRANSPORTATION COMPANY, a corporation, 6834 Washington Ave. South, Eden Prairie, MN 55344. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *malt beverages,* between points in St. Louis County, MO, Milwaukee and LaCrossee Counties, WI, and St. Clair and Peoria Counties, IL, on the one hand, and, on the other, points in MN.

MC 143701 (Sub-30F), filed November 25, 1980. Applicant: HODGES FREIGHT LINES, INC., P.O. Box 20247, Kansas City, MO 64079. Representative: Lester C. Arvin, 814 Century Plaza Bldg., Wichita, KS 67202. Transporting *such commodities* as are dealt in by wholesale and retail grocery and food business houses, between points in the U.S., restricted to traffic originating at or destined to the facilities of Topco and Associates, Inc., its suppliers, and customers.

MC 147851 (Sub-8F), filed December 2, 1980. Applicant: KWESVA, INC., Route

10, Benson Valley Rd., Frankfort, KY 40601. Representative: Herbert D. Liebman, 403 West Main St., P.O. Box 478, Frankfort, KY 40602. Transporting *glass bottles,* between points in KY and WV.

MC 151770 (Sub-1F), filed December 3, 1980. Applicant: WYOMING HOT FREIGHT, INC., P.O. Box 766, Cheyenne, WY 82001. Representative: James G. Stephen (same address as applicant). Transporting (1) *machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and (2) *machinery, materials, equipment and supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof, and (3) *mine and mill machinery, equipment, materials, and supplies,* between points in WY and CO.

MC 152850F, filed November 25, 1980. Applicant: CANJO COMPANY, a corporation, 6536 E. 42nd St., Tulsa, OK 74145. Representative: Julius M. Oswald, 601 Jefferson St., P.O. Box 550, Blue Springs, MO 64105. Transporting (1) *foundry products, metals, abrasives, refractories, plastics, chemicals, and petrochemicals,* and (2) *materials, equipment and supplies* used in the distribution of the commodities in (1) above, between points in Tulsa County, OK, Wyandotte, Leavenworth and Johnson Counties, KS, and Jackson, Cass, Platte, Clay and Ray Counties, MO, on the one hand, and, on the other, points in AR, KS, IL, IN, KY, MI, MO, OH, OK, NE, TN, and IA.

MC 153021F, filed December 1, 1980. Applicant: DAVID DALE TRANSPORT, INC., 2 Franklin St., West Medway, MA. 02053. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Transporting (1) *adhesives,* and *materials, equipment, and supplies* used in the manufacture and distribution of adhesives, between points in MA, on the one hand, and, on the other, points in OH, KY, NJ, NY, OK, and TX, and (2) *plastic articles,* and *materials, equipment, and supplies* used in the manufacture and distribution of plastic articles (except commodities in bulk), between points in MA, on the one hand, and, on the other, points in GA, MI, OH, NY, and PA.

Volume No: OP2-123

Decided: December 1, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 145213 (Sub-7F), filed November 21, 1980. Applicant: DEEP SOUTH TRUCKING, INC., Hwy 11 North, Post Office Box 304, Purvis, MS 39475. Representative: Kent F. Hudson, 202 Main Street, P.O. Box 696, Purvis, MS 39475. Transporting *wire and electrodes,* between points in the U.S., under continuing contract(s) with Dealers Wholesale Welding Supply, Inc., of Dallas, TX.

Volume No: OP2-128

Decided: December 11, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 58923 (Sub-60F), filed November 25, 1980. Applicant: GEORGIA HIGHWAY EXPRESS, INC., 2090 Jonesboro Road SE., P.O. Box 6944, Atlanta, GA 30315. Representative: Fritz R. Kahn, 1660 L Street NW., Suite 1000, Washington, DC 20036. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between Cheviot and Fernald, Ohio, on the one hand, and, on the other, points in the U.S.

Note.—Applicant intends to tack this authority with existing authority. The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 115092 (Sub-124F), filed November 25, 1980. Applicant: TOMAHAWK TRUCKING, INC., P.O. 0, Vernal, UT 84078. Representative: Walter Kobos, 1016 Keohoe Drive, St. Charles, IL 60174. Transporting *general commodities,* between Wyatt, MO, Steptoe and Thornton, WA, and Cushing, Crandall, Eustace, Frankston, Kaufman, Kemp, Larue, Mabank, Mohl, Poynor, Reklaw, Sacul and Seagoville, TX, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier service for abandoned rail service.

MC 134023 (Sub-3F), filed November 10, 1980. Applicant: KING VAN & STORAGE, INC., 2323 West La Palma Avenue, Anheim, CA 92801. Representative: David P. Christianson, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. Transporting *general commodities* (except used household goods, hazardous or secret materials and sensitive weapons and munitions) for the United States Government, between points in the U.S.

Volume No. OP3-110

Decided: December 9, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 14314 (Sub-46F), filed November 29, 1980. Applicant: DUFF TRUCK LINE, INC., P.O. Box 359, Broadway and Vine Sts., Lima, OH. Representative: R. L. Anderhalt, Jr. (same address as applicant). 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 points in St. Charles County, MO, on the one hand, and, on the other, points in the U.S.

MC 29555 (Sub-194F), filed November 28, 1980. Applicant: BRIGGS TRANSPORTATION CO., N-400 Griggs-Midway Bldg., St. Paul, MN 55104. Representative: Winston W. Hurd (same address as applicant). 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 commodities requiring special equipment), serving points in Crawford, Richard, Columbia, Dane, Dodge, Jefferson, Waukesha, Rock, Walworth, Racine and Kenosha Counties, WI, and Stearns, Sherburne, Wright, McLeod, Carver, Scott, Le Sueur, Rice, Brown, Blue Earth, and Waseca Counties, MN as off-route points in connection with applicant's presently authorized regular route operations.

Note.—Applicant intends to tack this authority with its existing authority.

MC 42405 Sub 42F, filed November 25, 1980. Applicant: MISTLETOE EXPRESS SERVICE, P.O. Box 25614, Oklahoma City, OK 73125. Representative: T.M. Brown, P.O. Box 1540, Edmond, OK 73034. Over regular route, transporting *general commodities* (except Classes A and B explosives), moving in express service, (1) between Memphis, TN, and Florence, AL, over U.S. Hwy 72, (2) between Memphis, TN, and Fulton, MS, over U.S. Hwy 78, (3) between Memphis, TN, and Winona, MS, (a) over U.S. Hwy 51, and (b) over Interstate Hwy 55, (4) between Memphis, TN, and Leland, MS, over U.S. Hwy 61, (5) between junction U.S. Hwys 61 and 49 and Greenville, MS; from junction U.S. Hwys 61 and 49 near Rich, MS, over U.S. Hwy 49 to junction MS Hwy 1, then over MS Hwy 1 to Greenville, MS, and return over the same route, (6) between junction U.S. Hwy 61 and MS Hwy 3 and junction U.S. Hwys 49W and 82; from junction U.S. Hwy 61 and MS Hwy 3, over MS Hwy 3 to junction U.S. Hwy 49, then over U.S. Hwy 49 to junction U.S. Hwy 49W, then over U.S. Hwy 49W to junction U.S. Hwy 82, and return over the same route, (7) between Clarksdale and Greenwood,

MS; from Clarksdale over U.S. Hwy 49 to junction U.S. Hwy 49E, then over U.S. Hwy 49E to Greenwood, MS, and return over the same route, (8) between Holly Springs and Greenwood, MS, over MS Hwy 7, (9) between junction MS Hwys 9W and 7 and Eupora, MS; form junction MS Hwys 9W and 7 over MS Hwy 9W to junction MS Hwy 9, then over MS Hwy 9 to Eupora, and return over the same route, (10) between Walnut, MS, and junction MS Hwy 15 and the Natchez Trace Parkway, over MS Hwy 15, (11) between Corinth and Columbus, MS, over U.S., Hwy 45, (12) between junction Natchez Trace Parkway and U.S. Hwy 82 and junction Natchez Trace Parkway and MS Hwy 25, over the Natchez Trace Parkway, (13) between junction U.S. Hwys 72 and MS Hwy 25 and junction MS Hwys 25 and 8, over MS Hwy 25, (14) between junction U.S. Hwys 45 and Alt. U.S. Hwy 45, and junction U.S. Hwys 82 and Alt. 45, over U.S. Hwy Alt. 45, (15) between junction MS Hwy 5 and U.S. Hwy 72 and Hickory Flat, MS, over MS Hwy 5, (16) between junction MS Hwys 7 and 30, and junction MS Hwy 30 and U.S. Hwy 45, over MS Hwy 30, (17) between junction MS Hwy 4 and U.S. Hwy 61 and junction MS Hwys 4 and 25, over MS Hwy 4, and (18) between Clarksdale and Tupelo, MS, over MS Hwy 6, (19) between junction MS Hwys 32 and 1 and Amory, MS; from junction MS Hwys 32 and 1, over MS Hwy 32 to Okolona, then over MS Hwy 41 and U.S. Hwy 278 to Amory, and return over the same route, (20) between Rosedale, MS, and junction MS Hwys 8 and 25, over MS Hwy 8, (21) between El Dorado, AR, and Columbus, MS, over U.S. Hwy 82 (22) between junction U.S. Hwy 167 and AR Hwy 4 and McGehee, AR, over AR Hwy 4, (23) between junction AR Hwys 4 and 35 and junction AR Hwy 35 and U.S. Hwy 165, over AR Hwy 35, (24) between Pine Bluff and Eudora, AR, over U.S. Hwy 65, (25) between junction U.S. Hwys 65 and 165 and Parkdale, AR, over U.S. Hwy 165, (26) between junction U.S. Hwy 65 and AR Hwy 81 and Eudora, AR; from junction U.S. Hwy 65 and AR Hwy 81 over AR Hwy 81 to Hamburg, then over AR Hwy 8 to Eudora, and return over the same route, (27) between Pine Bluff, AR, and Memphis, TN; from Pine Bluff over U.S. Hwys 79 to junction U.S. Hwy 70, then over U.S. Hwy 70 to Memphis, and return over the same route, (28) between Little Rock and Stuttgart, AR; from Little Rock over AR Hwy 130 to junction AR Hwy 11, then over AR Hwy 11 to Stuttgart, and return over the same route, (29) between Forrest City and Dumas, AR; from Forrest City over AR Hwy 1 to junction AR Hwy 54, then over AR Hwy 54 to Dumas, and return over the same route, (30) between Walnut Corner, AR and junction MS Hwy 1 and U.S. Hwy 49, over U.S. Hwy 49, (31) between Pine Bluff and Warren, AR, over AR Hwy 15, (32) between Fordyce and Warren, AR, over AR Hwy 8, (33) between Stuttgart and DeWitt, AR, (a) from Stuttgart over AR Hwy 11 to junction AR Hwy 152, then over AR Hwy 152 to DeWitt, and return over the same route, and (b) from Stuttgart over AR Hwy 11 to junction AR Hwy 130, then over AR Hwy 130 to DeWitt, and return over the same route, (34) between Brinkley and Marvell, AR, over U.S. Hwy 49, (35) between Batesville and Oxberry, MS, over MS Hwy 35, and (36) between Falkner, MS, and junction MS Hwys 370 and 4, over MS Hwy 370, in (1) above serving all intermediate points between Memphis and junction U.S. Hwy 72 and the MS-AL state line, and serving Florence, AL, for purposes of interline and interchange only, and in (2) through (36) above serving all intermediate points.

Note.—Applicant intends to tack this authority with its existing regular route authority.

MC 106398 (Sub-1087F), filed November 29, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., P.O. Box 3329, Tulsa, OK 74101. Representative: Paul D. Borghesani, 300 Communicana Bldg., 421 South Second St., Elkhart, IN 46516. Transporting (1) *Primary metal products,* including galvanized, except coating or other allied processing, (2) *fabricated metal products,* except ordnance, as described in Items 33 and 34, respectively, of the Standard Transportation Commodity Code Tariff, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2), between Points in the U.S.

Note.—Applicant relies on traffic studies rather than shipper support.

MC 107295 (Sub-1008 F), filed December 2, 1980. Applicant: PRE-FAB TRANSIT CO., a Corporation, P.O. Box 146, Farmer City, IL 61842. Representative: Duane Zehr (same address as applicant). Transporting (1) *buildings,* complete, knocked down, or in sections, *building sections, building panels, prefabricated structural components,* (2) *panels, parts and accessories* for the commodities in (1) above, from St. Joseph, MO, to points in the U.S. (exempt AK and HI); and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, from points in the U.S., to St. Joseph, MO and Evansville, WI.

MC 116915 (Sub-128F), filed November 29, 1980. Applicant: ECK MILLER TRANSPORTATION CORP., Rt. 1, Box 248, Rockport, IN 47635. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602. Transporting (1) *iron and steel articles,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between points in Lake County, IN, on the one hand, and, on the other, points in AL, AR, GA, KY, LA, MI, MS, NC, OH, PA, SC, TN, and TX.

MC 120364 (Sub-29F), filed November 29, 1980. Applicant: A & B FREIGHT LINE, INC., 4805 Sandy Hollow Rd., Rockford, IL 61109. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Rd., Madison, WI 53719. Transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, household goods as defined by the Commission, commodities requiring special equipment, frozen foods, motor vehicles, and farm equipment and supplies), between points in Dane County, WI, on the one hand, and, on the other, Chicago, IL and those points in IL on and north of Interstate Hwy 80.

MC 125254 (Sub-78F), filed November 28, 1980. Applicant: MORGAN TRUCKING CO., a corporation, P.O. Box 714, Muscatine, IA 52761. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *wood products,* from St. Joseph, MO and Muscatine, IA, to points in IA, IL, IN, MN, MO, WI, NE, KS, MI, OH, and KY.

MC 126305 (Sub-151F), filed November 20, 1980. Applicant: BOYD BROTHERS TRANSPORTATION, INC., RFD 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting (1) *iron and steel,* (2) *iron and steel articles,* (3) *heating and air-conditioning systems,* (4) *metal products,* (5) *pipe, pipe fittings and accessories for pipe,* (6) *wire products,* and (7) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) through (6) (except commodities in bulk), between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 133655 (Sub-229F), filed November 29, 1980. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 402535, Dallas, TX 75240. Representative: Warren L. Troupe, 3061 Ridge Rd., Green Bay, WI 54304. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in the U.S.

MC 134035 (Sub-45F), filed November 28, 1980. Applicant: DOUGLAS TRUCKING COMPANY, a corporation, P.O. Box 698, Highway 75 South, Corsicana, TX 75110. Representative: Jack K. Williams, P.O. Box 698, Corsicana, TX 75110. Transporting *floor coverings,* and *material and supplies* used in the manufacture of floor coverings, between points in Morgan County, AL, Bibb, Chatham, Floyd, Jeff Davis, Monroe, Murray and Whitfield Counties, CA, Catawba and Gaston Counties, NC, Mayes County, OK, Falls County, TX, and Franklin and Henry Counties, VA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 136315 (Sub-139F), filed November 28, 1980. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 28, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22807, Jackson, MS 39205. Transporting (1) *iron and steel articles,* (2) *machinery, equipment and supplies* used in the manufacture, sale and distribution of the commodities named in (1) above, between points in Georgetown County, SC, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 136635 (Sub-43F), filed November 29, 1980. Applicant: WHITEFORD TRUCK LINE, INC., 640 Ireland Rd., South Bend, IN 46680. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting (1) *food or kindred products,* as described in Item 20 of the Standard Transportation Commodity Code Tariff, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between the facilities of Stokely Van Camp, Inc., at (a) Poinciana, FL, (b) Gibson City and Hoopeston, IL, (c) Indianapolis and Tipton, IN, (d) Lawrence, KS, (e) Hart and Scottville, MI, (f) Norwalk and Paulding, OH, (g) Dallas, TX, (h) Newport and Tellico Plains, TN, (i) Appleton, Cumberland, Frederice and Plymouth, WI, on the one hand, and, on the other, points in the U.S.

MC 139614 (Sub-2F), filed November 29, 1980. Applicant: ERIN TOURS, INC., 2019 Haring St., Brooklyn, NY. 11229. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022. Transporting *passenger and their baggage* in the same vehicle with passengers, (1) in one-way charter operations, (a) from New York, NY and from points in Nassau County, NY, to points in AL, CT, DE, FL, GA, IL, IN, KY, LA, MA, MD, ME, MI, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, WV, and DC, and return; and (2) in round-trip charter operations, beginning and ending at the origin points in (a) above, and extending to the destination points named in (a) above.

MC 140665 (Sub-120F), filed November 29, 1980. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. Transporting *general commodities* (except commodities in bulk, household goods as defined by the Commission, and classes A and B explosives), between the facilities used by Rohm and Haas Company and its subsidiaries, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 140665 (Sub-121F), filed November 29, 1980. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. Transporting *tree killing compounds, weed killing compounds, plant growth inhibitor modifier, plant growth regulator and materials and supplies* used in the distribution of the commodities in (1) above (except commodities in bulk), between St. Joseph and Kansas City, MO, on the one hand, and, on the other, points in CA, ID, ND, OR, UT, WA, TX, TN, LA, GA, NC, OH, MJ, and PA.

MC 151274 (Sub-1F), filed December 1, 1980. Applicant: ALLYN BUS CO., LTD., P.O. Box 405, Brookfield, WI 53005. Representative: Richard C. Alexander, 710 N. Plankinton Ave., Milwaukee, WI 53203. Transporting *passengers and their baggage* in the same vehicle with passengers, in charter operations, beginning and ending at points in Kenosha, Racine, and Walworth Counties, WI, and extending to points in IL, IN, and MI.

MC 151624 (Sub-1F), filed November 26, 1980. Applicant: GARRISON TRANSPORTATION COMPANY, INC., 901 Castaic Ave.,BAkersfield, CA 93308. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306. Transporting (1) *fabricated metal products,* except ordnance, (2) *machinery,* except electrical, and (3) *transportation equipment,* as described in Items 33, 34, and 35, respectively, of the Standard Transportation Comodity Code, between points in CA on the one hand, and, on the other, points in TX.

MC 151734 (Sub-1), filed November 28, 1980. Applicant: C & B TRUCKING, INC., 2121 S. Pantano, #431, Tucson, AZ 85710. Representative: Thomas A. Casper (same address as applicant). Transporting (1) *malt beverages* (except in bulk), and (2) *malt beverage dispensing equipment,* between points in the U.S., under continuing contract(s) with Buxton-Smith Merc. Co., of Tucson, AZ.

MC 152615 (Sub-1F), filed November 29, 1980. Applicant: PETER J. DiGIOVANNI, d.b.a. GUARANTEED MOTOR TOWING SERVICE, P.O. Box 1, New Brunswick, NJ 08903. Representative: James F. Flint, Suite 406, 918 16th St., NW, Washington, DC 20006. Transporting *motor vehicles* and *trailers,* by wrecker or towing equipment, between points in the U.S. (except AK and HI).

MC 152924F, filed November 28, 1980. Applicant: INDIREC TRAVEL SERVICE, INC., 811 Bronx River Rd., Bronxville, NY 10708. Representative: Sidney J. Leshin, 575 Madison Ave., New York, NY 10022. As a *broker* in arranging for the transportation of *passengers and their baggage,* beginning and ending at New York, NY, and points in Westchester, Putnam, Nassau and Suffolk Counties, NY, Fairfield and New Haven Counties, CT, and Bergen, Essex, Union and Passaic Counties, NJ, and extending to points in the U.S. (including AK but excluding HI).

MC 152955F, filed November 28, 1980. Applicant: JOHN SETAR, d.b.a. SETAR MOVING & TRUCKING, 7371 Parma Park Blvd., Cleveland, OH 44130. Representative: Richard H. Brandon, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017. Transporting *general commodities* (except commodities in bulk, those of unusual value, household goods as defined by the Commission, classes A and B explosives, and those requiring special equipment), between points in the U.S. (except AK and HI), under continuing contract(s) with Williams and Co., Inc., Pittsburgh, PA.

Volume No. OP3–112

Decided: December 9, 1980.

By the Commission. Review Board Number 2, Members Chandler, Eaton, and Liberman. Member Chandler not particpating.

MC 59124 (Sub-22F), filed December 2, 1980. Applicant: MAIERS MOTOR FREIGHT COMPANY, a corporation, 875 East Huron Ave., Vassar, MI 48768. Representative: Wayne D. Fox (same address as applicant). Transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, and classes A and B explosives), between points in Tuscola County, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 69454 (Sub-11F), filed November 29, 1980. Applicant: DITTO FREIGHT LINES, a corporation, 1575 Industrial Ave., San Jose, CA 95112. Representative: Daniel W. Baker, 100

Pine St., Suite 2550, San Francisco, CA 94111. Transporting *glass containers,* from points in Los Angeles, Orange and San Bernardino Counties, CA, to Phoenix, AZ.

MC 107515 (Sub-1398F), filed December 1, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., NE., 5th Floor-Lenox Towers South, Atlanta, GA 30326. Transporting (1) *paper and paper products,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S. (except AK and HI).

MC 114334 (Sub-90F), filed November 26, 1980. Applicant: BUILDERS TRANSPORTATION COMPANY, a corporation, 3710 Tulane Rd., Memphis, TN 38116. Representative: Dale Woodall, 900 Memphis Bank Bldg., Memphis, TN 38103. Transporting *metal articles* and *building materials,* (1) between points in MO, IL, IN, AR, LA, and TX, and those in OK on and east of Interstate Hwy 35, on the one hand, and, on the other, points in TN, KY, MS, AL, and GA, (2) between points in AR, IL, and MO, and (3) between points in TN, MS, and AL.

Note.—Issuance of a certificate in this proceeding is conditioned upon coincidental cancellation of No. MC 114334 and subs thereunder.

MC 118304 (Sub-10F), filed November 28, 1980. Applicant: CALDWELL TRANSPORT LTD., P.O. Box 127, Florenceville, NB, Canada E0J 1K0. Representative: Francis E. Barrett, 10 Industrial Park Rd., Hingham, MA 02043. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between the ports of entry on the international boundary line between the U.S. and Canada, located in ME, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA.

Note.—Issuance of a certificate in this proceeding is conditioned upon prior cancellation at applicant's written request of Certificates in MC 118304 Sub 3, 118304, Sub 5, 118304 Sub 6, and 118304 Sub 7 to the extent they are duplicated by the authority here.

MC 110325 (Sub-170F), filed November 28, 1980. Applicant: TRANSCON LINES, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Bldg., 1221 Baltimore Ave., Kansas City, MO 64105. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Port of Seattle, of Seattle, WA.

MC 113974 (Sub-74F), filed November 28, 1980. Applicant: PITTSBURGH & NEW ENGLAND TRUCKING CO., 211 Washington Ave., Dravosburg, PA 15034. Representative: James D. Porterfield (same address as applicant). Transporting (1) *metal products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of metal products, between points in New Castle County, DE, and Washington County, PA, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, IL, IN, KY, LA, ME, MD, MA, MI, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI, and DC.

MC 116254 (Sub-318F), filed December 2, 1980. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, P.O. Box 339, Florence, AL 35631. Representative: Hampton M. Mills (same address as applicant). Transporting *phosphorous acid,* between points in Maury County, TN, on the one hand, and, on the other, points in Orange and Los Angeles Counties, CA.

MC 126305 (Sub-153F), filed November 26, 1980. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., RFD 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *alcoholic beverages,* and *equipment, materials and supplies* used in the manufacture and distribution of alcoholic beverages, from points in the U.S., to the facilities used by the Alcoholic Beverage Control Board of the State of Alabama, in AL.

MC 134604 (Sub-7F), filed December 3, 1980. Applicant: HOWARD DULLUM, Gardner, ND 58036. Representative: Alan Foss, 502 First National Bank Bldg., Fargo, ND 58126. Transporting *feed ingredients,* between points in ND, SD, MN, MT, IA, and NE.

MC 140665 (Sub-123F), filed December 2, 1980. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. Transporting (1) *foodstuffs,* and (2) *materials and supplies* used in the production and distribution of foodstuffs (except commodities in bulk), between points in WA and OR, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX.

MC 152915F, filed November 24, 1980. Applicant: SUNNYDALE DISTRIBUTING, INC., 450 Hart-Albin Bldg., Billings, MT 59103. Representative: Daniel J. Sweeney, 1750 Pennsylvania Ave., N.W., Washington, DC 20036. Transporting (1) *drugs, medicine, toilet preparations, chemicals, medical products and appliances, food, sweeteners, cleaning products, containers, store displays, adhesives* and (2) *materials, equipment, and supplies* used in the manufacture, processing, sale, and distribution of the commodities in (1), between points in the U.S., under continuing contract(s) with (a) William H. Rorer, Inc., (b) Vicks Health Care Division and Vicks Toiletry Division of Richardson-Merrell, Inc., (c) Mallinckrodt, Inc., (d) W. F. Young, Inc., (e) The Upjohn Company, (f) ICI Americas, Inc., (g) Norwich-Eaton Phaarmaceuticals, Division Morton-Norwich, (h) Noxell Corporation, (i) Johnson & Johnson Products, Inc., (j) Alberto-Culver Co., and (k) Warner-Lambert Company.

MC 152054F, filed November 28, 1980. Applicant: RALPH MEYERS, d.b.a. RALPH MEYERS TRUCK COMPANY, Box 25, Allendale, MI 49001. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. Transporting *frozen food products,* between Lake Odessa and Hart, MI, Chicago, IL and Napoleon, OH.

MC 152955F, filed December 1, 1980. Applicant: HEAVY HAULERS TRANSPORTATION, INC., 3822 LA Hwy 1 North, Port Allen, LA 70767. Representative: Roy Maughan, 1755 Wooddale Boulevard, Baton Rouge, LA 70806. Transporting *commodities* the transportation which, by reason of size or weight, require the use of special equipment, from points in LA to points in TX, OK, AR, MS, AL, and FL.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-39348 Filed 12-17-80; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon

request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication 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, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able 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 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 in the form of verified statements filed on or before February 2, 1981 (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 notice that the decision-notice is effective. On or before February 17, 1981, an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Vol. No. OP1-101

Decided: December 11, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 141961 (Sub-6F), filed December 3, 1980. Applicant: CARMAN CARRIER, INC., P.O. Box 2139, Clarksville, IN 47130. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 1530319F, filed December 4, 1980. Applicant: TRUCK FLEET SERVICES, INC., 985 Old Eagle School Rd., #501, Wayne, PA 19087. Representative: James G. Rondini (same address as applicant). As a *broker*, at Wayne, PA, in arranging for the transportation of *general commodities* (except household goods), between points in the U.S.

Volume No. OP2-122

Decided: December 9, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 152972F, filed December 2, 1980. Applicant: BARRY R. HAYNES, 4146 F. Williamson Rd, Marion, NY 14505. Representative: Barry R. Haynes (same address as applicant). Transporting *food and other edible products* (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, *agricultural limestone and other soil conditioners, and agricultural fertilizers*, if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

Volume No. OP2-125

Decided: December 12, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 153053F, filed December 5, 1980. Applicant: LEONARD M. REMINGTON, d.b.a. REMINGTON TRUCKING, 17005 Sandlake Road, Cloverdale, OR 97112. Representative: Russell M. Allen, 1200 Jackson Tower, Portland, OR 97205. Transporting *food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agriculture fertilizers)* if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-39364 Filed 12-17-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

United States v. Jack Foley Realty, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Maryland in *United States v. Jack Foley Realty, Inc., et al.*, Civil Action No. K-77-500. The defendants in the case are Jack Foley Realty, Inc.; Bogley, Inc., Colquitt-Carruthers, Inc.; Robert L. Gruen, Inc.; Schick & Pepe Realty, Inc.; and Shannon & Luchs Co. The complaint in this action alleges that beginning in September, 1974, and continuing until the filing of the complaint, the six defendant corporations along with various co-conspirators agreed to fix the commission rates and fees for the sale of residential real estate in Montgomery County, Maryland, in violation of Section 1 of the Sherman Act. The proposed Final Judgment enjoins the defendants from entering into any discussions or agreements with competing brokers concerning commission rates or fees to be charged for the sale of residential real estate.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the Federal Register and filed with the Court. Comments should be directed to Charles S. Stark, Antitrust Division, Department of Justice, Washington, D.C. 20530 (telephone [202] 633-2464).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

U.S. District Court for the District of Maryland

United States of America, Plaintiff, v. Jack Foley Realty, Inc.; Bogley, Inc.; Colquitt-Carruthers, Inc.; Robert L. Gruen, Inc.; Schick & Pepe Realty, Inc.; and Shannon & Luchs Co., Defendants. Civil No. K-77-500.

Filed: December 5, 1980.

Stipulation

It is stipulated by and bewteen the undersigned parties, by their respective attorneys, that: 1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or otehr proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: December 5, 1980.

For the Plaintiff:
Sanford M. Litvack,
Assistant Attorney General
Joseph H. Widmar
Charles F. B. McAleer,
Gerald A. Connell,
Attorneys, Department of Justice.

For the Defendants:
John Henry Lewir, Jr.,
Attorney for Jack Foley, Realty, Inc.
Robert P. Watkins,
Attorney for Bogley, Inc.
Richard A. Hibey,
Attorney for Colquitt-Carruthers, Inc.
Charles S. Stark,
Gary L. Halling,
Attorneys, Department of Justice.
George R. Clark,
Attorney for Robert L. Gruen, Inc.
Peter I. J. Davis,
Attorney for Shick & Pepe Realty, Inc.
James P. Mercurio,
Attorney for Shannon & Luchs Company.

U.S. District Court for the District of Maryland

United States of America, Plaintiff, v. Jack Foley Realty, Inc., bogley, Inc., Colquitt-Carruthers, Inc., Robert L. Gruen, Inc., Schick & Pepe Realty, Inc., and Shannon & Luchs Co., Defendants. Civil No. K-77-500.

Filed: December 5, 1980.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on April 1, 1977, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, except as reflected in this Court's order of October 19, 1977, and without this Final Judgment constituting any evidence against or admission by any party with respect to any issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein except as stated above, and upon consent of the parties hereto, it is hereby Ordered, adjudged and decreed, as follows:

I

This court has jurisdiction over the subject matter of this action and of each of the parties consenting hereto. The complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

As used in this Final Judgment:

(A) "Person" means any individual, partnership, corporation, association, firm, or any other business or legal entity.

(B) "Broker" means any person engaged as a broker in the business of selling residential real estate on behalf of others, and includes the officers, directors, employees, agents and representatives of such persons or firm.

(C) "Competing Broker" includes, but is not limited to, any broker engaged in the Washington, D.C. metropolitan area in the business of selling residential real estate on behalf of others.

III

This Final Judgment applies to the defendants and to their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who have received acutal notice of this Final Judgment by personal service or otherwise. This Final Judgment shall be fully binding upon any new firm, engaged in whole or in part in the real estate brokerage business, formed by or with the participation of any of the principal shareholders of the defendant firms herein, and upon all officers, directors, agents, employees, subsidiaries, successors and assigns thereof.

IV

(A) Each of the defendants is enjoined and restrained from directly or indirectly: (1) Entering into, adhering to, or maintaining any contract, agreement, understanding, plan or program, with any competing broker, to fix, raise, establish, maintain or stabilize commission rates or other fees for the sale of residential real estate;

(2) Advocating or urging that any commission rate or fee be charged or sought by any competing broker for the sale of residential real estate or engaging in any other conduct the primary purpose of which is to influence such commission rates or fees;

(3) Communicating to or discussing with any competing broker said defendant's proposed policies or practices with respect to commission rates or fees for the sale of residential real estate or soliciting from any competing broker information about such competing broker's proposed policies or practices with respcet to commission rates or fees for the sale of residential real estate; or

(4) Participating in any conversations, discussions or other communications with competing brokers that in any way relate to proposed commission rates or fees for the sale of residential real estate.

(B) The provisions of paragraphs IV(A)(1)-(4) shall not prohibit: (1) Agreements, instructions or communications solely between and among persons who are officers, directors, employees or sales representatives of the same firm, and are acting in such capacity;

(2) A defendant from disclosing, asking or otherwise negotiating the amount or rate of commission or fee applicable to the sale of a specific property in order to effectuate a specific transaction with respect to such property;

(3) A defendant from stating its policies or practices with respect to commission rates or fees in advertisements or advertising materials; or

(4) A defendant from adopting, without communications or discussions of the kind prohibited by paragraph IV(A)(3), any amount or rate of commission or fee.

V

Each defendant is ordered and directed: (A) To furnish within thirty (30) days after entry of this Final Judgment a copy thereof to each of its officers, directors, managers and sales representatives engaged in the sale of residential real estate;

(B) To furnish a copy of this Final Judgment to each person who in the ten (10) years after entry of this Final Judgment, becomes an officer, director, manager or sales representative engaged in the sale of residential real estate within ten (10) days after such person is employed by or becomes associated with such defendant;

(C) To direct each person to whom a copy of this Final Judgment is furnished pursuant to subparagraphs V(A) and V(B) hereof to retain such copy as long as he or she is employed by or associated with such defendant;

(D) To require each person to whom a copy of this Final Judgment is furnished pursuant to subparagraphs V(A) and V(B) hereof to sign and submit to the defendant a certificate in substantially the following form; and the defendant shall retain such certificates as long as this Final Judgment is in effect and for one year thereafter: The undersigned hereby (1) acknowledges receipt of a copy of the 1980 antitrust Final Judgment, (2) represents that the undersigned has read and understands such Final Judgment, and (3) acknowledges that the undersigned has been advised and understands that non-compliance with the Final Judgment may result in conviction for contempt of court and imprisonment and/or fine.

(E) At least once each year, during the first ten (10) years after entry of this judgment, to call to the attention of each of its officers, directors, employees, agents and sales representatives engaged in the sale of residential real estate the limitations imposed upon them by this Final Judgment, and of the sanctions that may be imposed for non-compliance therewith;

(F) To file with the court and serve upon the plaintiff, within sixty (60) days from the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsection V(A) hereof, and

(G) To furnish the plaintiff within thirty (30) days after each anniversary date of the entry of this Final Judgment, for a period of ten (10) years, an affidavit as to the fact of and manner of securing and ascertaining compliance with, the provisions of Section IV and subsections V(B), V(C), V(D) and V(E) of this Final Judgment.

VI

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Any duly authorized representative of the Department of Justice, shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

(1) Access during the office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview offices, directors, employees, agents, or sales representatives of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if required, with respect to any of the matters contained in this Final Judgment as may be requested. No information or documents obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

VII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement or compliance therewith, and the punishment of violation hereof.

VIII

Each defendant shall require, as a condition of the sale or disposition of all, or substantially all, of the assets used by it in is residential real estate brokerage business, that the acquiring party agree to be bound by the provisions of this Final Judgment, and that such agreement be filed with the court.

IX

This Final Judgment shall remain in effect until ten (10) years from date of entry.

X

Entry of this Final Judgment is in the public interest.

Dated: ——

U.S. District Judge ————.

U.S District Court for the District of Maryland

United States of America, Plaintiff, v. Jack Foley Realty Inc.; Bogley, Inc.; Colquitt-Carruthers, Inc.; Robert L. Gruen, Inc.; Schick & Pepe Realty, Inc.; and Shannon & Luchs Co., Defendants. Civil No. K-77-500.

Competitive Impact Statement

This competitive impact statement, relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding, is filed by the United States pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) (1976).

I

The Nature and Purpose of the Proceeding

On April 1, 1977, the United States filed a civil antitrust complaint alleging that six corporations had conspired to fix prices in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 (1976).

The Complaint alleges that beginning in or about the month of September 1974, and continuing until the filing of the complaint in the action, the defendants and various co-conspirators engaged in a combination and conspiracy to fix, raise, and maintain commission rates for the sale of residential real estate in Montgomery County, Maryland.

In the Prayer to its Complaint, the Government asked the Court to find that the defendants had joined in an unlawful combination and conspiracy in restraint of trade in violation of the Sherman Act as amended, 15 U.S.C. § 1, and to enjoin and restrain the defendants from such activities in the future. The defendants named in the Complaint are: Jack Foley Realty Inc.; Bogley, Inc.; Colquitt-Carruthers, Inc.; Robert L. Gruen, Inc.; Schick & Pepe Realty, Inc.; and Shannon & Luchs Co.

All of the original defendants in this action have previously been convicted of criminal charges following trial in Federal court and have been sentenced to pay fines. These criminal convictions were based on the same combination and conspiracy alleged in the Complaint. Three individuals were also found guilty of the criminal charges and have been sentenced to pay fines and to periods of probation.

This civil case had been held in abeyance until the criminal case was terminated by the exhaustion of defendants' appeals.

Entry by the Court of the proposed Final Judgment will terminate this litigation. The Court will retain jurisdiction for possible future proceedings which might be required to interpret, modify or enforce the proposed provisions of the Final Judgment.

II

The Nature of the Alleged Violation

In this proceeding six corporations are alleged to have conspired to fix the rate of commissions charged for services rendered in connection with the sale of residential real estate in Montgomery County, Maryland. Their services involve bringing together buyers and sellers of residential real estate. During the period covered by the Complaint all the defendants were real estate brokerage firms engaged in the business of selling houses in Montgomery County.

The Complaint alleges a combination and conspiracy which consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which have been to fix, raise, and maintain commission rates for the sale of residential real estate in Montgomery County. The Complaint further alleges that the defendants and co-conspirators have done those things which they combined and conspired to do, including, among other things, the following: (a) communicated to one another at a meeting and on other occasions the intention to raise commission rates to 7 percent on listings of residential real estate in Montgomery County; and

(b) jointly adopted a policy of increasing commission rates on listings of residential real estate in Montgomery County to 7 percent. The effects of the combination and conspiracy are described in the Complaint as follows: (a) commission rates on listings of residential real estate in Montgomery County have been fixed, raised and maintained at artificial and non-competitive levels;

(b) price competition among the defendants and co-conspirators in the sale of their services has been restrained; and

(c) sellers of residential real estate in Montgomery County have been deprived of free and open competition in the sale of real estate brokerage services.

III

Explanation of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at anytime after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)-(h) (1976). The proposed Final Judgment states that it constitutes no admission by any party with respect to any issue of fact or law. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

The proposed Final Judgment contains two principal forms of relief. First, the defendants are enjoined from repeating the behavior which characterized the conspiracy alleged in the Complaint. Second, the proposed Final Judgment places affirmative burdens on the defendants directed toward avoiding a repetition of this behavior.

A. *Prohibited Conduct.* Under Section IV(A)(1) of the proposed Final Judgment the defendants are restrained from entering into or maintaining any agreement with competing brokers, to fix commission rates or other fees for the sale of residential real estate. Under Section IV(A)(2) the defendants are restrained from advocating, urging or engaging in any other conduct primarily intended to influence the commission rate charged by any competing broker for the sale of residental real estate. Under Section IV(A)(3) the defendants are restrained from discussing with competing brokers said defendants policies with respect to commissions or fees charged for the sale of residential real estate, and soliciting from any other broker information about said broker's policies regarding commissions or fees charged. Finally, under Section IV(A)(4) of the proposed Final Judgment, the defendants are restrained from participating in any communications with competing brokers that in any way relate to proposed commission rates or fees for the sale of residential real estate.

To ensure that the defendants are able to carry on necessary and legitimate business activities while complying with the proposed Final Judgment, four types of activities are specifically allowed under the proposed Final Judgment. Under Section IV(B)(1) agreements solely between employees of the same firm are allowed. Under IV(B)(2) a defendant may disclose, ask or otherwise negotiate with others the commission rate applicable to the sale of a specific property in order to effectuate a specific transaction. Under Section IV(B)(3) a defendant may state its policies with respect to commission rates or fees in advertisements or advertising materials. Lastly, under Section IV(B)(4) a defendant may unilaterally adopt any amount of rate or commission or fee.

B. *Defendant's Affirmative Obligations.* Under section V of the proposed Final Judgment each defendant is required to inform all present and future employees, other than those whose duties are exclusively secretarial or clerical, involved in the sale of residential real estate of the terms of this Final Judgment. Under Section V(A) each employee, as described above, who is employed by a defendant corporation at the time this Final Judgment is entered, is to be furnished with a copy of the Judgment within 30 days after the Judgment is entered. Under Section V(B) any future employee is to be furnished with a copy of his judgment within 10 days of commencement of this or her employment. Each employee who receives a copy of the Judgment is required, under Section V(C), to retain such copy as long as he or she is employed by the defendant. Further, under Section V(D) each defendant is ordered to obtain from each employee to whom a copy of this Final Judgment is furnished pursuant to subparagraphs V(A) and V(B), a certificate whereby each such employee: (1) acknowledges receipt of a copy of the Final Judgment: (2) represents that the undersigned has read and understood the terms of the Judgment; and (3) acknowledges that the undersigned has been advised and understands that non-compliance with the Final Judgment may result in conviction for contempt of Court and imprisonment and/or fine. Further, under Section V(E) at least once each year each defendant is to call to the attention of the employees described above the limitations imposed upon them by this Final Judgment and the sanctions that may be imposed for non-compliance therewith. Finally, under Section V(G) each defendant must annually furnish the plaintiff with an affidavit as to the fact and manner of securing and ascertaining compliance with the provisions of this Final Judgment for a period of ten (10) years.

Under Section VI of the proposed Final Judgment the Department of Justice will have access, upon reasonable notice, to the defendant's records and personnel in order to determine the defendant's compliance with the Judgment. Under Section VIII of the proposed Final Judgment, each defendant shall require, as a condition of the dispostion of the assets used in its real estate brokerage business, that the acquiring party agree to be bound by the provisions of this Final Judgment, and that such agreement be filed with the court.

C. *Scope of the Proposed Judgment.* The proposed Final Judgment applies to the defendants and to their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other person in active concert or participation with any who have received actual notice of this Final Judgment by personal service or otherwise. Further, this Final Judgment shall be fully binding upon any new firm, engaged in whole or in part in the real estate brokerage business, formed by or with the participation of any of the principal shareholders of the defendant firms named in the Complaint, and upon all officers, directors, agents, employees, subsidiaries, successors and assigns thereof.

D. *Effect of ther Proposed Judgment on Competition.* The terms of Section IV of the Judgment are designed to ensure that the defendants will act independently in determining the commission rates or other fees charged for the sale of residential real estate. The affirmative obligations of Section V are directed toward informing the defendants' employees of their obligations under the decree in order to avoid repetition of the behavior that occurred in Montgomery County during the period of the conspiracy. Compliance with the proposed Final Judgment should prevent collusion among the defendants in determining the commission rates of fees to be charged for the sale of residential real estate.

IV

Remedies Available to Potential Private Plantiffs

After entry of the proposed Final Judgment, any potential private plaintiff that might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal or equitable relief that it may have had if the Final Judgment had not been entered. The Final Judgment may not be used, however, as *prima facie* evidence in private litigtion, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. § 16(b).

Following the filing of this action and the return of the Indictment in the related criminal case involving these same defendants, treble-damage actions were filed in the United States District Court for the District of Maryland by private parties and by the Attorney General of the State of Marlyand. These actions have previously been settled.

V

Procedures Available for Modification of the Proposed Consent Judgment

The proposed Final Judgment is subject to a stipulation between the Government and the defendants which provides that the Government may withdraw its consent to the proposed Judgment any time before the Court has found that entry of the proposed Judgment is in the public interest. By its terms, the proposed Judgment provides for the Court's retention of jurisdiction of this action in order to permit any of the parties to apply to the Court for such orders as may be necessary for the modification of the Final Judgment.

As provided by the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), any person wishing to comment upon the proposed Judgment may, for a sixty-day period subsequent to the publishing of this document in the Federal Register, submit written comments to the United States Department of Justice, Attention: Charles S. Stark, Antitrust Division, Washington, D.C. 20530. Such comments and the Government's response to them will be filed with the Court and published in the Federal Register. The Government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the proposed Judgment.

VI

Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the proposed Final Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides for all the relief Prayed for in the Complaint.

VIII

Determinative Materials and Documents

No materials or documents were considered determinative by the United States in formulating the proposed Final Judgment. Consequently, none are being filed pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b).

Dated: December 5, 1980.

Charles S. Stark,

Gary L. Halling,

Attorneys, Antitrust Division, Department of Justice, Washington, D.C. 20530.

[FR Doc. 80-39248 Filed 12-16-80; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel: Meetings

Correction

In FR Doc. 80-38147 appearing on page 81133 in the issue of Tuesday, December 9, 1980, third column, the third "DATE" reading "January 12, 1981" should be moved down below the line reading "For projects beginning after April 1, 1981."

BILLING CODE 1505-01-M

NATIONAL SCIENCE FOUNDATION

Gerald L. Kooyman and Robert E. Ricklefs; Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish

notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357-7934.

SUPPLEMENTAL INFORMATION: On July 31, 1980, the National Science Foundation published a notice in the Federal Register, page 51004, of permit applications received. On November 7, 1980 the NSF published a notice in the Federal Register, page 74122, of permit applications received. On December 9, 1980 permits were issued to the following aplicants:

Gerald L. Kooyman.
Robert E. Ricklefs.

Charles E. Myers,
Permit Office, Division of Polar Programs.

[FR Doc. 80-39323 Filed 12-17-80; 8:45 am]
BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 80-51]

Safety Recommendations and Responses

The serious consequences which can result from engine flameout or power loss are pointed out in the National Transportation Safety Board's recommendation letter forwarded December 9 to the Federal Aviation Administration.

On May 9, 1980, a Bell 206B helicopter operating as an unscheduled airtaxi passenger flight crashed near Brighton, Utah, during an emergency-autorotation following an engine flameout. There were no injuries, but the aircraft was damaged substantially. At the time, investigators were unable to determine the cause of the engine flameout. About 2 weeks later another Bell 206 from the same operation had four flameouts in one flight, with successful engine relight each time. Investigation determined that a drain valve on the engine-driven fuel pump in this second aircraft was leaking. Based on this determination, further investigation and testing of the Brighton accident engine determined that when the engine, an Allison 250C-20B, is operated without the fuel boost pumps operating, air can enter the fuel lines through loose fittings or a partially open valve and then be trapped in the fuel filter of the engine-driven pump. When this trapped air migrates through the engine fuel system, it causes fuel flow interruption and engine flameout or loss of power.

The Safety Board notes that some helicopter manufacturers install a drain valve on the engine-driven fuel pump low-pressure filter. Some of these valves have been found to leak, which permits air to enter the filter during engine operation. If the boost pump is not operating, air can also enter the system when the valve is opened to drain the filter during preflight. The engine manufacturer, Detroit Diesel Allison, recognized over a year ago that air could be trapped in the filter housing. In June 1979, the manufacturer issued Service Letter CSL-1081 which advised operators of the possibility of trapped air and presented a procedure for purging air from the engine system.

Following the two cited incidents, Detroit Diesel Allison advised all helicopter manufacturers using the 250C-20 engine that air from any number of sources, when ingested into the fuel system, can cause a power loss or flameout. Specifically, the manufacturer cited the filter drain valves as a source of the introduction of air into the fuel system and recommended that the system be purged using the procedure in Service Letter CSL-1081 any time the system is opened. A review of several FAA-approved flight manuals for helicopters using the 250C-20 engine revealed that the procedures for draining this filter during preflight inspection are vague and do not require that the system be pressured to insure that air will not enter the filter when the valve is opened. Detroit Diesel Allison has stated that the system should be purged after opening the valve, or the system should be pressurized by means of the boost pumps before opening the valve.

The Safety Board believes that positive action is necessary to preclude the loss of power from air trapped in the engine low-pressure filter, and recommends that FAA:

Require, for all helicopters powered by Detroit Diesel Allison 250C-20 engines, the revision of the FAA-approved flight manual to include a detailed preflight procedure for draining the engine-driven fuel pump low-pressure filter which will preclude the entrance of air into the fuel system, or alternatively a procedure for purging the system of air after draining the filter. (Class II, Priority Action) (A-80-123)

Review fuel system designs with helicopter manufacturers to determine if drain valves on the Detroit Diesel Allison 250C-20 engine-driven fuel pump low-pressure filters are necessary. If determined to be unnecessary, issue appropriate Airworthiness Directives to require removal. (Class III, Longer Term Action) (A-80-124)

Responses to Safety Recommendations

Aviation

A-80-24, from the Federal Aviation Administration, December 2, 1980.—Letter supplements FAA's initial response of June 25 (45 FR 46585, July 10, 1980), and is in response to the Safety Board's comments of August 12. This recommendation was issued last March 27 following investigation of the crash of a Piper Model PA-18 Super Cub at the Lebanon (N.H.) Regional Airport on April 21, 1979, and asked FAA to amend 14 CFR 61.31, "General Limitations," to require that before acting as pilot-in-command of a tailwheel airplane, a private or commercial pilot receive flight instructions (including all normal and contingent aspects of takeoffs and landings) from an authorized flight instructor who has found him competent to pilot such airplane and has so endorsed his pilot logbook.

The Safety Board's August 12 letter notes that the comments in FAA's June 25 response do not relate directly to recommendation A-80-24. For example, FAA concurs with the Board in that an adequate checkout of pilots in tailwheel aircraft is essential and references several FAA educational publications which provide information relating to the operation of tailwheel aircraft. The Board states that recommendation A-80-24, however, deals not with the availability of educational material, but with a proposed amendment to § 61.31. The Board is aware of the educational publications mentioned and does not dispute the availability of operational information which could serve as the basis for a comprehensive checkout in tailwheel airplanes, but the Board is recommending that such a checkout, flight instruction, or endorsement be required by regulation in a manner similar to the flight instruction/certification required under § 61.31(e) dealing with high performance airplanes.

FFA's December 2 response notes that a review of computer printouts from FAA's Safety Data Branch in Oklahoma, concerning accidents involving tailwheel aircraft during the takeoff and landing ground roll phase of flight, indicates that the causal factors were not peculiar to tailwheel aircraft or significantly different from those of nosewheel aircraft accidents. Ground loops, loss of directional control, and runway overruns were also factors common to accidents in both aircraft types. FAA also notes that the circumstances surrounding the crash of the PA-18 Super Cub at Lebanon indicate that a lack of pilot proficiency in general, rather than characteristics

peculiar to tailwheel aircraft, may have contributed to that tragedy. FAA has determined that the pilot received 1 hour of flight instruction from a certificated flight instructor immediately prior to his departure from Lock Haven, Pa.

FAA states that an amendment to § 61.31 would not necessarily provide a solution to the concerns outlined in recommendation A-80-24. To require a private or commercial pilot to receive flight instruction from an authorized flight instructor in tailwheel aircraft, with an appropriate endorsement in his pilot log, would not ensure that the pilot's checkout was adequate. In this instance, FAA states, the dual flight instruction received was apparently not adequate to preclude this tragedy. The responsibility for determining the adequacy of a checkout rests with the flight instructor. In FAA's judgment this is a proper assignment of responsibility. For these reasons, FAA does not believe that the regulatory action recommended by the Board pertaining to tailwheel aircraft is justified.

A-80-86 through -89, from the Federal Aviation Administration, December 9, 1980.—Response is to recommendations issued September 10 resulting from investigation of a presumed crash of a Cessna 340, N11ORA, near Petersburg, Alaska, on August 20, 1980. (See 45 FR 62232, September 18, 1980.)

FAA notes that the reference to Airworthiness Directive (AD) 80-16-06 made in each of the three recommendations is in error. The appropriate AD number is 80-18-06 and has been corrected in FAA's response.

Recommendation A-80-86 asked FAA to revise AD 80-18-06, dated August 23, 1980, to require an initial inspection before further flight, regardless of the aircraft's total time, and restrict the performance envelope of those Cessna models affected by the AD to that of the basic Cessna model 335/340 until the empennage structural cracking problem is resolved. FAA concurs and reports that AD 80-18-06 was superseded by AD 80-19-17 on September 12, 1980, requiring an inspection before further flight, and each 10 hours thereafter, regardless of total hours or engine configuration. A review of 113 reports received in accordance with the requirements of the AD indicates that any failure or damage would be readily detectable long before it could progress to a potentially unsafe condition within the 10-hour inspection cycles, regardless of the performance envelope for the particular airplane. It should be noted, FAA states, that the Model 335 and the Model 340 have different performance envelopes.

FAA concurs in recommendation A-80-87, which called for an evaluation of the 100-hour recurring inspection interval now required in AD 80-18-06 to ascertain the need for a shorter interval, and amend the AD as appropriate. FAA notes that, subsequent to the issuance of AD 80-18-06, a cracked gusset was reported on an airplane with a total time of 39.6 hours. Three other reports identified significant damage on airplanes that had been inspected 43, 44, and 61 hours earlier. Additionally, the airplane involved in the presumed crash near Petersburg, Alaska, had been inspected approximately 20 hours previously. Based on a "worst case" assumption, a 10-hour inspection interval was established for AD 80-19-17.

Recommendation A-80-88 asked FAA to evaluate the design certification data of the Cessna 335/340 empennage structure to ascertain if all possible vibratory modes and structural loads to which it can be exposed have been considered and require retrofit modification to aircraft affected by AD 80-18-06 as indicated to be necessary. FAA concurs and is now evaluating certification data for a new design horizontal stabilizer and elevators. In addition to applicable 14 CFR Part 23 requirements, this will include measured flight loads of critical tail structure and an accelerated service test program. The manufacturer now plans to retrofit all affected airplanes when the new design is finalized. FAA will advise the Board when actions on this recommendation are completed.

Recommendation A-80-89 asked FAA to evaluate the results of the initial inspections performed in compliance with the revised AD to ascertain the need for a Quality Assurance Systems Analysis Review (QASAR) of the Cessna 335/340 manufacturing process. Again, FAA concurs. FAA's evaluation reveals that all data and findings to date, concerning Model 335/340 empennage structural cracking, generally reflect design deficiency rather than poor workmanship or quality control. Moreover, FAA notes, the intent of recommendation A-80-89, with respect to possible quality causes, is accomplished by ongoing programs adminstered by the Wichita Engineering and Manufacturing District Office as a function of Production Certificate Management. This program includes regularly scheduled QASAR evaluations (the most recent one at Cessna Wallace Division was conducted July 15 through 24, 1980). Additional unannounced "pop-in' audits were performed at Cessna Wallace in February, June, and August 1980, and an airworthiness shakedown of a Model 340A aircraft was conducted in November 1979. FAA notes that although numerous discrepancies were corrected, none of the findings represented a safety/airworthiness item. Additionally, the assigned principal inspector conducts a progressive system of airworthiness verification as an ongoing part of day-to-day certificate management.

Finally, FAA says it will be alert for detection of workmanship quality items of significance during the AD inspections. If such items are reported through the service difficulty system or directly by coordination between field offices, the Wichita District Office will evaluate the findings, conduct additional investigations as appropriate, and inititate a requirement for corrective action when concluded. All of these actions are a part of the certificate management responsibilities of the Engineering and Manufacturing District Office.

A-80-90 through -95, from the Federal Aviation Administration, December 8, 1980.—Response is to recommendations issued September 9, resulting from the Safety Board's study of general aviation accidents during 1974-1978, involving postcrash fire. (See 45 FR 62232, September 18, 1980.)

Recommendation A-80-89 asked FAA to amend the airworthiness regulations to incorporate the latest technology for flexible, crash-resistent fuel lines, and self-sealing frangible fuel line couplings at least equivalent in performance to those used in recent FAA tests and described in Report No. FAA-RD-78-28 for all newly certificated general aviation aircraft. Recommendation A-80-91 called for amendment of the airworthiness regulations to incorporate the latest technology for light weight, flexible, crash-resistent fuel cells at least equivalent in performance to those used in recent FAA tests and described in Report No. FAA-RD-78-28 for newly certificated general aviation aircraft having nonintegral fuel tank designs. A-80-92 asked FAA to require after a specified date that all newly manufactured general aviation aircraft comply with the amended airworthiness regulations regarding fuel system crashworthiness, and A-80-94 recommended assessment of the feasibility of requiring the installation of selected crash resistent fuel system components, made available in kit form from manufacturers, in existing general aviation aircraft on a retrofit basis and promulgation of appropriate regulations.

FAA believes the above four recommendations merit consideration, but will require indepth investigation

with regard to effectivity and feasbility. A project has been established to consider the substance of these recommendations, and FAA intends to provide the Board a status report within 90 days.

With respect to recommendations A-80-93, asking FAA to fund research and development to develop the technology and promulgate standards for crash-resistent fuel systems for general aviation aircraft having integral fuel tank designs equivalent to the standards for those aircraft having nonintegral fuel tank designs, and A-80-95, seeking continuance of research and development funding to advance the state-of-the-art with the view toward developing other means to reduce the incidence of postcrash fire in general aviation aircraft, FAA reports that a crashworthiness investigation team specializing in the collection of precise accident and injury information is being formed. Research and development efforts will be undertaken depending on the results of the team's findings. FAA says any such programs will include a cost/benefit analysis to assure that the cost of installing crash-resistent tanks and fittings are commensurate with expected safety improvements; and the Board will be kept informed.

A-80-96 through-100, from the Governor of the State of Alaska, December 3, 1980.—Response is to recommendations issued September 25 as a result of the Safety Board's special study, "Air Taxi Safety in Alaska," covering the period 1974-1975. The recommendations asked the State of Alaska to: Coordinate with the Federal Aviation Administration (FAA) and the National Weather Service (NWS) to facilitate the rapid implementation of the air transportation projects contained in Chapter 50, SLA (State Legislature of Alaska) (A-80-96); improve the level of maintenance of runway facilities as the rural villages within the State airport system (A-80-97); centralize authority and responsibility for planning, operating, and maintaining the States' aviation facilities (A-80-98); develop, in cooperation with FAA and the system users, a comprehensive aviation system plan and a program for implementing the plan (A-80-99); and establish, in cooperation with FAA and the air taxi operators, a program to impress upon the public, particularly those living in rural villages, the importance of respecting and properly maintaining airfield facilities (A-80-100). (See 45 FR 73828, November 6, 1980.)

In response, the Governor states that the Department of Transportation and Public Facilities has adopted a comprehensive plan for implementing Chapter 50, SLA 1980. Its Central Region of Planning and Programming, headquartered in Anchorage, has the responsibility of coordinating the plan with FAA and NWS.

The Governor states that it will be possible to improve the level of maintenance of rural village airports only through more effectively using present resources. Rural villages are small, generally having populations less than 200, and residents' needs can be filled with small, general aviation type aircraft, using relatively primitive runways or using natural landing areas.

Centralized authority and control for transportation planning is vested in the Deputy Commissioner for Planning and Programming in the Department of Transportation and Public Facilities. An overall State Transportation Plan is being prepared. Statewide overview for all aviation planning is with the Central Division of Planning and Programming in Anchorage. The Department of Transportation and Public Facilities Maintenance and Operations Division is also headquartered in Anchorage and is developing an overall State Transportation Plan. Airport system planning is being done in conjunction with that work.

The Governor notes that responsibility for overall aviation planning is with Central Division of Planning and Programming in Achorage, location of FAA's Alaskan Region Headquarters and a major NWS office. Also, Alaska has had an ongoing Six-Year Capital Improvement Plan for the past 20 years which has listed airport improvement needs. The plan is updated at least annually, and the list of recommended airport improvements is comprehensive and current.

Further, the Governor reports that Maintenance and Operations maintains close liaison with the Alaska Air Carriers Association, and the carriers are asked to keep it informed of airport safety information. Additionally, the Alaska Village Safety Officer Program, which trains an individual or individuals in the village in law enforcement, fire fighting, and medical aid, can be a vehicle more impressing the public with need to respect airports as well as for reducing vandalism and providing trained assistance in case of an accident.

Marine

M-79-108, from Joseph W. Nelkin, Counsel to the Crescent River Port Pilots Association and Board of River Port Pilot Commissioners for the Port of New Orleans, joint addresses, November 12, 1980.—Letter is in response to the Safety Board's comments of September 22, 1980, to initial response dated December 4, 1979 (45 FR 7019, January 31, 1980). This was one of four recommendations issued following investigation of the collision of the M/T RIBAFORADA with a barge, three wharves, and the M/V TIARET on December 4, 1977, on the lower Mississippi River near New Orleans. The recommendation called for establishment of guidelines for pilot duty periods which provide for sufficient rest to avoid fatigue.

The Safety Board's letter noted that action had been initiated through the Louisiana Public Service Commission to obtain additional revenue to make available a number of additional Crescent River Port Pilots, and that efforts were being made to establish a workload for members which is less likely to result in fatigue. The Board asked to be informed as to the final ruling of the Public Service Commission on this issue and as to proposals or programs which may be developed to attain more effective cooperation from ship agents.

Mr. Nelkin reports that the Louisiana Public Service Commission has issued a final ruling, in part acknowledging the need for an increased number of Crescent River Port Pilots. By the terms of this ruling (copy provided), the Public Service Commission authorizes revenues which it deemed sufficient to provide funds for commissioning 20 additional pilots. That was in response to a request for funding of 35 additional pilots. Although this response is "final" as to the Public Service Commission, Mr. Nelkin notes that the steamship industry has statutorily reserved to it the right to appeal that decision to the court. Such appeal has in fact been filed and is presently under judicial consideration. The ship agents association is expressing opposition to the need for additional pilots. The Board will be advised as to disposition of the litigation.

Railroad

R-78-36 and R-79-21, from the Federal Railroad Administration, December 2, 1980.—Letter reports on implementation of two recommendations which concern the State Participation Program and which were discussed at the NTSB/FRA

Quarterly Meeting on Railroad Safety Recommendations, held October 30, 1980.

FRA reports that in August 1980, FRA, together with the National Association of Regulatory Utility Commissioners and the National Conference of State Rail Officials, joined to form a Federal/State Task Force. The purpose of this task force is to explore avenues of joint effort, which, if implemented, would serve to enhance and improve operation of the State Participation Program. Coincident with the effort, FRA's Office of Safety had been charged with developing a System Safety Plan, of which State participation in enforcing safety regulations is an integral part. The recommendations of the task force would contribute substantially to that portion of the plan.

Anticipating the passage by Congress of what is now Public Law 96-423, which contains provisions for State participation in enforcing all Federal safety regulations and standards heretofore restricted to Federal enforcement only, it was envisioned that an opportunity existed for a fresh approach to the workings of the State Participation Program. FRA notes that the Federal/State Task Force met in August and September 1980 (participant list provided) and, in a new spirit of communication and cooperation, has formulated a plan of action to be implemented by both Federal and State interests. Dictated by a reorganization with FRA that saw a previously divided responsibility for the State Participation Program now totally contained within the Office of Safety, a closer relationship between the State manager or surpervisor and the Regional Director of Railroad Safety will develop. This relationship is highlighted by the requirements inherent in the new plan. FRA states that it entails joint State/Federal operational planning, as well as a refined fiscal awareness in the funding requirements of the participating States.

Note.—Copies of the Safety Board's recommendation letters, as well as responses and related correspondence, are provided free of charge. All requests for copies must be in writing, identified by recommendation number. Address requests to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,

Federal Register Liaison Officer.

December 12, 1980.

[FR Doc. 80-39280 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-58-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-170-OL]

Armed Forces Radiobiology Research Institute; Establishment of Atomic Safety and Licensing Board To Preside in Proceeding

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register (37 FR 28710) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Armed Forces Radiobiology Research Institute

(TRIGA-Type Research Reactor)

Facility License No. R-84

This Board is being constituted pursuant to a notice published by the Commission on November 25, 1980, in the Federal Register (45 FR 78314-15) entitled, "Consideration of Application for Renewal of Amended Facility License".

This Board is comprised of the following Administrative Judges:

Louis J. Carter, Esquire, Chairman, 23 Wiltshire Road, Philadelphia, Pennsylvania 19151

Mr. Ernest E. Hill, Lawrence Livermore Laboratory, University of California, P.O. Box 808, L-123, Livermore, California 94550

Dr. David R. Schink, Department of Oceanography, Texas A&M University, College Station, Texas 77840

Issued at Bethesda, Maryland, this 11th day of December 1980.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 80-39370 Filed 12-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Byproduct Material License No. 37-14600-01]

Applied Health Physics, Inc.; Order To Modify License (Effective Immediately) and Order To Show Cause Why Such Modification Should Not Be Made Permanent

I

Applied Health Physics, Inc., 2896 Industrial Boulevard, Bethel Park, Pennsylvania 15102 (the "licensee") is the holder of Byproduct Material License No. 37-14600-01 (the "license") issued by the Nuclear Regulatory Commission (the "Commission"). The license authorizes the company to receive and possess packages containing waste byproduct material for the purpose of transferring the packages to authorized land burial facilities. The license was issued on September 4, 1975, and was due to expire on August 31, 1980. The license continues in force on a timely renewal application.

II

The license prohibits the storage of waste byproduct material at the licensee's facility for more than three (3) months because the packaged waste storage is unsheltered from the weather. Observations during various inspections indicated that packages, some in storage since October 1978, were deteriorating. Numerous attempts—inspections, enforcement meetings and a license amendment to permit repackaging—were not sufficient to bring the licensee into compliance.

The Commission determined that the continued storage of this waste byproduct material at the licensee's facility would present an unreasonable hazard to the health and safety of the public due to potential exposures to radioactive material resulting from loss of confinement in the deteriorating packages. On July 2, 1980, the Director of the Office of Inspection and Enforcement served on the licensee an Order Requiring Prompt Repackaging of Waste Byproduct Material and Prompt Transfer to an Authorized Land Burial Facility. The licensee informed the Office of Inspection and Enforcement by telephone and mailgram on July 16, 1980, that the transfer of waste byproduct material could not be completed by July 18, 1980, as specified in the Order dated July 2, 1980. In this mailgram, the licensee requested that the completion date be extended one month to August 18, 1980. A Modification of Order dated July 18, 1980 extended the disposal date to August 18, 1980.

An inspection on August 19, 1980, indicated that while seventy-one 55 gallon drums containing repackaged waste byproduct material were sent for burial on August 18, 1980, waste byproduct material remained at the Bethel Park facility and had not been repackaged and transferred in accordance with the Order dated July 2, 1980, and Modification of Order dated July 18, 1980.

From the foregoing, it is apparent that the licensee has engaged in a practice of chronic noncompliance with the Commission's requirements including the Orders of July 2 and July 18, 1980; moreover, this chronic noncompliance

indicates a careless disregard for the public health, safety and interest. Accordingly, the Director, Office of Inspection and Enforcement, has determined that no prior notice as provided in 10 CFR 2.201 and 10 CFR 30.61(c) is required and that pursuant to 10 CFR 2.202(f), License No. 37-14600-01 should be amended effective immediately.

III

In view of the foregoing and pursuant to § 161(b) of the Atomic Energy Act of 1954, as amended, and the regulations in 10 CFR Parts 2, 20, and 30, it is hereby ordered that: 1. Effective immediately, License No. 37-14600-01 is amended, to limit authority for possession of licensed material to the six (6) containers of transuranics currently in the licensee's possession. Such material shall be in secured storage, protected from the weather, until an authorized disposal method is available; and,

2. Any other containers of radioactive material possessed under License No. 37-14600-01 shall be disposed of by immediate transfer to an authorized recipient; and,

3. Effective immediately, License No. 37-14600-01 is amended to prohibit any acquisition of additional licensed material; and,

4. The licensee shall show cause in the manner hereinafter provided why the requirements set forth in 1, 2, and 3 above, should not be made permanent.

IV

The licensee may, within twenty-five days of the date of this Order, show cause by filing a written answer to this Order under oath or affirmation. The licensee or any person who has an interest which may be affected by the Order may request a hearing within the said twenty-five day period. A request for a hearing shall be addressed to the Secretary to the Commission, U.S.N.R.C., Washington, D.C. 20555. A copy of the hearing request shall also be sent to the Executive Legal Director, U.S.N.R.C., Washington, D.C. 20555. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which its interest may be affected by the Order. Any answer to this Order which the licensee intends to satisfy the show cause requirement shall include specific plans, procedures, and facility modifications for conducting future activities with licensed material in compliance with Commission requirements. If a hearing is requested by the licensee or a person who has an interest affected by this Order, the Commission will isue an order designating the time and place of hearing. Upon failure of the licensee to file an answer within the time specified, the Director, Office of Inspection and Enforcement, will without further notice, issue an Order permanently modifying license No. 37-14600-01 to include the requirements set forth in section III above.

In the event a hearing is held, the issue to be considered at such hearing shall be: Whether, on the basis of the facts set forth in Section II above, License No. 37-14600-01 should be amended as set forth in Section III above.

Dated at Bethesda, Maryland this 8th day of December 1980.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Director, Office of Inspection and Enforcement.

[FR Doc. 80-38369 Filed 12-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 45 to Facility Operating License No. DPR-35, issued to the Boston Edison Company, which revised Technical Specifications for operation of the Pilgrim Nuclear Power Station Unit 1 (the facility) located in Plymouth County, Massachusetts. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to define requirements relating to high radiation areas.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environment impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For futher details with respect to this action, see (1) the licensee's submittal dated September 1, 1980, (2) Amendment No. 45 to License No. DPR-35, and (3) the Commission's letter to the licensee dated December 10, 1980. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Plymouth Public Library, North Street, Plymouth, Massachusetts 02360. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 10th day of December, 1980.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 80-38371 Filed 12-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-325 and 50-324]

Carolina Power & Light Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 31 and 52 to Facility Operating License Nos. DPR-71 and DPR-62, issued to Carolina Power & Light Company (the licensee), which revised the licenses for operation of the Brunswick Steam Electric Plant, Units 1, and 2 (the facility), located in Brunswick County, North Carolina. The amendments are effective as of the date of issuance and are to be fully implemented within 30 days of Commission approval in accordance with the provisions of 10 CFR 73.40(b).

The amendments add license conditions to include the Commission-approved Safeguards Contingency Plan as part of the licenses.

The licensee's filing complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulation in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will

result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

The licensee's filing dated August 1, 1980, is being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For futher details with respect to this action, see (1) Amendment Nos. 31 and 52 to License Nos. DPR-71 and DPR-62 and (2) the Commission's related letter to the licensee dated December 10, 1980. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Auburn Public Library, 118—15th Street, Auburn, Nebraska. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 10th day of December, 1980.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 80-39372 Filed 12-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-482]

Kansas Gas & Electric Co., et al.; Receipt of Application for Facility Operating License; Availability of Applicant's Environmental Report; Consideration of Issuance of Facility Operating License and Notice of Opportunity for Hearing

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application for a facility operating license from Kansas Gas and Electric Company, Kansas City Power and Light Company and Kansas Electric Power Cooperative, Inc. (applicants), to possess, use and operate the Wolf Creek Generating Station, Unit No. 1, a pressurized water nuclear reactor (the facility), located on a site in Coffey County, Kansas. The reactor is designed to operate at a core power level of 3411 megawatts thermal, with an equivalent net electrical output of approximately 1150 megawatts. This application references the Standardized Nuclear Unit Power Plant System (SNUPPS) FSAR, dated October 19, 1979.

The applicants have also filed, pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in 10 CFR Part 51, an environmental report. The report, which discusses environmental considerations related to the proposed operation of the facility is being made available at the Division of State Planning and Research, Department of Administration, Mills Building, Suite 501, 109 West 9th Street, Topeka, Kansas 66612.

After the environmental report has been analyzed by the Commission's staff, a draft environmental statement will be prepared. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the Federal Register, a notice of availability of the draft statement, requesting comments from interested persons on the draft statement. The notice will also contain a statement to the effect that any comments of Federal agencies and State and local officials will be made available when received. The draft environmental statement will focus only on any matters which differ from those previously discussed in the final environmental statement prepared in connection with the issuance of the construction permit. Upon consideration of comments submitted with respect to the draft environmental statement, the Commission's staff will prepare a final environmental statement, the availability of which will be published in the Federal Register.

The Commission will consider the issuance of a facility operating license to Kansas Gas and Electric Company, Kansas City Power and Light Company, and Kansas Electric Power Cooperative, Inc. which would authorize Kansas Gas and Electric Company, acting for itself and the other applicants, to possess, use and operate the Wolf Creek Generating Station, Unit No. 1 in accordance with the provisions of the license and the technical specifications appended thereto, upon: (1) the completion of a favorable safety evaluation of the application by the Commission's staff; (2) the completion of the environmental review required by the Commission's regulations in 10 CFR Part 51; (3) the receipt of a report on the applicants' application for a facility operating license by the Advisory Committee on Reactor Safeguards; and (4) a finding by the Commission that the application for the facility license, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter 1. Construction of the facility was authorized by Construction permit CPPR-147, issued by the Commission on May 17, 1977. Construction of the Wolf Creek Generating Station is anticipated to be completed by December 1983.

Prior to the issuance of an operating license, the NRC staff will study the Floodplain Aspects of the Wolf Creek Generating Station and issue an assessment pursuant to Executive Order 11988 Floodplain Management.

Prior to issuance of any operating license, the Commission will inspect the facility to determine whether it has been constructed in accordance with the application, as amended, and the provisions of the construction permit. In addition, the license will not be issued until the Commission has made the findings reflecting its review of the application under the Act, which will be set forth in the proposed license, and has concluded that the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public. Upon issuance of the license, the applicants will be required to execute an indemnity agreement as required by Section 170 of the Act and 10 CFR Part 140 of the Commission's regulations.

By January 7, 1981 the applicants may file a request for a hearing with respect to issuance of the facility operating license. By January 19, 1981, any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the Commission, or designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible

effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition for leave to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by January 19, 1981. A copy of the petition should also be sent to the executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the applicant. Any questions or requests for additional information regarding the content of this notice should be addressed to the Chief Hearing Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details pertinent to the matters under consideration, see the application for a facility operating license, dated February 19, 1980, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Coffey County Courthouse, Burlington, Kansas 66839. As they become available, the following documents may be inspected at the above locations: (1) the safety evaluation report prepared by the Commission's staff; (2) the draft environmental statement; (3) the final environmental statement; (4) the report of the Advisory Committee on Reactor Safeguards on the application for facility operating license; (5) the proposed facility operating license; and (6) the technical specifications, which will be attached to the proposed facility operating license.

Copies of the proposed operating license and the ACRS report, when available may be obtained by request to the Director, Division of Licensing, Office of Nuclear Regulatory Commission, Washington, D.C. 20555. Copies of the Commission's staff safety evaluation report and final environmental statement, when available, may be purchased at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland this 8th day of December 1980.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 80-39369 Filed 12-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309]

Maine Yankee Atomic Power Co., Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 50 to Facility Operating License No. DPR-36, issued to Maine Yankee Atomic Power Company, which revised Technical Specifications for operation of the Maine Yankee Atomic Power Station (the facility) located in Lincoln County, Maine. The amendment is effective as of its date of issuance.

The amendment consists of revisions to the Administrative Controls Section of these Technical Specifications to modify the on-site and off-site organizational structures and titles associated with the structure.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the isuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated July 17, 1978, s supplemented November 19, 1979 and June 20, 1980, (2) Amendment No. 50 to License No. DPR-36, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W,, Washington, D.C. and at the Wiscasset Public Library Association, High Street, Wiscasset, Maine. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 1st day of December, 1980.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 80-39373 Filed 12-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-298]

Nebraska Public Power District; Issuance of Amendment to Facility Operating License

The U. S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 66 to Facility Operating License No. DPR-46, issued to Nebraska Public Power District (the licensee), which revised the Technical Specifications for operation of the Cooper Nuclear Station, located in Nemaha County, Nebraska. The amendment is effective as of its date of issuance. This amendment changes the Technical Specifications to provide additional limiting conditions of operation and surveillance requirements for fire protection equipment. Other miscellaneous editorial changes were made for purposes of consistency.

The licensee's submittals comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the licensee's submittals dated October 22, 1979 and January 16, 1980, (2) Amendment No. 66 to License No. DPR-46, and (3) the Commission's Supplement 1 to the Fire Protection Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Auburn Public Library, 118—15th Street, Auburn, Nebraska 68305. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 21st day of November 1980.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 80-39374 Filed 12-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-286, License No. DPR-64, EA-80-48]

Power Authority of the State of New York; Order Imposing Civil Monetary Penalties

I

Power Authority of the State of New York, 10 Columbus Circle, New York, New York ("the licensee") is the holder of Operating License No. DPR-64 ("the license") issued by the Nuclear Regulatory Commission ("the Commission"). The license authorizes the operation of the Indian Point Unit 3 Nuclear Power Plant at steady state reactor core power levels not in excess of 2436 megawatts thermal (rated power). The facility consists of a pressurized light water moderated and cooled reactor (PWR) located at the licensee's site at Buchanan, New York.

II

An inspection of activities performed under the license was conducted on June 24-26, 1980 at the Indian Point Unit 3 Nuclear Power Plant at Buchanan, New York. As a result of this inspection, it appears that the licensee had not conducted its activities in full compliance with the conditions of its license and the requirements of the Commission. A written Notice of Violation was served upon the licensee by letter dated August 22, 1980 specifying the items of noncompliance in accordance with 10 CFR 2.201. A Notice of Proposed Imposition of Civil Penalties was served concurrently upon the licensee in accordance with Section 234 of the Atomic Energy Act of 1954 as amended (42 U.S.C. 2282) and 10 CFR 2.205, incorporating by reference the Notice of Violation which stated the name of the items of noncompliance and the provisions of NRC regulations and license conditions.

A Response to the Notice of Violation dated September 16, 1980 was received from the licensee. The licensee did not file an answer to the Notice of Proposed Imposition of Civil Penalties.

III

In its response the licensee admitted items of noncompliance A, B, C and E of the Notice of Violation. Upon consideration of the answer received for items D.1 and D.2 and the explanation of mitigation and argument of denial respectively contained therein, the Director of the Office of Inspection and Enforcement has determined that the penalty proposed for Item D.1 should be imposed while Item D.2 should be retracted and its associated proposed penalty be remitted in its entirety.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282) and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the total amount of Eleven Thousand Dollars ($11,000) within twenty-five (25) days of the date of this Order, by check, draft, or money order payable to the Treasurer of the United States, and mailed to the Director of the Office of Inspection and Enforcement.

V

The licensee may, within twenty-five (25) days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Secretary to the Commission, U.S.N.R.C., Washington, D.C. 20555. A copy of the hearing request shall also be sent to the Executive Legal Director, U.S.N.R.C., Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within twenty-five (25) days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in noncompliance with the Commission's regulations as designated in the Notice of Violation referenced in Section II above; and,

(b) Whether, on the basis of such items of noncompliance, this Order should be sustained.

Dated this 8th day of December 1980 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Director, Office of Inspection and Enforcement.

[FR Doc. 80-39375 Filed 12-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-311]

Public Service Electric and Gas Co., et al.; Issuance of Amendment to License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 4 to License No. DPR-75, issued to Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees), which revised Technical Specifications for operation of the Salem Nuclear Generating Station, Unit No. 2 (the facility) located in Salem County, New Jersey. The amendment is effective as of the date of issuance.

The amendment approves an organizational change to the Salem operation and support staffs, and revises the related Technical Specifications.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10

CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated November 20, 1980, (2) Amendment No. 4 to License No. DPR-75, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 8th day of December, 1980.

For the Nuclear Regulatory Commission.

F. J. Miraglia,

Acting Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 80-39376 Filed 12-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-259 and 50-260]

Tennessee Valley Authority; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 64 to Facility Operating License No. DPR-33 and Amendment No. 60 to Facility Operating License No. DPR-52 issued to Tennessee Valley Authority (the licensee), which revised Technical Specifications for operation of the Browns Ferry Nuclear Plant, Unit Nos. 1 and 2, located in Limestone County, Alabama. The amendments are effective as of the date of issuance.

These amendments change the Technical Specifications to allow operation of Browns Ferry Unit No. 2 with the standby coolant supply capability (supplied from Unit No. 1) inoperable for a period not to exceed ten days.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments to not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated September 17, 1980, (2) Amendment No. 64 to License No. DPR-33, and Amendment No. 60 to License No. DPR-52, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Athens Public Library, South and Forrest, Athens, Alabama 35611. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 10th day of December, 1980.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 80-39377 Filed 12-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 60 to Facility Operating License No. DPR-28, issued to Vermont Yankee Nuclear Power Corporation (the licensee), which revised the license for operation of the Vermont Yankee Nuclear Power Station (the facility), located in Windham County, Vermont. The amendment is effective as of the date of issuance and is to be fully implemented within 30 days of Commission approval in accordance with the provisions of 10 CFR 73.40(b).

The amendment revises license condition 3.G to include the Commission-approved Safeguards Contingency Plan as part of the Physical Security Plan.

The licensee's filing complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

The licensee's filing dated March 18, 1980 is being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment No. 60 to License No. DPR-28, and (2) the Commission's related letter to the licensee dated November 21, 1980. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 21st day of November 1980.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 80-39378 Filed 12-17-80; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

December 15, 1980.

Background

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 U.S.C. 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 (burden change), extensions (no change), or reinstatements. 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 title 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;

The Standard Industrial Classification (SIC) codes, referring to specific respondent groups that are affected;

Whether small businesses or organizations are affected;

A description of the Federal budget functional category that covers the information collection;

An estimate of the number of responses;

An estimate of the total number of hours needed to fill out the form;

An estimate of the cost to the Federal Government;

The number of forms in the request for approval;

The name and telephone number of the person or office responsible for OMB review; and

An abstract describing the need for and uses of the information collection.

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, instructions, 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 NW., Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper—202-447-6201

Revisions

- Animal and Plant Health Inspection Service

Animal Welfare (reports)
VS 18-3, 18-8, 18-11 and 18-23
On occasion annually
Businesses or other institutions
Animal dealers and exhibitors, research facilities
SIC: 599 799 027
Small businesses or organizations
Agricultural research and services, 22,054 responses; 31,521 hours; $308,438 Federal cost; 4 forms
Charles A. Ellett, 202-395-7340
Reports used in implementing the Animal Welfare Act (7 U.S.C. 2131-2156). Data used to insure that dealers, exhibitors, carriers, etc., adhere to the act, the regulations, and humane standards governing the purchase, handling, and sale of animals, in commerce.

- Economics and Statistics Service

Livestock mail survey
Annually
Farms
Livestock producers
SIC: 021
Small businesses or organizations
Agricultural research and services, 87,400 responses; 14,858 hours; $50,000 Federal cost; 5 forms
Office of Federal Statistical Policy and Standard, 202-673-7974
Alaska and Hawaii use this survey to estimate their State cattle inventory as of January 1. Eleven other States use this survey to supplement the December enumerative survey (40-R2820) and cattle, multiframe survey (40-R3774) for preparing county estimates. These estimates are used by the livestock industry in planning production and marketing policies.

DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michals—202-377-3627

New

- Economic Development Administration

Preliminary plan for data collection forms for assessment of EDA's rural job targeting efforts
ED456QP
Nonrecurring
Individuals or households/businesses or other institutions
Employees of firms located at EDA public works site
SIC: Multiple
Small businesses or organizations
Area and regional development, 0 responses; 0 hours; $175,000 Federal cost; 1 form
William T. Adams, 202-395-4814
Preliminary plan for data collection forms for assessment of EDA's rural job targeting efforts.

Extensions (Burden Change)

- Economic Development Administration

Technical assistance application (nongovernment applicants)
ED-357NG
Other—See SF83
Businesses or other institutions
Non-Government organizations, both profitmaking and nonprofitmaking organizations

SIC: Multiple
Small businesses or organizations
Area and regional development, 125 responses; 1,250 hours; $230,000 Federal cost; 1 form
William T. Adams, 202-395-4814
Application for grants and or cooperative agreements under the economic development administrations program of technical assistance.

Extensions (No Change)

• Economic Development Administration
Preliminary plan for an assessment of EDA's metropolitan capacity building demonstration
ED-453Q
Nonrecurring
State or local governments/businesses or other institutions
Staff of metropolitan planning organizations
SIC: 930 920
Area and regional development, 252 responses; 126 hours; $120,000 Federal cost; 1 form
William T. Adams, 202-395-4814
To demonstrate the potential rules regional planning and development institutions have in the formulation and implementation of regional economic development strategies, in particular, those that address the problems of central city and older suburban economic distress (bases on 42 U.S.C. 3151(C)).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph Strnad—202-245-7488

New

• Health Resources Administration
Study of NP Programs, Students, Graduates, and Employers of NP's
Nonrecurring
Individuals or households
Directors of NP programs, students, NP, NP employers
Health, 7,020 responses; $328,198 Federal Cost; 2,190 hours; 4 forms
Richard Eisinger, 202-395-6880
The major application of the findings will be in the area of policy making, legislation, and regulations. The study is needed to provide information for future planning and for the administration of the nurse practitioner program by the division of nursing. Estimated start date, spring 1981 with expiration date of December 1982.

• Departmental Management
Request for Advance or Reimbursement
OS-26-80
Monthly
State or local governments/businesses or other institutions
HHS Grant-in-Aid recipients
SIC: Multiple
Public assistance and other income supplements, 83,964 responses; $36,027 Federal Cost; 20,991 hours; 1 form
Richard Eisinger, 202-395-6880
This is a revision of the current cash request form. It requires recipients to schedule from one to four advances within the month to correspond to immediate disbursement needs. It also will require the recipient to report the actual cash on hand as of the request date.

• Office of Assistant Secretary for Health
Field Test of a long-term Care Data Set in Selected Sites
Nonrecurring
Businesses or other institutions
Long-term Care Pro. in Calif., Ill., & Minnesota
SIC: Multiple
Small businesses or organizations
Health, 3,590 responses; $440,000 Federal Cost; 3,539 hours; 5 forms
Richard Eisinger, 202-395-6880
The LTC MDS is designed to be collected on all LTC clients (i.e., institutional, ambulatory, and home settings). The evaluation data are needed to guide future studies in LTC by incorporating standard items, definitions, and procedures. The MDS will ultimately be used in LTC planning, evaluation, and research.

• Health Services Administration
Provision of Sanitation Facilities (Pub. L. 86-121)
HSA-62
On occasion
Individuals or households
Indiv. & representatives of Indian Tribes and groups
Health Care Services, 500 responses; $600 Federal Cost; 150 hours; 1 form
Richard Eisinger, 202-395-6880
This form is used for the scheduling of surveys for developing preliminary construction plans and preparing budget proposals for construction of sanitation facilities in areas where Indian individuals and groups have expressed a desire to participate in the construction of essential sanitation facilities under Pub. L. 86-121.

Extensions (No Change)

• Food and Drug Administration
Blood Sample Identification Card
FD-3059
Other—see SF-83
Individuals or households
Volunteer blood donors
Consumer and occupational health and safety, 200 responses; 33 hours; 1 form
Richard Eisinger, 202-395-6880
The form provides information from blood donors which is entered into a computer with tissue typing and other information concerning genetic characteristics. The results will determine the type of tests for which the blood cells will be used.

• Social Security Administration
Quality Control Negative Case Action Review Schedule
SSA-6401
Annually
Individuals or households
Individuals applying for AFDC or adult assistance
Public Assistance and other income supplements, 37,614 responses; 18, 978 hours; 1 form
Barbara F. Young, 202-395-6880
Sections 402(A)(6), 403(C), and (J) of the Social Security Act provide for information required to ensure that applicants or recipients are not being denied AFDC, adult assistance, or medicaid coverage for which they are eligible. This form provides a more reliable, cost-effective mechanism for assessing the States' performance in denial or termination of coverage. Enables SSA to make incentive payment to those States that qualify under section 403(J).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—Robert G. Masarsky—202-755-5184.

Revisions

• Community Planning and Development
Urban Development Action Grant Program Quarterly Progress Report
Quarterly
State or local governments/businesses or other institutions
Units of gen. local gov't which meet sel. crit. by const.
SIC: Multiple
Community development, 4,000 responses; 16,000 hours; $20,000 Federal cost; 1 form
Richard Sheppard, 202-395-6880
Pub. L. 95-128, Sec. 119 (c) and (e) set forth application and Federal review requirements for the urban development action grant program.
This application is designed to meet the legislative requirements and to be used by communities to apply for action grants. Pub. L. 95-128, Sec. 110(h) requires HUD to "Make reviews and audits of recipients of grants . . . to determine the progress

made . . ." Pub. L. 93-383, Sec. 113 requires HUD to make an annual report to Congress.

DEPARTMENT OF LABOR

Agency Clearance Officer—Paul E. Larson-202-523-6341.

New

Employment and Training Administration
Organizational survey of the work incentive program
MT-314
Other-See SF83
State or local governments
State & local gov't staff operating the work incen. prog.
SIC: 944
Training and employment, 2,250 responses; 1,688 hours; $178,720 Federal cost; 2 forms
Arnold Strasser, 202-395-6880
A survey at three points in time of WIN managers and staff in both experimental and central sites to determine the impact of implementing systematic organizational change strategies designed to improve program performance and productivity.

• Bureau of Labor Statistics
Occupational emp statistics (OES survey Mont H HLY)
Progress reports
BLS02877 A
Monthly
State or local governments
State Employment Security Agen. (SESA) cooperating in OES
Sic: 944
Other labor services, 636 responses; 318 hours; $12,720 Federal Cost; 1 form
Off. of Federal Statistical Policy & Standard, 202-673-7974 the OES survey monthly progress reports are the primary source of current management data on the status of State OES survey operations.
They allow for early identification and resolution of State Collection problems on an ongoing basis.

• Bureau of Labor Statistics
OES Survey State Operations Review Package
BLS-2877B
Annually
State or local governments
State Employment Security Agencies
SIC: 944
Other labor services, 53 responses; 848 hours; $10,600 Federal cost; 1 form
Off. of Federal Statistical Policy & Standard 202-673-7974
The OES Survey State Operations Review Package is the principal source of management information regarding the quality of the data and estimates produced by the OES cooperating States. The review package allows an evaluation of the supplied data which is the principal input to the BLS's national occupation estimates and projections.

• Bureau of Labor Statistics
ES-202 State Operations Review Package
BLS-30 30
Annually
State or local governments
State Employment Security Agencies
SIC: 944
Small businesses or Organizations
Other labor services, 53 responses; 1,272 hours; $10,000 Federal cost; 1 form
Off. of Federal Statistical Policy & Standard, 202-673-7974
The ES-202 State Operations Rev. Package is the principal source of management information regarding quality and State conformance to BLS specified procedures in the collection and tabulation of ES-202 data.

• Occupational Safety and Health Administration
Report of injuries to employees operating mechanical power presses, OSHA-180
On occasion
Businesses or other institutions
Any employ. operat. mechan. power presses resul in injur.
SIC: All
Small businesses or organizations
Consumer and occupational health and safety, 400 responses; 120 hours; $0 Federal cost; 1 form
Arnold Strasser, 202-395-6880
This report is necessary in order that OSHA may conduct an on-going analysis of mechanical power press injuries. The report is used to record and evaluate the causal factors of such injuries and thus monitor the effectiveness of the standard for continued use or revision when found appropriate.

Revisions.

• Employment and Training Administration
Youth Initiatives in Apprenticeship Study
MT-304
Nonrecurring
Individuals or households/businesses or other institutions
Proj. partic., compar. students, employers & assoc per.
SIC: All
Training and employment, 2,593 responses; 912 hours; $312,255 Federal cost; 5 forms
Arnold Strasser, 202-395-6880
There is a need to evaluate the effectiveness of the new youth initiatives in apprenticeship as a Department of Labor program activity, and to document the school-to-work experiences of a non-participant sample of high-school graduates. The interview instruments also seeks the opinions of employers and school personnel who have had contact with the program. January 81 is the expiration date.

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—John Winsor, Acting—202-426-1887.

Reinstatements

• Federal Aviation Administration
Aircraft registration (regulations) FAR 47
AC 8050-81, aircraft contract of conditional
On occasion
Individuals or households/businesses or other institutions
Aircraft owners
Small businesses or organizations
Air transportation; 92,200 responses; 43,807 hours; $22,000 Federal cost, 1 form
Corrinne Hayward 202-395-7340
Federal Aviation Act of 1958, section 501 (49 USC 1401) requires registration of aircraft. 14 CFR 47 prescribes requirements for the registration process. Information collected is used to determine compliance.

INTERNATIONAL DEVELOPMENT ASSISTANCE

Agency Clearence Officer—Timothy P. Campbell—202-632-0084.

New

• Registry of Institutional Resources, Questionnaire
AID 1620-5 A thru D
On occasion
Individuals or households/businesses or other institutions
Universities and individual professors
Foreign economic and financial assistance; 100 responses, 1,650 hours; $93,020 Federal cost, 4 forms
Phillip T. Balazs 202-395-4814
BIFAD is routinely asked by AID to provide potential university contractors, which have prescribed qualifications. All university files on areas of capacity and interest must be searched for each request. As each university is unique in areas of experience and competence, the file of information is too large and complex to manipulate manually. This questionnaire will standardize university responses and permit computer storage and retrieval. starting 1/5/81.

• Contractor Index and Roster of Individual Consultants, Questionnaires

AID 1420-50 A thru D
Nonrecurring
Individuals or households/businesses or other institutions
Indiv. consultants, consulting firms, and small A&E firms
SIC: 739 891 737 893
Small businesses or organizations
Foreign economic and financial assistance, 75 responses, 375 hours; $0 Federal cost, 4 forms.
Phillip T. Balazs, 202-395-4814
This package contains questionnaires for three types of contractors: (1) individuals, (2) consulting firms, and (3) A&E firms. These materials including a profile booklet will educate the business community as to this agency's potential needs by service and area of specialization and enable respondents to present their relevant capabilities according to the same format.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Agency Clearance Officer—Wallace Velander—202-755-3122.

Extensions (No Change)

• ELT Effectiveness Report
On occasion
Businesses or other institutions/State or local governments/individuals or H aircraft crash investic.—Civil Air Patrol—FAA Fld Off.
Multiple functions, 7,000 responses, 3,500 hours, 1 form
William T. Adams, 202-395-4814
Emergency locator transmitters (ELT) are used to locate disabled aircraft as an aid to search and rescue (SAR) activities. Cases of improper and inadequate performance of the ELT have required the development of a second generation ELT to improve the SAR community with the necessary information to evaluate the effectiveness of the new process. Start date-April 1980.

• Contractor Financial Management Report
533 series
Monthly, quarterly
Businesses or other institutions
NASA cost-type contractors
Small businesses or organizations
Multiple functions, 23,170 responses, 231,700 hours, 3 forms
William T. Adams, 202-395-4814
The NASA form 533 series is the basic financial management medium for reporting correlated data needed by NASA project management for evaluation of contractor cost as it relates to schedule and technical performance. Reporting actual and projected data necessary for assuring that contractor performance is realistically planned and supported by dollar and labor resources; and for inputting of contractor cost data into the NASA cost accounting and budget system.

VETERANS ADMINISTRATION

Revisions

• Application for total disability income provision (Medical) Government Life Insurance
VA29-1606
On occasion
Individuals or households
Vet. who apply for Tot. Disab. Income when med exam is req.
Income Security for veterans, 450 responses; 675 hours, $18,927 Federal cost; 1 Form
Laverne V. Collins, 202-395-6800
Abstract: The completed application is required by law, 38 U.S.C. 715 and 748. The information collected used to determine the insured's eligibility for the provision.

Extensions (Burden Change)

• Application for designation as fee appraiser for mobile home loans
26-668 1A
On occasion
Individuals or households
Fee appraisers
Veterans housing, 200 responses; 67 hours, $1,616 Federal cost; 1 form
Laverne V. Collins, 202-395-6880
Form solicits information on professional experience of mobile home fee appraiser applicants, for evaluation by panels for possible VA fee appraiser designation. Fee appraisers recommend the value of used mobile home units proposed for VA financing as required by 38 U.S.C. 1819(E)(4)(B) and also appraise units in process of foreclosure or repossesion.

Reinstatements

• Application for National Service Life Insurance (RN) 29-4364
On occasion
Individuals or households
Veterans who apply for (NSLT) Nat'l Service Life Insurance Income Security for Veterans, 14,000 responses; 21,000 hours, $840,207 Federal cost; 1 form
Laverne V. Collins, 202-395-6880
The completed application is required by law, 38 U.S.C. 722. The information collected is used to determine the applicant's eligibility for the insurance and establish the insurance master record.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Clearance Officer—Linda Shiley—202-254-9515.

Revisions

• National Flood Insurance Program Annual Report
Annually
State or local governments
Elected officials of counties and incorporated communities
SIC: Multiple
Disaster relief and insurance, 17,300 responses; 8,650 hours, $75,000 Federal cost; 2 forms
Robert Veeder, 202-395-4814
The Federal Insurance Administration requires that communities participating in the National Flood Insurance program submit an annual report to indicate the progress made during the past year within the community in the development and implementation of flood plain and/or mudslide area management measures (CFR Title 23, Chapter X, Subchapter B, Part 1909.22). This uniform format helps to reduce the time which communities spend on preparing annual reports.

Reinstatements

• Standards reinsurance contract
FEMA 81-6 FEMA 81-7
Annually
Businesses or other institutions
Property insurance companies U.S.A.
Small businesses or organizations
Community development, 200 responses; 600 hours, $3,000 Federal cost; 2 forms
Robert Veeder, 202-395-4814
The Standard Reinsurance Contract program reinsures against excess aggregate losses resulting from riots or civil disorders to eligible insurers for the contract year (Oct.-Sept.). The offer and the contract are authorized under the provisions of the Urban Property Protection and Reinsurance Act of 1968, as amended.

GENERAL SERVICES ADMINISTRATION

Agency Clearance Officer—John F. Gilmore—202-566-1164.

Reinstatements

• Sale of Government property forms
SF 114, A, B, E, F
On occasion
Individuals or households/businesses or other institutions
Private persons or firms
Small businesses or organizations
Multiple functions, 110,000 responses; 55,000 hours, $1,002,000 Federal cost; 5 forms
Kenneth B. Allen, 202-395-3785
The SF 114 Assembly is used to advertise and describe Government

surplus property for public sale. Responses received from the interested public are used by the Government to determine the highest bidder and make award of sale for the surplus property which was offered.

NATIONAL CREDIT UNION ADMINISTRATION

Agency Clearance Officer—D. Lynn Gordon—202-357-1202.

Extensions (No Change)

- Monthly sample (Federal) monthly sample (State)

NCUA 5301 & 5303
Monthly
Businesses of other instituions
Federal and State credit unions
Small businesses or organizations
Mortgage credit and thrift insurance, 14,400 responses; 2,400 hours, 1 form
Warren Topelius, 202-395-7340

Credit Union monthly survey provides financial and ecomomic data on a seasonally adjusted and unadjusted basis. Approximately 1,100 participating Federal and State-chartered credit unions serve as the basis for estimating: Consumer savings and installment credit held by credit unions; credit union growth; savings and loans flows; liquidity; investment trend; and key operating ratios that reflect conditions within the credit union industry. Data are analyzed for.

Reinstatements

- Annual statistics for State-Chartered credit unions

NCUA-5306
Annually
Businesses or other institutions
State-Chartered credit unions in USA and Puerto Rico
SIC: All
Small businesses or organizations
Mortgage credit and thrift insurance, 46 responses; 92 hours, $4,000 Federal cost; 1 form
Warren Topelius, 202-395-7340

The annual statistics reports provide information essential to the National Credit Union Administration and Government for policy and regulatory decisions and research requirements. The data is also used for analyzing trends that are essential for management and legislative purposes, and for publication of an annual report of State credit unions financial condition.

NATIONAL SCIENCE FOUNDATION

Agency Clearance Officer—Herman Fleming—202-357-7811.

New

- National Science Foundation proposal evaluation process

NSF-1B, 423, 980, 989, 1053, 1054, 1071, ISPT-1,2,3, SE/DOE-52, 53, 4A, 5A, SE-2, 15, 16
On occasion
Individuals or households
Scientists, Edu., engineers, specialists in fields, general science and basic research, 176,365 responses; 881,825 hours, $2,500,000 Federal cost; 47 forms
Marsha D. Traynham, 202-395-7340

- The foundation's scientist, engineers and other officials evaluate all proposals submitted to the agency. To assist them in the evaluation process, the foundation obtains the advice of scientists and others who are specialist in the fields covered in the proposals. Assistance is obtained through mail-review and assembled panels.

SMALL BUSINESS ADMINISTRATION

Agency Clearance Officer—Ms. Oleta Waugh—202-653-6399.

New

- Assessment of the need for and feasibility of SBA initiating an installment sales guarantee program

Nonrecurring
Individuals or households/businesses or other institutions
Merger and acquisition firms, economic and business prof.
SIC: Multiple
Small businesses or organizations
Other advancement and regulation of commerce, 1,370 responses; 685 hours, $6,652 Federal cost; 5 forms
Edward C. Springer, 202-395-4814

There is a Congressional mandated study to determine the need for and feasibility of SBA implementing a small business installment sales guarantee program. A comprehensive survey of the parties directly/indirectly involved in such transaction and opinions of experts is required. Such data is at present not available.

Arnold Strasser,
Acting Deputy Assistant Director for Reports Management.

[FR Doc. 80-39406 Filed 12-17-80; 8:45 am]
BILLING CODE 3110-01-M

Agency Forms Under Review

December 10, 1980.

Background

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 (burden change), extensions (no change), or reinstatements. 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 title 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;

The Standard Industrial Classification (SIC) codes, referring to specific respondent groups that are affected;

Whether small businesses or organizations are affected;

A description of the Federal budget functional category that covers the information collection;

An estimate of the number of responses;

An estimate of the total number of hours needed to fill out the form;

An estimate of the cost to the Federal Government;

The number of forms in the request for approval;

The name and telephone number of the person or office responsible for OMB review; and

An abstract describing the need for and uses of the information collection.

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, instructions, 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 COMMERCE

Agency Clearance Officer—Edward Michals—202-377-3627.

New

- Economic Development Administration

Evaluation of the economic impacts of the footwear industry
Revitalization program
ED455-QP
Nonrecurring
Businesses or other institutions
Random sample of footwear manufacturers
SIC: 314
Small businesses or organizations
Area and regional development, 0 responses; 0 hours; $80,000 Federal cost; 1 form
William T. Adams, 202-395-4814
The information obtained in this study will be used to assess the economic impact of trade adjustment assistance on the footwear industry to refine basic program guidelines

Revisions

- Bureau of the Census

Housing Vacancy Survey (HVS)
HVS-1
Monthly
Individuals or households
Eligible vacant housing units in mo. Sample of 86,000 units
Other advancement and regulation of commerce, 72,000 responses; 3,600 hours; $427,000 Federal cost; 1 form
Off. of Federal Statistical Policy and Standard 202-673-7974
The HVS provides quarterly statistics on vacancy rates for rental and homeowner units by various charcteristics such as size, facilities, and value of the units. The statistics are used by public and private housing agencies in formulating housing policies.

VETERANS ADMINISTRATION

Agency Clearance Officer—R. C. Whitt—202-389-2146.

Extensions (no change)

- Request to correspondent for identifying

Info re veteran
FL 07-2 FL60-2
On occasion
Individuals or households
Veterans and other beneficiaries
Other veterans benefits and services, 50,000 responses; 8,333 hours; 1 form
Laverne V. Collins, 202-395-6880
FL 60-2 is used to request additional identifying data when incoming correspondence does not provide sufficient information to permit the identification of a specific veteran's record.

SMALL BUSINESS ADMINISTRATION

Agency Clearance Officer—Ms. Oleta Waugh—202-653-6399.

New

- Applicant's environmental impact data

SBA 1231
Nonrecurring
Farms/businesses or other institutions
All applicants for SBA fi. assist. that may have an impt.
SIC: Multiple
Small businesses or organizations
Other advancement and regulation of commerce, 500 responses; 1,750 hours; $500,000 Federal cost; 1 form
Edward C. Springer, 202-395-4814
This National Environmental Policy Act and CEQ regulations require an environmental evaluation or environmental impact statement in some instances. This form provides the basic data for SBA to determine when an environmental impact statement is needed.

Arnold Strasser,
Acting Deputy Assistant Director For Reports Management.

[FR Doc. 80-39407 Filed 12-17-80; 8:45 am]
BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 17369; (SR-CBOE-80-26)]

Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

December 12, 1980.

On October 24, 1980, the Chicago Board Options Exchange, Incorporated ("CBOE") 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. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which requires that members effecting transactions with an Order Book Official ("OBO") obtain an oral confirmation from the OBO or his staff as to the material terms of the transaction.

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. 17263, October 31, 1980) and by publication in the Federal Register (45 FR 74136, November 7, 1980). No written statements with respect to the proposed rule change 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. 80-39313 Filed 12-17-80; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 21837; (70-6532)]

National Fuel Gas Co.; Proposed Increase in Authorized Shares of Preferred Stock and Limitation in Preemptive Rights of Common Stock and Order Authorizing Solicitation of Proxies in Connection Therewith

December 10, 1980.

Notice is hereby given that National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7. and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

National proposes to amend its Restated Certificate of Incorporation ("Certificate") to increase to 3,200,000 from 2,000,000 the number of shares of preferred stock ($25 par value) that National would be authorized to issue. Of the 2,000,000 shares currently authorized, National has issued 1,200,000 shares, which remain outstanding and which represent $30,000,000 of its capitalization. The proposed increase would allow National to raise up to $50,000,000 in additional capital in the form of preferred stock.

It is stated that National will continue to need additional external capital financing to satisfy the long-term financial requirements of certain of its subsidiaries and for its own general corporate purposes. In the past, the company has raised such capital primarily through the issuance of debentures; however, because of the generally higher interest costs incurred in recent debenture issues, and the effect that those higher costs have had on the coverage requirements for the issuance of additional debentures, National believes it is essential that it examine alternative financing arrangements. The authorization to issue additional preferred stock would give National increased flexibility during periods when external financing becomes necessary.

National also proposes to amend its Certificate to limit the preemptive rights of the holders of its common stock. The preemptive rights of the holders of National's preferred stock would not be changed. Under the Certificate as it is proposed to be amended no common stockholder will have preemptive rights with respect to shares, obligations or other securities which (a) are issued pursuant to a public offering; or (b) are issued pursuant to an offering to or through underwriters or investment bankers who shall agree promptly to make public offering thereof; or (c) are issued pursuant to employee benefit plans; or (d) are issued pursuant to programs available to all stockholders or open to all customers of utility subsidiaries of the corporation, including, without limitation, dividend reinvestment and stock purchase programs or limited investment programs.

It is stated that the proposed amendment will make it possible for National to issue previously authorized, but unissued, shares of common stock in a more expedient manner and will assist in administering its automatic dividend reinvestment plan, its employee stock ownership plan, and an employees' thrift plan. Currently, the trustee must purchase the shares of common stock of National on the open market in order to satisfy the funding requirements of the three plans.

National intends to submit the proposed amendments to the holders of its common stock for their approval at its Annual Meeting scheduled for January 29, 1981. In connection therewith, National proposes to solicit proxies from the holders of its common stock. Adoption of the proposals requires the affirmative vote of a majority of the votes cast by the holders of National's common stock. No action of the holders of National's preferred stock is required for the adoption of the proposals. National has filed its proxy solicitation material and requests that the effectiveness of its declaration with respect to the solicitation be accelerated as provided in Rule 62.

It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than January 8, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing to the Commission that National's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rules 62 and 65:

It is ordered that the declaration regarding the proposed solicitation of proxies be, and hereby is, permitted to become effective forthwith pursuant to Rules 62 and 65.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-39311 Filed 12-17-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17366; (SR-NYSE-80-36)]

New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

December 11, 1980.

On September 26, 1980, the New York Stock Exchange, Inc. filed witht he Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which requires Exchange approval of member and member organization bank loan agreements which are given capital value for otherwise non-allowable assets and securities with no ready market value.

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. 34-172242, October 23, 1980) and by publication in the Federal Register (45 FR 71878, October 30, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be

withheld from the public in accordance with the provisions of 5 U.S.C. § 552) were made available to the public at the Commission's Public Reference Room.

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. 80-39312 Filed 12-17-80; 8:45 am]

BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

December 10, 1980.

The above named national securities exchange has filed an application 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 common stock of: Quaker State Oil Refining Corp., Common Stock, $1.25 Par Value (File No. 7-5791).

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 2, 1981 written data, views and arguments concerning the above-referenced application. 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 application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is 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. 80-39308 Filed 12-17-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21838; (70-6527)]

Providence Energy Corp.; Proposed Acquisition To Create Holding Company

December 11, 1980.

Notice is hereby given that Providence Energy Corporation ("Provicence Energy"), a Rhode Island corporaration, 100 Weybosset Street, Providence, Rhode Island 02901 has filed with this Commission an application and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a)(2) and 10 of the Act as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Providence Energy, a newly organized corporation, proposed to acquire all of the common stock of Providence Gas Company ("Providence Gas"), a Rhode Island corporation and a gas utility as defined in Section 2(a)(4) of the Act, in a transaction in which it is proposed that Providence Merger Company (a wholly-owned subsidiary of Providence Energy) will be merged with and into Providence Gas and under which each of the outstanding shares of common stock of Providence Gas will be converted into one share of the common stock of Providence Energy, and the outstanding shares of Providence Merger Company will be converted into shares of the common stock of Providence Gas. As a result of the reorganization, the present shareholders of Providence Gas will become the shareholders of Providence Energy, which in turn will hold all of the issued and outstanding common stock of Providence Gas, and Providence Energy will be, therefore, a holding company as defined in Section 2(a)(7) of the Act. The shareholders of Providence Gas will be asked to vote on the proposed merger at a meeting to be held on January 12, 1981. The proposed merger requires the affirmative vote of the holders of a majority of the outstanding common stock of Providence Gas. The authorized capital of Providence Gas consists of 2,500,000 shares of common stock, 1,243,598 of which are issued and outstanding, and an unlimited number of shares of preferred stock, none of which have been issued.

Providence Energy was organized on behalf of Providence Gas for the purpose of serving as the publicly-held holding company of Providence Gas and its subsidaries following the proposed reorganization of Providence Gas. The authorized capital of Providence Energy consists of 3,000,000 shares of common stock, $1.00 par value, of which 100 shares are outstanding and held by Providence Gas, and 1,000,000 shares of preferred stock, $10 par value, none of which have been issued. It is stated that the objective of the reorganization is to create a holding company vehicle which may more easily invest in and obtain financing for areas of business other than Providence Gas' traditional gas business.

Providence Gas is a public utility engaged in the purchase, distribution and sale of natural gas for residential, commercial and industrial use to approximately 115,000 customers within the State of Rhode Island. On September 30, 1980, Providence Gas (consolidated) had total gross utility plant of $81,447,000 and for the twelve months then ended $99,069,000 of operating revenues and $4,215,000 of net income. Its gas sales for the year then ended were 19,731,000 MCF. Providence Gas purchases its natural gas from Algonquin Gas Transmission Company ("Algonquin"), a pipeline company in which Providence Gas has less than a 1% common stock ownerhsip. Providence Gas has a liquefied natural gas storage facility of 55,000 barrel capacity located in Exeter, Rhode Island, and has the right to storage of 348,000 barrels of liquefied natural gas in a storage tank owned by an affiliate of Algonquin located on land in Providence, Rhode Island, and leased from Providence Gas. Providence Gas' executive offices, distribtuion and maintenance facilities are all located within Rhode Island. None of its sales are made to customers outside the State of Rhode Island, and it has no plans for making any such sales.

Providence Gas is also a holding company under Section 2(a)(7) of the Act by virtue of its 100% ownership of the capital stock of Tiverton Gas Company ("Tiverton Gas"), also a Rhode Island gas utility company, which serves approximately 500 customers in the town of Tiverton, Rhode Island. Triverton Gas also sells bottled gas in Rhode Island and Massachusettes. For the year ended September 30, 1980, the operating revenues of Tiverton Gas were $210,000 and its gas sales were 32,000 MCF. Providence Gas was granted status as an exempt holding company under Sections 3(a)(1) and

3(a)(2) of the Act by order dated April 16, 1975 (HCAR No. 18938). Providence Gas also owns all of the issued and outstanding stock of four non-utility subsidiaries: Bay Front Real Estate Company ("Bay Front"), which holds title to approximately seven acres of land in Newport, Rhode Island and conducts no business other than owning such land: Prudence Corporation ("Prudence"), which holds title to various parcels of real property used other than in the conduct of a gas utility business; Arrowhead Propane Corporation ("Arrowhead"), through which Providence Gas sells propane fuel for residential, commercial and industrial use; and Resource Monitors, Inc. ("Resource"), which has been organized to serve as the vehicle for collecting the non-utility accounts receivable of Providence Gas and for preventing theft or other diversion of its gas. Providence Gas carries on its books its investments in Bay Front, Prudence, Arrowhead and Resource at $300,000, $493,926, $108,500 and $6,500, respectively.

Providence Energy is not now a holding company, and it does not intend to register as such if the acquisition of Providence Gas is authorized and the merger of Providence Gas and Providence Merger Company consummated. Providence Energy states that is will be entitled to an exemption under Section 3(a)(1) of the Act, on the basis that it and its public utility subsidaries Providence Gas and Tiverton Gas "are predominately intrastate in character and carry on their business substantially in a single state in which such holding company and every such subsidiary company thereof are organized," and intends to claim such exemption by an appropriate filing pursuant to Rule 2 promulgated thereunder. In connection with such filing it is stated that there will be an undertaking that Providence Energy will not issue and sell any perferred stock without prior approval of this Commission.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than January 5, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said amended application, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney-at-law, by certificate) should be filed with the request. At any time after said date, the application, as ameded or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. 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 Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-309 Filed 12-17-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11486; (812-4725)]

Westdeutsche Landesbank Girozentrale; Application for an Order Pursuant to Section 6(c) of the Act Exempting Applicant From All Provisions of the Act

December 10, 1980.

Notice is hereby given that Westdeutsche Landesbank Girozentrale ("Applicant") Friedrichstrasse 56, 4000 Duesseldorf 1, Federal Republic of Germany filed an application on August 29, 1980, and an amendment thereto on November 6, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of 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 states that it was formed in 1969 as a result of the merger of two banks established in the nineteenth century and that it is incorporated by special act of the State of North-Rhine Westphalia, one of the eleven States constituting the Federal republic of Germany. It is the third largest bank in the Federal Republic of Germany and is among the top twenty largest banks in the world. At December 31, 1979, it had assets of approximately $54.58 billion and a paid-in capital of $565,980,000. Its capital has been contributed by the State of North-Rhine Westphalia and various regional authorities and banking associations. These contributors are in effect applicant's stockholders. In addition to its head office at Friedrichstrasse 56, 4000 Duesseldorf 1, Federal Republic of Germany, Applicant has branches and wholly-owned subsidiaries in the Federal Republic of Germany, wholly-owned subsidiaries in Luxembourg and Hong-Kong and branches in London, Tokyo, New York and the Cayman Islands. The New York branch is licensed by the State of New York and is located at 450 Park Avenue, New York, New York 10022.

Applicant states that it performs all the functions of a typical commercial bank. At December 31, 1979, deposits comprised approximately 52.4% and bonds and notes 40.3% of Applicant's total liabilities. Approximately 75.7% of its deposits are from German individuals or entities. On the same date, loans constituted 86.7% of Applicant's total assests and interest on such loans accounted for approximately 65% of its gross income. Approximately 88.4% of these loans were extended to German individuals or entities.

Applicant states that, in addition to its deposit and lending business, it is engaged in providing a wide range of banking services such as leasing and factoring, investment and portfolio management, corporate analysis and advisory services. In addition, Applicant participates in various investment banking activities. Applicant also serves as a state and municipal bank for the State of North-Rhine Westphalia and its municipalities, and as clearing bank for all savings banks located in North-Rhine Westphalia.

Applicant represents that it is extensively regulated pursuant to German banking laws which provide for supervision by the Bundesaufsichtsamt fuer das Kreditwesen ("Federal Banking Supervisory Authority"), the Deutsche Bundesbank (German Central Bank) and by the State of North-Rhine Westphalia. Applicant states that such entities regulate its capital reserves, liquidity and loans. Applicant states that it must report regularly to the Federal Bank Supervisory Authority which may conduct on-site examinations and impose wide-ranging sanctions for violations of banking regulations. In addition, pursuant to the International

Banking Act of 1978, applicant is subject to supervision and regulation by the United States Federal Reserve Board.

Applicant also states that its non-bank depositors are protected by a Sicherheitsreserve (Guaranty Fund) and that the Liquiditaets-Konsortialbank GmbH (Liquidity Consortium Bank) would support Applicant in case of a liquidity squeeze.

Applicant proposes to issue and sell unsecured prime quality commercial paper (the "Notes") denominated in United States dollars, in order to provide an alternative source of supply of United States dollars which supplement United States dollars currently obtained by Applicant in the Eurodollar market. It is stated that under this proposal no Note will be in a denomination smaller than $100,000. The Notes will be issued and sold by Applicant to a commercial paper dealer in the United States which will reoffer the Notes as principal to investors in the United States. Applicant represents that it does not currently intend to sell the Notes in the United States in excess of an aggregate of $500 million at any one time outstanding.

Applicant states that it undertakes to ensure that the Notes will not be advertised or otherwise offered for sale to the general public, but instead will be sold by a registered United States securities dealer to institutional investors and other entities and individuals who normally purchase commercial paper notes. Applicant also states that it undertakes to ensure that each offeree of the Notes will receive prior to purchase a memorandum which briefly describes Applicant's business and includes its most recent publicly available annual financial statement, which shall have been audited in accordance with German accounting principles. Applicant represents that such memorandum will describe any material differences between accounting principles applied in the preparation of such financial statements and "generally accepted accounting principles" employed by United States banks. Applicant states that such memorandum will be at least as comprehensive as those customarily used in offering commercial paper in the United States and will be updated promptly to reflect material changes in Applicant's financial condition.

Applicant represents that the terms of the Notes, including their maturity and minimum denomination, the amount outstanding at any given time, and their manner of offering to investors, will be such as to qualify them for the exemption from registration provided for certain short-term commercial paper by Section 3(a)(3) of the Securities Act of 1933 ("1933 Act"). Applicant states further that the Notes will be prime quality, negotiable commercial paper of a type eligible for discount by Federal Reserve Banks and will arise out of, or the proceeds of which will be used for, current transactions. Applicant states that the Notes will contain no provision for payment on demand, extension, renewal or automatic rollover either at the option of Applicant or the holder. Applicant asserts that, as a consequence, it will not be required to register the Notes under the 1933 Act.

Applicant represents, in addition, that it will not issue and sell the Notes until it has received an opinion of its United States legal counsel to the effect that, under the circumstances of the proposed offering, the Notes would be entitled to the exemption provided by Section 3(a)(3) of the 1933 Act. Applicant states that it does not request Commission review or approval of United States counsel's opinion letter regarding the availability of an exemption under Section 3(a)(3) of the 1933 Act and the Commission expresses no opinion as to the availability of any such exemption. Applicant further represents that it is not subject to the reporting requirements of the Securities Exchange Act of 1934 and will not become subject to such requirements in connection with the issuance of sale of the Notes.

Applicant also represents that the currently proposed issue of securities and all future issues of securities will have received prior to issuance one of the three highest investment grades from at least one nationally-recognized statistical rating organization and that its United States counsel will have certified that such rating has been received.

Applicant asserts that the Notes will rank *pari passu* among themselves and equally with all other of its unsecured indebtedness (including liabilities to depositors) and will rank prior to its equity securities.

In addition, the State of North-Rhine Westphalia and Applicant's other shareholders will be guarantors of Applicant's obligation under these Notes inasmuch as they are jointly and severably liable for the obligations of Applicant if, and only if, Applicant's assets are insufficient to satisfy such obligations. Applicant undertakes to notify holders of the Notes of such guarantee in case of any default in payment on the Notes by Applicant.

Applicant states that it will appoint a bank in the United States as its authorized agent to issue the Notes from time to time. Applicant also states that it will appoint either such bank or the Commission to accept any process which may be served in any action based on the Notes and instituted by the holder of any Note in any state or federal court. Applicant further states that it will expressly accept the jurisdiction of any state or federal court in the City and State of New York in respect of any such action, and that such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes have been paid by Applicant. Applicant represents that it will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the Notes or otherwise, but that its authorized agent will not have any responsibilities or duties to act for such holders as would a trustee.

Applicant states that it may, from time to time, offer other debt securities, but not including shares of its capital stock, for sale in the United States. Applicant represents that any such future offering of its securities in the United States will be done on the basis of disclosure documents at least as comprehensive in their description of Applicant, its business and its financial condition as those customarily used in United States offerings of such securities and undertakes to ensure that each offeree of such securities will be provided with such disclosure documents. Applicant states, in connection with any future offering in the United States of its securities, that it will appoint an agent to accept any process which may be served in any action based on any such security and instituted in any state or federal court by the holder of any such security. Applicant further represents that it will expressly accept the jurisdiction of any state or federal court in the City and State of New York in respect of any such action, and that such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable so long as such securities remain outstanding and until all amounts due and to become due in respect of such securities have been paid. Applicant states that it will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such securities or otherwise. Applicant consents to having any order granting the relief requested under Section 6(c) of the Act expressly conditioned upon its compliance with its undertakings regarding disclosure documents.

Section 3(a)(3) of the Act defined investment company to mean 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 centum of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Section 6(c) provides that the Commission, by order upon application, may exempt any person from the 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 the purposes fairly intended by the policy and provisions of the Act. Applicant states that it is applying to the Commission because of uncertainty whether or not foreign commercial banks would be defined as "investment companies" under the Act.

Applicant contends that approval of its application is both necessary and appropriate in the public interest. Because compliance with the Act would conflict with its commercial banking practices, Applicant would effectively be precluded from selling securities in the United States if it is required to register as an investment company. Without an exemption, Applicant would be denied access to the only dollar-denominated commercial market in existence, and investors in the United States who would be precluded from purchasing securities issued by foreign banks, would be denied access to an increasingly important segment of the short-term, prime quality securities available for purchase on the international market.

Applicant maintains that foreign banks have a particular need for access to the United States securities markets which goes beyond that for foreign issuers generally. It is stated that because of the development of the large Eurodollar market, major foreign banks which deal in that market need a source of dollars in the event of even a short disruption in the market. Applicant asserts that an exemption pursuant to Section 6(c) could make an important contribution to the stability of the international financial markets. Applicant asserts that its activities are extensively regulated by the German banking authorities and that the limitations imposed by German laws afford substantial protection to investors in debt securities. Finally, Applicant claims that a commercial bank, such as itself, is substantially different from the typical investment company that Congress intended the Act to regulate, and that Applicant's activities do not lend themselves to the abuses which the provisions of the Act were designed to prevent.

Notice is further given that any interested person may, not later than January 5, 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 or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she 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. 80-39310 Filed 12-17-80 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 734]

Privacy Act of 1974; Annual Publication of Systems of Records

The Privacy Act of 1974 (5 U.S.C. 552a (e)(4) requires agencies to publish annually in the Federal Register a notice of the existence and character of their systems of records. The Department of State last published the full text of its systems of records at 42 FR 49699, September 27, 1977.

A document published at 45 FR 3690, January 18, 1980, further updated the systems of records. Since that time the following new system of records has been adopted: STATE-52, April 2, 1980 (45 FR 21759). For the convenience of the public, this system is republished below.

The full text of the Department of State systems of records also appears in Privacy Act Issuances, 1979 Compilation, Volume III, page 2019. This volume may be ordered through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The price of this volume is $9.50

Robert H. Miller,

Acting Under Secretary for Management.

STATE-52

SYSTEM NAME:

Parking Permit and Car Pool Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State, 2201 C Street, NW., Washington, D.C. 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of State, AID and ACDA employees, and full time employees of private organizations located in the building who have permits for State Department parking facilities; individuals who car pool with employees holding such permits; persons interested in joining a car pool.

CATEGORIES OF RECORDS IN THE SYSTEM:

Parking Permit Information: title and grade of the employee issued a parking permit, home address, year and make of car, license number, bureau, office, room and telephone number, arrival time, departure time, and type of parking permit. Car Pool Information: Name of member of car pool, office address and phone number, make of car, license number and state, home address, and work hours.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 811a; 22 U.S.C. 2658, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of the information in this system is to facilitate control over and issuance of parking permits for the Department of State, AID, ACDA personnel and full time employees of private organizations located in the Department's buildings. The information will be used to facilitate the formation of car pools with employees who have been issued parking permits. Principal

users of this information outside the Department of State are employees of other Federal agencies and private businesses in the Washington, D.C. area who would be interested in forming car pools. Also see the "Routine Uses" paragraph of the Prefatory Statement published in the Federal Register (42 FR 49699, September 27, 1977).

POLICIES AND PRACTICES OR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer media, hard copy, IBM Office System 6.

RETRIEVABILITY:

By the individual's name, bureau, office, zip code, or handicap (if applicable).

SAFEGUARDS:

All employees of the Department of State and the Foreign Affairs Recreation Association have undergone a thorough background security investigation. Access to the Department of State and its annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secure file cabinets or in restricted areas, access to which is limited to authorized personnel.

RETENTION AND DISPOSAL:

This information is maintained until the permit is revoked or reissued, or if the holder of the permit leaves the Department, transfers to another organizational unit of the Department, or is transferred out of the Washington, D.C. area.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, General Services Division, OPR/GS, Room 1493, Department of State, 2201 C Street, NW., Washington, D.C. 20520.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Parking Permit and Car Pool Records might have information pertaining to them, should write to the Information and Privacy Coordinator, Foreign Affairs Document and Reference Center, Room 1239, Department of State, 2201 C Street, NW., Washington, D.C. 20520. The individual must specify that he/she wishes the Parking Permit and Car Pool Records to be checked. At a minimum, the individual should include: Name, date and place of birth, current mailing address and zip code, signature.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Information and Privacy Coordinator, Foreign Affairs Document and Reference Center (address above).

RECORD SOURCE CATEGORIES:

By the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 80-39317 Filed 12-17-80; 8:45 am]

BILLING CODE 4710-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

Proposed Change in Fog Signal, Duluth, Minn.; Meeting

AGENCY: U.S. Coast Guard.

ACTION: Public meeting on proposal to change the fog signal at Duluth Harbor South Breakwater Light, located at Duluth, Minnesota.

SUMMARY: A private citizens' organization of Duluth, MN has proposed restoring a Type F Diaphone Fog Horn to the South Breakwater Outer Light and placing the Diaphone Horn in operation in lieu of the ELG-500/02 Electronic Fog Signal installed since 1968. The organization bases its proposal on various marine safety, aesthetic, historic and tourism reasons.

Coast Guard concerns center on fog signal reliability as an aid to navigation, insuring the safest, most cost effective methods and equipment are used, and minimizing environmental noise pollution.

A public meeting is being held to air the viewpoints of all concerned parties. At the meeting, or through written correspondence, input is solicited on all aspects of this proposal. Information submitted concerning effects on waterway traffic should be specific in describing problems regarding this matter. The determination as to whether this proposal will be approved must rest primarily upon its effect on waterway traffic and as an aid to navigation within the operational requirements and statutory duties of the U.S. Coast Guard. However, all other pertinent factors will be considered in determining if it would be in the public interest to grant approval.

DATE: The public meeting will be held on January 14, 1981 at the U.S. Naval Reserve Center, Minnesota Avenue and 13th Street, Duluth, MN at 7:30 p.m.

FOR FURTHER INFORMATION CONTACT: To submit public comments or for further information, write Mr. R. W. Gasior, c/o Commander (oan), Ninth Coast Guard District, 1240 East Ninth St., Cleveland, OH 44199.

J. T. Montonye,

Captain, Assistant Chief, Short Range Aids to Navigation Division.

[FR Doc. 80-39339 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Alternative Separation Concepts Workshop

The Department of Transportation, Federal Aviation Administration, is pleased to announce a Public Workshop on Alternative Separation Concepts. This 3-day workshop will commence at 9 a.m. on Wednesday, January 7, in the Auditorium at the FAA Technical Center, Atlantic City, New Jersey.

In March 1978, the Federal Aviation Administration started a major effort to discuss with the aviation community, industry, and the public critical questions of policy and operational philosophy that will guide the future development of the air traffic control and airport system. One result of this effort was a report published in March 1, 1979, of User Consensus Views and Recommendations on New Engineering and Development Initiatives—Policy and Technology Choices. In December 1979, FAA published a response to these views and recommendations in Report No. FAA-EM-79-8. In January 1980, FAA held a Consultative Conference with airspace users to review the user consensus and the FAA responses.

Topic Group III of the New E & D Initiatives process was charged with exploring freedom of airspace. As part of this exploration, the group examined certain alternatives to the conventional separation of air traffic by the existing air traffic control system. One of the concepts explored came to be known as Electronic Flight Rules (EFR).

During 1980 the feasibility of EFR, and other alternative separation concepts, were studied by FAA and other organizations. FAA engaged Lincoln Laboratory to conduct an analysis of EFR and a report on their study is to be published soon.

Feasibility of the concept of Electronic Flight Rules has yet to be established. Questions concerning the definition of equipment to be required on EFR-qualified aircraft, the need for an EFR flight plan, the co-existence of EFR flight operations in mixed airspace under Instrument Meteorological Conditions

(IMC), and with IFR traffic the interface between terminal and en route airspace and other questions have yet to be satisfactorily resolved.

Electronic Flight Rules and other alternative separation concepts offer the promise of reducing the demand on the air traffic control system, thereby increasing the capacity of the airspace during Instrument Meteorological Conditions. In addition, the Discrete Address Beacon System (DABS) and the Automatic Traffic Advisory and Resolution Service (ATARS), coupled with the active Beacon Collision Avoidance System, appear to provide an environment conducive to the definition of some type of Electronic Flight Rules or other separation concept. The Federal Aviation Administration now believes it timely to convene a public workshop to examine and explore alternative separation concepts and their potential.

The first morning of the Workshop will include presentations by FAA defining the status of current programs related to alternative separation concepts. The second day of the Workshop will provide the opportunity for detailed study of certain salient aspects critical to the evolutionary development of EFR and its implementation. The final day of the Workshop will feature reports of the detailed studies and a closing Plenary Session.

Although the Alternative Separation Concepts Workshop is open to the public, meeting space is at a premium and advance notice of attendance is requested.

Further information concerning the Workshop may be obtained from the Federal Aviation Administration, Mr. Karl Bierach, Office of Systems Engineering Management, AEM-100, 800 Independence Avenue, S.W., Washington, D.C. 20951, Telephone (202) 426-8828.

Issued in Washington, D.C., on December 10, 1980.

A. P. Albrecht,

Associate Administrator for Engineering and Development.

[FR Doc. 80-39234 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-80-34]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 7, 1981.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e) and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on December 11, 1980.

John H. Cassady,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought
21094	Swift Aire Lines	14 CFR 121.311(f)	To permit petitioner to operate Fokker F-27 aircraft until March 6, 1982, with flight attendant seats not meeting the requirements of Section 25.785(h) of the FAR.
21096	Golden Gate Airlines	14 CFR 21.197	To allow issuance of a continuing ferry authorization for maintenance purposes.
21103	USAir	14 CFR 121.291	To permit petitioner to increase the seating capacity of its BAC-1-11-200 series aircraft from 74 seats to 79 seats without first conducting a full-seating capacity emergency evacuation demonstration.
20854	Tyler P. Toles	14 CFR 135.243(a)	To permit petitioner to serve as Pilot-in-Command under Part 135 without first having attained his 23rd birthday.
21097	John Louis Polando	14 CFR 135.243(b)(3)	To permit petitioner to serve as Pilot-in-Command under Part 135 without an Airplane Instrument Rating or an Airline Transport Pilot Certificate with an airplane category rating.
21106	Puerto Rico International Airlines, Inc	14 CFR 121.291(a)(1)	To allow introduction of a newly acquired Convair 580 aircraft into service without first conducting a full-seating capacity emergency evacuation and ditching demonstration.
20494	Presidential Airways	14 CFR 135.337(b)(2)	To allow, to the extent necessary, the use of a qualified Flight Safety International simulator instructor to serve in the capacity of a check airman without having received the initial pilot and flight instructor ground training under Subpart G of Part 135.
20586	Comair Inc	14 CFR 135.117(a)(8)	To allow petitioner to omit the briefing of passengers on the location and operation of fire extinguishers in company aircraft having 9 passenger seats or less.
20048	American Airlines	14 CFR 121.543(b)(3)	To allow a required flight crewmember to leave the assigned duty station if the crewmember is taking a rest period and relief is provided.
15735	Cessna Aircraft Co	14 CFR 65.81(a) and 145.39(d)	To amend Exemption No. 2353C to include the McCauley Model 700 Series propellers, and extend the exemption which presently applies to the eighteen-month experience requirements for propeller repairman.
20811	Christensen Aviation	14 CFR 135.243(b)(3)	To allow a pilot in command to operate without an instrument rating.
20354	Sky Flite, Inc	14 CFR 135.89	To amend Exemption No. 3005 to allow addition of petitioner's newly acquired Lear 25 aircraft to the exemption. The present exemption allows relief from the Pilot requirements: Use of oxygen.
20898	R. E. Frasch Company	14 CFR 91.32(b)(1)	To allow operation of petitioner's Learjet 35A, N25RF up to 45,000 feet without requiring one pilot to wear and use an oxygen mask at all times above 35,000 feet.

Petitions for Exemptions—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
20900	Flight Trails	14 CFR 135.171(a)	To allow petitioner to continue to operate a recently purchased DC-3 aircraft under Part 135 for a 90-day period without having crew shoulder harnesses installed.
20807	Lockheed Aircraft	14 CFR 21.185(b)	To permit issuance of restricted airworthiness certificates for Lockheed Model C-130B airplanes that were operated and declared surplus by a foreign military service.
20801	Boeing	14 CFR 25.809	To allow, to the extent necessary, type certification of the model 747 with upper deck emergency exits which are not openable from outside the airplane.
20771	USAir, Inc	14 CFR 91.307	To allow operation in the United State under a service to small communities exemption specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1985—19 DC-9's; and until not later than January 1, 1988—28 DC-9's and 29 BAC 1-11's.
20856	Rio Airways, Inc	14 CFR 135.261(b)	To reduce the 10-hour rest period to eight hours.
21110	Rio Airways, Inc	14 CFR 61.31(a)(1)	To permit petitioner's pilots to operate Swearingen Metro IIA large aircraft without possessing the appropriate type rating for that aircraft.

Dispositions for Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
20377	Delta Airlines Inc	14 CFR 121.413(c)(1)	To allow substitute training in FAA-approved simulators for the inflight training of petitioner's line check airmen. *Denied 12/4/80.*
20802	New York Air Lines	14 CFR 121.291 and Appendix D of Part 121.	To permit petitioner to commence initial service in DC-9-30 aircraft in a 115 passenger seat configuration without first conducting a full-seating capacity emergency evacuation demonstration. *Granted 12/3/80.*
20551	Aeroamerica, Inc	14 CFR 61.157(d)(1) and 61.63(d)(2) and (3).	To allow petitioner's trainees to complete a practical test for the issuance of a type rating to be added to any grade of pilot certificate in an airplane. *Withdrawn 12/5/80.*
20894	Trans-Colorado Airlines	14 CFR 135.181(a)(2)	To allow use of an alternate means of compliance for operation of petitioner's Swearingen Metro II over a portion of a route where the aircraft will not be able to climb, with the critical engine inoperative, at least 50 feet a minute when operating at the MEAs of the route to be flown or 5,000 feet MSL, whichever is higher. *Granted 12/3/80.*
25656	James E. Beasley	14 CFR 91.42(a)(2)	To permit dual flight instruction in a P-51TF aircraft having an experimental category certificate for compensation or hire. *Withdrawn 12/5/80.*
20578	California Amphibious	14 CFR 91.78(b), 135.203(a)(1), 135.205, and 135.173.	To permit it to conduct enroute VFR day operations in less than VFR conditions. *Withdrawn 11/24/80.*
19742	Philippine Airlines	14 CFR various Parts of 21, 61, 63, and 91.	To renew Exemption No. 2888 to permit petitioner to maintain aircraft using a continuous airworthiness maintenance program, and to operate aircraft using a master minimum equipment list. *Granted 12/3/80.*
20788	Gull Air Inc	14 CFR 135.243(a)	To allow Mr. LaForge to continue to operate as pilot in command in passenger-carrying operation in multiengine airplanes being operated by the "Commuter Air Carrier" without holding an airline transport pilot certificate. He meets all requirements except the requirement of the applicant being 23 years of age. *Granted 12/3/80.*
17702	American Airlines	14 CFR 61.3, 61.29, 63.3, and 63.16.	Extension of expiration date of Exemption No. 2626 which permits petitioner to issue teletype confirmation of lost airman certificates which may be used until FAA confirmation is obtained. *Partial grant 11/26/80.*
20254	Royale Airlines	14 CFR 135.225(a)(1)	To permit petitioner the use of lower than standard takeoff visibility minimums at Polk AAF (Fort Polk). *Granted 12/8/80.*
20552	Tulsa County Area Vocational Technical School	14 CFR 147.31(c)	To enable petitioner to credit students with instruction given during a period when it did not have FAA certification. *Denied 12/9/80.*
20380	Club USA Int., Inc	14 CFR 123.1(b)	To allow, to the extent necessary, sub-lease of petitioner's aircraft on entering into "contract carriage" agreements. *Cancelled 11/24/80.*
20524	Pipe Fabricators, Inc	14 CFR 43.3(h)	To permit petitioner's trained and certificated pilots to remove, check, and reinstall magnetic chip detector plugs on Allison 250 C Series engines. *Granted 12/1/80.*
20562	Swift Aire Lines	14 CFR 121.220	To permit operation of F-28 and Nord 262 aircraft up to flight level 200 for short periods of time without meeting the ozone check requirements. *Denied 12/5/80.*
19752	Transamerica Airlines	14 CFR 121.291(a)	to amend Exemption No. 2885 to allow Petitioner to increase its passenger seating configuration of its B-747 aircraft from 520 to 546 in accordance with the provisions of Section 121.291 without conducting an evacuation demonstration. *Granted 11/26/80.*
20525	Peter G. Hardy	14 CFR 65.77	To allow Mr. Hardy to take the powerplant mechanics rating examinations without first meeting the experience requirements for a mechanic rating. *Denied 12/1/80.*
18324	American Airlines	14 CFR 43.3 and 121.703(b)(3)	Amendment to Exemption No. 2678, to extend the termination date to November 30, 1982. The present exemption permits petitioner's certificated flight engineers to stow passenger supplemental oxygen masks during flight and to make an entry in the aircraft logbook. *Granted 11/28/80.*
13498	Aerolinee Itavia	14 CFR—various Parts of 21, 61, 91.	To amend Exemption No. 1658M to extend the expiration date of subject exemption with respect to three DC-9 aircraft leased from Hawaiian Airline, Inc. The exemption permits certain of petitioner's airman to obtain U.S. airman certificates and allows maintenance of leased aircraft under a continuous airworthiness maintenance and inspection program. *Granted 12/3/80.*
20285	Harbour Helicopter and Marine, Inc	14 CFR 135.261(b)	To permit splitting the 10 hours of required crew rest into a 6-hour period and a 4-hour period. *Cancelled 11/26/80.*

Dispositions for Petitions for Exemptions—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
17324	Gulf Air Company	14 CFR portions of Parts 21, 61,63, and 91.	Amendment of Exemption No. 2468, to add two leased U.S.-registered L-1011 aircraft, N92TA and N92TB. The present exemption permits certain of petitioner's airman to obtain U.S. airman certificates and allows maintenance of leased aircraft under a continous airworthiness maintenance program. *Granted 12/3/80.*

[FR Doc. 80-39052 Filed 12-17-80; 8:45 am]
BILLING CODE 4910-13-M

Flight Standards District Office; Philadelphia, Pennsylvania; Establishment and Redesignation

Notice is hereby given that on or about March 1, 1981, a Flight Standards District Office will be established at the Philadelphia International Airport. The existing General Aviation District Office at North Philadelphia Airport and the existing Air Carrier District Office at Greater Wilmington Airport will remain where they are. These two offices will be redesignated as the North Philadelphia Flight Standards Field Unit and the Wilmington Flight Standards Field Unit subordinate to the new district office.

(Sec. 313(a) of the Federal Aviation Act of 1958, 72 Stat. 752, 49 U.S.C. 1354)

Issued in New York, New York on December 4, 1980.

Lonnie D. Parrish,

Deputy Director, Eastern Region.

[FR Doc. 80-39051 Filed 12-17-80; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Pittsburgh, Allegheny County, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Pittsburgh, Allegheny County, Pennsylvania.

FOR FUTHER INFORMATION CONTACT: John R. Krause, Environmental Engineer, Federal Highway Administration, 228 Walnut Street, Harrisburg, Pennsylvania 17108, Telephone: (717) 782-2276, or Roger E. Carrier, District Engineer, Pennsylvania Department of Transportation, District 11-0, Four Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania, 15220, Telephone (412) 565-2586.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation, will be preparing an environmental impact statement (EIS) on a proposal to construct the Ohio River Boulevard Extension including an interchange with the existing West End Bridge in the Manchester District of the City of Pittsburgh, Allegheny County, Pennsylvania. The proposed improvement would begin near the intersection of Pennsylvania Avenue and Chateau Street and proceed eastwardly past the West End Bridge 0.75 mile to the vicinity of Allegheny Avenue where it would join the existing connection to the Fort Duquesne Bridge. The purpose of the proposed project is to provide a closing section which is an integral part of the North Side Highway System. The proposed project would provide significantly improved highway facilities to accommodate existing and projected traffic demands. Alternatives under consideration include (1) construction of the Ohio River Boulevard mainline with connections to the West End Bridge and the City street system at North Avenue, (2) construction of the Ohio River Boulevard mainline with connections to the West End Bridge and the city street system at Western Avenue, and (3) taking no action.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. A series of public meetings will be held in the Manchester area between January and June 1981. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment. No formal scoping meeting is planned at this time. To insure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Donald E. Hammer,

Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 80-38969 Filed 12-17-80; 8:45 am]
BILLING CODE 4910-22-M

Traffic Control Devices on Federal-Aid and Other Streets and Highways

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This document provides notification of dates established by the FHWA as a goal for obtaining full compliance with the standards provided in the 1978 Manual on Uniform Traffic Control Devices (MUTCD).

FOR FURTHER INFORMATION CONTACT: James C. Partlow, Signs and Markings Branch, Office of Traffic Operations, 202-426-0411, or Lee Burstyn, Office of the Chief Counsel, 202-426-0761, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The MUTCD [1] has been approved by the Federal Highway Administration as the national standards for traffic control devices on all streets and highways open to public travel in accordance with 23 U.S.C. Sections 109(d) and 402(a).

Each State, in cooperation with its political subdivisions, is required by 23 CFR 1204.4 to have a program which shall include provisions for systematically upgrading substandard traffic control devices and for the installation of needed devices to achieve conformity with the MUTCD.

The following dates are established as a goal for obtaining full compliance with the standards provided in the 1978 MUTCD.

Traffic Control Device and Compliance Date

Pavement Markings, by the end of 1982.

Regulatory and Warning Signs, by the end of 1985.

Traffic Signals, by the end of 1988.

Guide Signs, by the end of 1990.

The compliance dates with the national standards of the MUTCD are issued under the authority of 23 U.S.C.

[1] The MUTCD, Federal Highway Administration, 1978 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (GPO Stock Number 050-001-81001-8). It is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

109(d), 315 and 402(a) and the delegation of authority in 49 CFR 1.48(b).

Issued on: December 10, 1980.

R. D. Morgan,

Associate Administrator for Engineering and Traffic Operations, Federal Highway Administration.

[FR Doc. 80-39169 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[Waiver Petition Docket Nos. LI-80-11 through LI-80-21]

Elgin, Joliet and Eastern Railway, et al.; Petitions for Waiver of Locomotive Safety Standards

As required by 45 U.S.C. 431(c), and in accordance with 49 CFR 211.41 and 221.9, notice is hereby given that nine waiver petitions have been submitted to the Federal Railroad Administration (FRA) requesting temporary, or permanent waivers of compliance with 49 CFR Part 229 (Locomotive Safety Standards).

These regulations prescribe minimum safety standards for all locomotives except those propelled by steam power. The regulations were recently revised. The final rule was published in the Federal Register on March 31, 1980 (45 FR 21092) and became effective on May 1, 1980.

Each of the railroads seeking a waiver is identified below. A brief discussion of each request for waiver is provided.

Interested persons are invited to participate in these proceedings by submitting written data, views, or comments. The FRA does not anticipate scheduling a public hearing in connection with the aforementioned petitions since the facts do not appear to warrant a hearing. However, a public hearing will be scheduled if requested by an interested person December 30, 1980.

All communications concerning these petitions must identify the appropriate docket number (e.g., FRA Waiver Petition No. LI-80-1) and should be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, DC 20590. Communications received before January 10, 1980, will be considered by the FRA before final action is taken. Comments received after that date will be considered to the extent practicable.

Detailed information concerning each petition is on file with the Docket Clerk. Any comments received will also be on file. This material is available for examination by the public during regular business hours (9 a.m.–5 p.m.) in Room 8211, Nassif Building, 400 Seventh Street, S.W., Washington, DC 20590.

Elgin, Joliet and Eastern Railway

[FRA Waiver Petition Docket Number LI-80-11]

The Elgin Joliet and Eastern Railway (EJ&E) seeks a permanent waiver of compliance with the provisions of 49 CFR 229.123. Section 229.123 requires that each lead locomotive be equipped with an end plate that is positioned no more than six inches above the top of the rail.

The EJ&E currently operates approximately 100 locomotives and the presently installed end plate on 67 of these units is positioned between nine and twelve inches above the top of the rail. The end plates on these locomotives were installed in the last few years when footboards were removed from these units. The height selected for the end plate corresponds with the height of the original footboards and in the opinion of the EJ&E this arrangement provides an adequate degree of protection from the dangers of foreign objects.

Consolidated Rail Corporation

[FRA Waiver Petition Docket Number LI-80-12]

Consolidated Rail Corporation (Conrail) seeks a temporary waiver of compliance with several provisions of 49 CFR Part 229. The waiver sought by Conrail involves a variety of equipment used to provide commuter service in the New York and Philadelphia metropolitan areas. This equipment is owned by several different entities which include the Southeastern Pennsylvania Transportation Authority (SEPTA), New Jersey Transit Corporation (NJTC), the Metropolitan Transportation Authority (MTA) and the Connecticut Department of Transportation (Conn DOT).

Conrail seeks a waiver of compliance with the provisions of 49 CFR 229.117 for 52 MU cars owned by SEPTA, 226 MU cars owned by NJTC and 87 MU cars owned by either MTA or Conn DOT. Section 229.117 requires that all of these units be equipped with speed indicators if the unit is operated as a lead locomotive. Conrail states that 46 of the SEPTA MU cars and 226 of the NJTC MU cars are due to be retired before December 31, 1983, and have been safely operated for many years. Consequently, Conrail seeks authority to keep operating these units until retirement without installing speed indicators. SEPTA has 6 MU cars and MTA or Conn DOT have 87 MU cars identified as the 1100 series, that also lack speed indicators. Conrail seeks authority to continue operating these units until the speed indicators are installed. Conrail indicates any needed installation will be completed by December 31, 1983.

Conrail seeks a waiver of compliance with the provisions of 49 CFR 229.121 for approximately 330 MU cars and 3 diesel locomotives owned by SEPTA, 33 MU cars and approximately 80 diesel locomotives owned by NJTC, and 87 MU cars and 44 diesel locomotives owned by either MTA or Conn DOT. Section 121 requires that interior cab noise not exceed a sound level of 115 decibles. Conrail states that the emergency brake valves installed on these units exceed this level during emergency brake applications. Conrail seeks time to develop and install the needed modifications to bring these units into compliance. Conrail indicates that this work can be accomplished by December 31, 1983.

Conrail seeks a waiver of compliance with the provisions of 49 CFR 229.123 for approximately 200 MU cars owned by SEPTA, approximately 100 MU cars owned by NJTC and approximately 340 MU cars owned by either MTA of Conn DOT. Section 229.123 requires that each lead locomotive be equipped with an end plate, a snowplow or a pilot. Conrail indicates that all of these units have been operating without one of these devices. Conrail indicates that it will need until December 31, 1983 to complete the installation of either end plates or snowplows on each of these units or to retire the units from service.

Conrail also seeks a waiver of compliance with the provisions of 49 CFR 229.125 for 46 MU cars owned by SEPTA and 226 MU cars owned by NJTC. The headlights of all of these units fail to meet the minimum candella rating prescribed by this section. Conrail seeks authority to maintain the units in service until December 31, 1983, without modifying the units.

Providence and Worcester

[FRA Waiver Petition Docket No. LI-80-13]

The Providence and Worcester (P&W) seeks a permanent waiver of compliance with 49 CFR 229.67. Section 229.67 requires that each locomotive shall have a device to prevent the truck and locomotive body from separating in the event of a derailment.

The P&W operates a single diesel locomotive on the Warwick Railroad in Cranston, Rhode Island. This locomotive was built by Atlas in 1938 and lacks any securement mechanism. The unit operates only on a very small segment of track to serve three industries, and

has not been a safety problem. The P&W also notes that no inspection pit exists on the Warwick Railroad and that full compliance with § 229.23 is not possible.

Hutchinson and Northern Railway

[FRA Waiver Petition Docket No. LI-80-14]

The Hutchinson and Northern Railway (H&N) seeks a permanent waiver of compliance with a portion of 49 CFR 222.23. Section 229.23 requires that during the periodic inspection a locomotive be positioned so that the underneath portion of the locomotive can be inspected. In support of this waiver request the H&N notes only that it operates two locomotives on approximately four miles of track in the State of Kansas.

Long Island Railroad

[FRA Waiver Petition Docket No. LI-80-15]

The Long Island Railroad (LIRR) seeks a permanent waiver of compliance with 49 CFR 229.81. Section 229.81 requires that each electrically operated MU car have a device for insulating the current collection apparatus from the third rail.

The LIRR indicates that it has made changes in the operating procedures relative to this equipment that have removed the need for such devices. A power control center has been placed in service that is capable of shutting off power, almost instantaneously, to any portion of the railroad. Additionally, the third rail system is now protected by a fault sensing pilot wire that detects high resistance faults. Consequently, if a failure mode problem occurs, train crews are advised to have the power removed from the third rail by a radio request before attempting any further action. The LIRR believes this approach is a safer method and seeks authority to remove the insulator devices currently installed on approximately 760 MU cars.

Aroostook Valley Railroad

[FRA Waiver Petition Docket No. LI-80-16]

The Aroostook Valley Railroad (AVR) seeks a permanent waiver of compliance with 49 CFR 229.115. Section 229.115 mandates that locomotives be equipped with a device that provides an audible or visual alarm in the cab to warn of either slipping or sliding wheels on powered axles when under power.

The AVR currently operates two locomotives that are not equipped with such a device. No injuries or operational problems have occurred over many years of operating these units without such a device. The AVR notes that it operates at very slow speeds and is in poor financial condition. Consequently, this waiver is being sought to avoid the unnecessary expense of installing the alarm device.

Chicago, Milwaukee, St. Paul and Pacific

[FRA Waiver Petition Docket No. LI-80-17]

The Chicago, Milwaukee, St. Paul and Pacific Railroad (Milwaukee) seeks a temporary waiver of compliance with 49 CFR 229.129. Section 229.129 requires that all locomotives be equipped with audible warning devices that produce a minimum sound level.

The Milwaukee indicates that it currently operates approximately 40 switcher type locomotives which have an audible warning device that does not fully meet the minimum sound levels. A program to bring these units into compliance has been initiated and is expected to be completed by March 31, 1981. This waiver is sought to permit the continued operation of the units until they are modified.

Canadian Pacific Railroad

[FRA Waiver Petition Docket No. LI-80-19]

The Canadian Pacific Railroad (CP Rail) seeks a permanent waiver of compliance with Section 229.63. Section 229.63 specifies the maximum permissable amount of uncontrolled lateral movement for center axles of three axle trucks.

CP Rail indicates that it operates approximately 80 locomotives that were manufactured by the Montreal Locomotive Works that do not comply with this provision. The design features of these units and the manufacturer's maintenance instructions provide for more lateral clearance than would be permitted by the regulation. The locomotives are identified as bearing numbers in the 4500 series and 4700 series of CP locomotive and are used for operations in the United States.

The locomotives have not been a safety problem for CP Rail and authority to continue operating them in this country is sought by this proceeding.

Birmingham Southern Railroad

[FRA Waiver Petition Docket No. LI-80-21]

The Birmingham Southern Railroad (BSR) seeks a permanent waiver of compliance with the provisions of 49 CFR 229.123. Section 229.123 requires that each lead locomotive be equipped with an end plate, a pilot or a snowplow.

The railroad currently operates approximately 26 switcher locomotives that do not conform to this requirement, the BSR notes it does not believe that installation of end plates would be of any practical safety benefit given the nature of its operations. Therefore, this waiver of compliance is being sought by the railroad.

This notice is issued under the authority of Section 5 of the Locomotive Inspection Act. 36 Stat. 914 (45 U.S.C. 28) and § 1.49(c)(5) of the regulations of the Secretary of Transportation 49 CFR 1.49(c)(5).

Issued in Washington, D.C., on December 5, 1980.

J. W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 80-38364 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-06-M

[Waiver Petition Docket Nos. RSGM-80-32 through RSMG-80-38]

Pittsburgh and Shawmut Railroad Co., et al.; Petitions for Waiver of Safety Glazing Standards

Notice is hereby given that seven petitioners have submitted requests for temporary or permanent waivers of compliance with the Safety Glazing Standards (49 CFR Part 223). The Federal Railroad Administration (FRA) published a final rule on December 31, 1979, that requires that all newly built and most existing railroad equipment have improved safety glazing materials installed in order to reduce the risk of death or serious injury resulting from flying objects, including bullets. The regulation provides for equipping the affected locomotives, passenger cars, and cabooses with certified glazing in all windows prior to June 30, 1983.

The individual petitions for a waiver of compliance with this regulation are described below. The description indicates the nature and extent of the relief requested as well as any information that has been submitted in support of the request for the waiver of compliance.

Interested persons are invited to participate in these proceedings by submitting written data, views or comments. FRA does not anticipate scheduling an opportunity for oral comment since the facts do not appear to warrant it. All communications concerning these petitions must identify the appropriate Docket Number (e.g., FRA Waiver Petition Docket Number RSGM-80-21) and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Nassif Building, Federal Railroad Administration, 400

Seventh Street, S.W., Washington, DC 20590. Communications received before January 5, 1981, will be considered by the FRA before the date final action is taken. All comments will be available for examination both before and after the closing date for comments, during regular business hours (9 a.m.– 5 p.m.), in Room 8211, Nassif Building, Federal Railroad Administration, 400 Seventh Steet, S.W., Washington, DC 20590.

The Pittsburgh and Shawmut Railroad Company

[FRA Waiver Petition Docket No. RSGM–80–32]

The Pittsburgh and Shawmut Railroad Company (Shawmut) requests a permanent waiver of compliance with the provisions of 49 CFR 223. The Shawmut operates 88 miles of railroad utilizing 10 switching locomotives and 8 cabooses. These units are currently equipped with "Lexan Safety Glass". The petitioner indicates that the railroad operates in a sparsely populated area and has not had problems with vandalism window breakage. Consequently, Shawmut believes that to comply with the rule be raghe costly and of very little benefit.

Tuscola and Saginaw Bay Railway Company, Inc.

[FRA Waiver Petition Docket No. RSGM–80–33]

The Tuscola and Saginaw Bay Railway Company, Inc., (Tuscola) requests a permanent waiver of compliance with 49 CFR 223.11. Petitioner began operations on October 1, 1977, and has not experienced any type of vandalism. Tuscola operates 44 miles of line in Central Michigan and utilizes three locomotives the petitioner believes that the expense of retrofitting equipment to comply with 49 CFR 223.11 would impose an undue finanical burden on the railroad to protect against situations that the Tuscola does not encounter.

Sabine River and Northern Railroad Company

[FRA Waiver Petition Docket No. RSGM–80–34]

The Sabine River and Northern Railroad Company (SR&N) requests a permanent waiver of compliance with 49 CFR 223 for its three locomotives built in 1955. The petition of SR&N emphasizes that all 32 miles of its main line track runs through rural country which is lightly populated and during almost 15 years of existence the railroad has experienced no vandalism occurences that would require safety glazing for protection of SR&N train crews.

The Danville and Mount Morris Railroad Company

[FRA Waiver Petition Docket No. RSGM–80–35]

The Danville and Mount Morris Railroad Company requests a permanent waiver of compliance with the provisions of 49 CFR 223.11. The Danville and Mount Morris Railroad operates a single locomotive over nine miles of track between Danville, New York and Groveland, New York. The route traveled by the railway is sparsely populated and there have been no incidents wherein the equipment was stoned or shot at by vandals.

Wyandotte Southern Railroad Company

[FRA Waiver Petition Docket No. RSGM–80–36]

The Wyandotte Southern Railroad Company requests a permanent waiver of compliance with the provisions of 49 CFR 223.11. The request by Wyandotte Southern Railroad Company involves their one diesel locomotive which has safety glass. Moreover, the petition claims that all of the switching is done in a fenced or lightly populated area.

The Newburgh and South Shore Railway Company

[FRA Waiver Petition Docket No. RSGM–80–37]

The Newburgh and South Shore Railway Company (Newburgh) requests a waiver of compliance from the provisions of 49 CFR 223.11. The Newburgh is a switching railroad located entirely in the City of Cleveland and the Village of Cuyahoga Heights in the State of Ohio. Although in heavily populated areas, 90 per cent of the railroad is surrounded on both sides by businesses, primarily manufacturing plants, steel mills and other railroad yards. The Newburgh operates over approximately six miles of track divided evenly between main line track within designated yard limits. The three miles of main line are split by a major classification yard so that only one mile of main line lies east of the yard and two miles west of the yard.

Additionally, the Newburgh operates an average of only 5 trains daily with three of these having the potential of traveling the length of the main line. The caboose may be used on a maximum of two of these trains on any particular day. The risk of exposure for crew members to the vandals on these few trains is very limited.

The Railway currently uses ¼ thick safety glass with a .030" vinyl interlayer in its locomotive windows, and the same in its caboose windows. The materials are believed by the Newburgh to be sufficient protection. A review of its records for the past five years shows only one incident of a locomotive window being struck and broken by vandals and in that incident there was no reported employee injury.

The Chicago and North Western Transportation Company

[FRA Waiver Petition Docket No. RSGM–80–38]

The Chicago and North Western Transportation Company (C&NW) petitions for a permanent waiver of compliance with 49 CFR 223.15 for in excess of 280 passenger cars which it operates to provide commuter service in the greater Chicago area.

The waiver being sought by C&NW would apply to the end doors of the passenger cars and to the interior biparting vestibule doors of these cars. The C&NW notes that these windows are not in exposed locations where they would be subject to damage by rocks or bullets. Consequently, granting this waiver would not expose crew members or passengers to any risk of injury.

(Sec. 202 of the Federal Railroad Safety Act of 1970, 84 Stat. 97 (45 U.S.C. 431) and § 1.49(n) of the regulations of the Office of the Secretary of Transportation 49 CFR 1.49(n))

Issued in Washington, D.C. on December 5, 1980.

J. W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 80-38023 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-06-M

[Waiver Petition Docket Nos. RSGM–80–46 through RSGN–80–87]

West Virginia Northern, et al., Petitions for Waiver of Safety Glazing Standards

Notice is hereby given that thirty railroads have submitted requests for

permanent waivers of compliance with the Safety Glazing Standards (49 CFR Part 223). The Federal Railroad Administration (FRA) published a final rule on December 31, 1979, that requires that all newly built and most existing railroad equipment have improved safety glazing materials installed in order to reduce the risk of death or serious injury resulting from flying objects, including bullets. The regulations provide for the affected locomotives, passenger cars, and cabooses to be equipped with certified glazing in all windows after June 30, 1983.

The individual railroads seeking a waiver of complinace with this regulation are listed below. In this listing FRA has identified the railroad, the specific docket designation and the number of locomotives or cabooses that are involved in each request. Each of the petitions are similar in most respects. The railroad operates ten or less locomotives and has experienced no vandal related damage to the windows of its equipment. Most the these railroads operate in rural surroundings and the others provide service in very compact industrial areas. The petitioners generally indicate that the cost of retrofitting would be very costly in terms of their limited operating budget.

The railroads seeking the waivers are as follows:

1. West Virginia Northern (Docket No. RSGM-80-46) which operates three locomotives.
2. Pittsburg and Ohio Valley (Docket No. RSGM-80-47) which operates four locomotives.
3. Chattahoochee Industrial (Docket No. RSGM-80-49) which operates eight locomotives.
4. Iowa Terminal (Docket No. RSGM-80-50) which operates eight locomotives.
5. Graysonia, Nashville and Ashdown (Docket No. RSGM-80-51) which operates one locomotive.
6. Genessee and Wyoming (Docket No. RSGM-80-54) which operates six locomotives and two cabooses.
7. Texas and Northern (Docket No. RSGM-80-55) which operates seven locomotives.
8. Aroostook Valley (Docket No. RSGM-80-56) which operates two locomotives.
9. Laurinburgh and Southern (Docket No. RSGM-80-63) which operates eight locomotives.
10. New York and Lake Erie (Docket No. RSGM-80-64) which operates two locomotives.
11. Skanteateles Short Line (Docket No. RSGM-80-65) which operates two locomotives.
12. Manufacturers Junction (Docket No. RSGM-80-67) which operates one locomotive.
13. Minnesota Transfer (Docket No. RSGM-80-68) which operates five locomotives.
14. Cedar Rapids and Iowa City (Docket No. RSGM-80-69) which operates seven locomotives.
15. Alexander (Docket No. RSGM-80-70) which operates three locomotives,
16. Hillsdale County (Docket No. RSGM-80-72) which operates three locomotives.
17. Winchester and Western (Docket No. RSGM-80-73) which operates two locomotives.
18. Public Utilities Commission of Charleston, South Carolina (Docket No. RSGM-80-74) which operates two locomotives.
19. East Cooper and Berkeley (Docket No. RSGM-80-75) which operates two locomotives.
20. Port Terminal of South Carolina (Docket No. RSGM-80-76) which operates two locomotives.
21. Santa Maria Valley (Docket No. RSGM-80-78) which operates eight locomotives and two cabooses.
22. Montpelier and Barre (Docket No. RSGM-80-79) which operates five locomotives.
23. Claremont and Concord (Docket No. RSGM-80-80) which operates two locomotives.
24. Frankfort and Cincinnati (Docket No. RSGM-80-81) which operates four locomotives.
25. Greenville and Northern (Docket No. RSGM-80-82) which operates three locomotives.
26. McCloud River (Docket No. RSGM-80-83) which operates four locomotives.
27. Belfast and Moosehead Lake (Docket No. RSGM-80-84) which operates four locomotives and two cabooses.
28. Pittsburg, Allegheny and McKees Rock (Docket No. RSGM-80-85) which operates one locomotive.
29. Ontario Midland (Docket No. RSGM-80-87) which operates four locomotives.
30. Goodwin (Docket No. RSGM-80-88) which operates two locomotives.

Interested persons are invited to participate in these proceedings by submitting written data, views, or comments. FRA does not anticipate scheduling an opportunity for oral comment since the facts do not appear to warrant it. All communications concerning these petitions must identify the appropriate Docket Number (e.g., FRA Waiver Petition Docket Number RSGM-80-46) and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration (FRA), 400 Seventh Street, S.W., Washington, DC 20590. Communications received before January 15, 1981, will be considered by the Federal Railroad Administration before the date final action is taken. All comments will be available for examination both before and after the closing date for comments, during regular business hours (9 a.m.—5 p.m.), in Room 8211, Nassif Building, 400 Seventh Street, S.W., Washington, DC 20590.

(Sec. 202 of the Federal Railroad Safety Act of 1970, 84 Stat. 97 (45 U.S.C. 431) and § 1.49(n) of the regulations of the Office of the Secretary of Transportation 49 CFR 1.49(n))

Issued in Washington, DC on December 5, 1980.

J. W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 80-38862 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-06-M

Office of the Secretary

Change of Members of Senior Executive Service Performance Review Board

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice of change of members of a senior executive service performance review board.

SUMMARY: This notice announces the appointment of two new members and two alternate members of the composite PRB for the Bureaus of Engraving and Printing, Mint, Government Financial Operations, and Public Debt.

FOR FURTHER INFORMATION CONTACT: W. M. Gregg, Deputy Commissioner, Bureau of the Public Debt, Room 300 WA, 1435 G Street, N.W., Washington, D.C. 20220; Telephone 376-0265.

SUPPLEMENTARY INFORMATION: The members of the Combined PRB for the Bureaus of Engraving and Printing, Mint, Government Financial Operations, and Public Debt which appeared in the Federal Register, Volume 45, No. 176, page 59470, Tuesday, September 9, 1980 have changed. The changes are as follows:

Irvin Faunce, Deputy Commissioner, Bureau of Government Financial Operations, replaces John Turner, Assistant Commissioner (Governmentwide Accounting) as a regular board member. John Turner is appointed as an alternate member of the board.

Bland Brockenborough, Assistant Commissioner (Administration), Bureau of Government Financial Operations, replaces Michael D. Serlin, Assistant Commissioner (Disbursement and Claims) as a regular board member. Michael D. Serlin is appointed as an alternate member of the board.

This notice does not meet the Department's criteria for significant regulations.

Bette B. Anderson,

Under Secretary.

[FR Doc. 80-39302 Filed 12-17-80; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 245
Thursday, December 18, 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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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Friday, December 19, 1980.

"FEDERAL REGISTER" Citation of previous announcement: S-2302-80.

CHANGE IN THE MEETING: The following item, previously announced as being on the open portion of the agenda was moved to the portion closed to the public:

OFCCP, Department of Labor Regulations pertaining to Executive Order 11246.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of Change:

Eleanor Holmes Norton, Chair.
Daniel E. Leach, Vice Chair.
Armando M. Rodriquez, Commissioner.
J. Clay Smith, Jr., Commissioner.

CONTACT PERSON FOR MORE INFORMATION: Treva I. McCall, Acting, Executive Officer, Executive Secretariat, at (202) 634-6748

This Notice Issued December 16, 1980.

[S-2329-80 Filed 12-16-80; 3:34 pm]
BILLING CODE 6570-06-M

2

FEDERAL ENERGY REGULATORY COMMISSION.

December 15, 1980.

TIME AND DATE: 10 a.m., December 22, 1980.

PLACE: Room 9306, 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—474th Meeting, December 22, 1980, Regular Meeting (10 a.m.)

CAP-1. Project No. 2280, Pennsylvania Electric Co. and the Cleveland Electric Illuminating Co.
CAP-2. Project No. 618, Alabama Power Co.
CAP-3. Docket No. RE80-30, Southwestern Public Service Co.

Miscellaneous Agenda—474th Meeting, December 22, 1980, Regular Meeting

CAM-1. Docket No. QF81-2, Merced Irrigation District
CAM-2. Docket No. QF80-28, Stieren Farms

Gas Agenda—474th Meeting, December 22, 1980, Regular Meeting

CAG-1. Docket No. TA81-1-7-000 (PGA81-1, IPR81-1, DCA81-1, GRI81-1 and LFUT81-1), Southern Natural Gas Co.
CAG-2. Docket No. RP78-20, Columbia Gas Transmission Corp.
CAG-3. Docket No. RI76-28, Arkansas Louisiana Gas Co. v. Frank J. Hall, et al.
CAG-4. Docket No. CP66-110, et al. (CP66-121), Midwestern Gas Transmission Co.; Docket No. CP66-112 (Docket Nos. CP66-110, et al.), Docket No. CP70-20 (Docket Nos. CP70-19, et al.)-Docket No. CP71-223 (Docket Nos. CP71-222, et al.) Great Lakes Gas Transmission Co.; Docket No. CP66-110, et al., Great Lakes Gas Transmission Co.; Docket No. CP79-161, Midwestern Gas Transmission Co.; Docket No. CP79-169, Michigan Wisconsin Pipe Line Co.

Power Agenda—474th Meeting, December 22, 1980, Regular Meeting

I. Licensed Project Matters

P-1. Reserved

II. Electric Rate Matters

ER-1. Docket Nos. ER71-70-000 and ER81-71-000, New England Power Co.
ER-2. Docket No. ER81-95-000, Alabama Power Co.

Miscellaneous Agenda—474th Meeting, December 22, 1980, Regular Meeting

M-1. Docket No. RM81- , rule adopting revised alternative fuel price ceilings for the state of Kentucky

Gas Agenda—474th Meeting, December 22, 1980, Regular Meeting

I. Pipeline Rate Matters

RP-1. Reserved

II. Producer Matters

CI-1. Reserved

III. Pipeline Certificate Matters

CP-1. Docket No. TC81-15-000, Panhandle Eastern Pipe Line Co.

Kenneth F. Plumb,
Secretary.

[S. 2328-80 Filed 12-16-80; 10:38 am]
BILLING CODE 6450-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 82434, December 15, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., December 17, 1980.

CHANGE IN THE MEETING: The following items have been added:

Item Number, Docket Number, and Company

CAP-13. ER80-256, Wisconsin Power & Light Co.
CAG-28. CP80-552, Northern Natural Gas Co., Division of InterNorth, Inc.

Kenneth F. Plumb,
Secretary.

[S-2331-80 Filed 12-16-80; 2:43 pm]
BILLING CODE 6450-85-M

4

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 81921, December 12, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., December 17, 1980.

CHANGE IN THE MEETING: Withdrawal of the following item from the open session:

6. Agreement No. 9925-2: Modification of the Pacific Australia Container Express Line Joint Service and Agreement No. 9767-1: Modification of the Associated Container

Transportation (Austraila), Ltd., Joint Service to authorize intermodal operations.

[S-2327-80 Filed 12-16-80; 10:03 am]

BILLING CODE 6730-01-M

5

[USITC SE-80-58A]

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 81142–3, December 9, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, December 16, 1980.

CHANGES IN THE MEETING: Emergency action to close a portion of the meeting originally announced as open to the public.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c)(4) and in conformity with 19 CFR 201.36(b)(4), Commissioners Alberger, Calhoun, Moore, Bedell, and Stern voted by action jacket 1NV-D-193 to hold the discussion with respect to item No. 5 [Snow-grooming vehicles from the Federal Republic of Germany (Inv. 731-TA-36 [Preliminary])—briefing and vote] in closed session.

Commissioners Alberger, Calhoun, Moore, Bedell, and Stern determined, pursuant to 19 CFR 201.37(b) that Commission business requires the change in the determination of the Commission to open or close this portion of the meeting and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-2324 Filed 12-15-80; 4:36 pm]

BILLING CODE 7020-02-M

6

NATIONAL LABOR RELATIONS BOARD.

TIME AND DATE: 2:30 p.m., Tuesday, December 23, 1980.

PLACE: Board conference room, Sixth floor, 1717 Pennsylvania Avenue NW., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Consideration of applicants qualified for appointment to Administrative Law Judge.

CONTACT PERSON FOR MORE INFORMATION: Robert Volger, Acting Executive Secretary, Washington, D.C. 20570; telephone: (202) 254-9430.

Dated: Washington, D.C, December 15, 1980.

By direction of the Board.

Robert Volger,

Acting Executive Secretary.

[S-2330-80 Filed 12-16-80; 11:20 am]

BILLING CODE 7545-01-M

7

NUCLEAR REGULATORY COMMISSION.

DATE: Wednesday, December 17, 1980.

MATTERS TO BE CONSIDERED: Wednesday, December 17:

10 a.m.

1. Briefing by Executive Branch on Export Matters (approximately 1 hour, closed—Exemption 1).

2 p.m.

1. Briefing on TVA's Activities in Emergency Offsite Facilities (approximately 1 hour, public meeting).
2. Affirmation Session (approximately 10 minutes, public meeting).
   a. Affirmations.
   1. PRM on 10 CFR 50 re Emergency Response Plans for Nuclear Facilities.
   2. Amendments to Part 140—Nuclear Energy Liability Insurance Policy.
   3. Integrated Operational Experience Reporting System.
   4. Revised Criteria for States.
   5. Policy Statement re Reactor Operating Licenses (tentative).

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634-1410.

December 10, 1980.

Walter Magee,

Office of the Secretary.

[S-2325-80 Filed 12-15-80; 4:40 pm]

BILLING CODE 7590-01-M

8

NUCLEAR REGULATORY COMMISSION.

DATE: Thursday, December 11, 1980.

MATTERS TO BE CONSIDERED:

3:20 p.m.

Discussion of Review of ALAB-603 (Florida Power & Light Company) (approximately 30 minutes, closed—Exemption 10).

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634-1410.

December 11, 1980.

Walter Magee,

Office of the Secretary.

[S-2326-80 Filed 12-15-80; 4:43 pm]

BILLING CODE 7590-01-M

9

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

STATUS: Open meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, December 9, 1980.

CHANGES IN THE MEETING: Deletion. The following item will not be considered at an open meeting scheduled for Thursday, December 18, 1980, at 2:30 p.m.:

Consideration of whether to grant an application by Investors Research Corporation and Twentieth Century Investors, Inc. for an exemption from the provisions of Section 17(e)(1) of the Investment Company Act of 1940 to permit the adviser to receive payments for the leasing of computer programs to brokers to which a substantial portion of the portfolio brokerage of the adviser's investment company client is directed. For further information, please contact W. Randolph Thompson at (202) 272-3029.

Chairman Williams and Commissioners 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: Art Delibert at (202) 272-2467.

December 15, 1980.

[S-2323-80 Filed 12-15-80; 4:13 pm]

BILLING CODE 8010-01-M

federal register

Thursday
December 18, 1980

Part II

Department of Transportation

Office of the Secretary

Organization and Delegation of Powers and Duties; Miscellaneous Amendments

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. No. 1-157]

Organization and Delegation of Powers and Duties; Miscellaneous Amendments

AGENCY: Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: DOT amends the description of its organization to reflect recent legislation and managerial decisions and makes delegations of statutory authority to a number of its officials.

EFFECTIVE DATE: December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, (202) 426-4723.

SUPPLEMENTAL INFORMATION: Since these amendments relate to Departmental management, procedures and practices, they are excepted from notice and public procedure requirements as unnecessary, and they may be made effective in fewer than 30 days after publication in the Federal Register.

DISCUSSION OF AMENDMENTS

Reorganzation

A new agency has been created—the Research and Special Programs Administration—composed of the Materials Transportation Bureau, the Transportation Systems Center, and the Transportation Programs Bureau, which incorporates certain elements of the Office of the Secretary.

The Office of the Secretary of Transportation (OST) itself has been reorganized in a number of respects:

1. *Office of Inspector General*—Under the Inspector General Act of 1978 (Pub. L. 95-452), an Office of Inspector General has been established in DOT. Organizationally, it is part of OST. It includes, among other elements, the former Office of Audits and the investigative functions of the former Office of Investigations and Security, both of which reported previously to the Assistant Secretary for Administration.

2. *Office of the Assistant Secretary for Policy and International Affairs*—Formerly the Office of the Assistant Secretary for Policy, Plans, and International Affairs; this office has been reorganized internally to include five permanent functional offices.

3. *Office of the Assistant Secretary for Governmental Affairs*—Formerly the Office of the Assistant Secretary for Congressional and Intergovernmental Affairs, this office also now includes responsibility for consumer affairs, community planning assistance, and technology assistance.

4. *Office of Small and Disadvantaged Business Utilization*—Established in DOT by the Small Business Act Amendments of 1978 (Pub. L. 95-507), this office organizationally is part of OST. Its policy and operating role has been expanded to ensure effective minority business enterprise and small and disadvantaged business participation in Departmental direct procurement and Federal financial assistance activities. Also, the Minority Business Resource Center and its non-rail-specific functions have been transferred from the Federal Railroad Administration to the Office of Small and Disadvantaged Business Utilization.

5. *Office of the Assistant Secretary for Environment, Safety and Consumer Affairs*—This office has been disbanded. Environment and Safety are now part of the Office of the Assistant Secretary for Policy and International Affairs. Consumer Affairs is part of the Office of the Assistant Secretary for Governmental Affairs.

6. *Office of the Assistant Secretary for Systems Development and Technology*—This office also has been disbanded; its functions have been transferred to the Research and Special Programs Administration.

7. *Office of Transportation Research and Technology*—This office has been established to serve as research and technology advisor to the Secretary and be responsible for planning and coordinating an overall Departmental research and development program.

Delegations

Numerous delegations of authority vested in the Secretary by statute are also accomplished in this document. Among them are—

1. *Vessel inspection.* The Act of September 10, 1979 (90 Stat. 1236, 46 U.S.C. 420) authorizes the Secretary of the Department in which the Coast Guard is operating to issue permits exempting specific cargo-carrying vessels operating from point to point within the State of Alaska from all or part of 46 U.S.C. 88, 391, 391a, and 404 and the regulations issued thereunder, relating to inspection of vessels. The specific vessels, by intent, are those serving very remote villages along the Alaskan shoreline which are not presently served by any commerical vessel certificated by the Coast Guard. Only vessels granted some relief from these laws can economically provide such service. As these laws are currently enforced by the Coast Guard, the exemption authority of this Act is delegated to the Commandant of the Coast Guard.

2. *Public Lands.* The purpose of this amendment is to delegate to the Commandant of the Coast Guard the authority under the Federal Land Policy and Management Act of 1976 to issue a statement of consent to the Department of the Interior, Bureau of Land Management, for publication of land orders restoring excess Coast Guard land to the public domain.

3. *Research and Development.* This amendment delegates to the Director of the new Office of Transportation Research and Technology those functions in the DOT Act which relate to the promotion of research and development relating to transportation.

4. *Minority Business Enterprise.* Delegations of authority to the Federal Railroad Administrator for those functions vested in the Secretary by section 906 of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, have been rescinded and this authority has been delegated to the Director of Small and Disadvantaged Business Utilization.

5. *Surface Transportation Assistance Act of 1978.* Functions vested in the Secretary by this statute have been delegated to the Commandant of the Coast Guard and the Federal Highway, National Highway Traffic Safety, and Urban Mass Transportation Administrators.

6. *Other.* Certain delegations shared by the Federal Highway and Urban Mass Transportation Administrators, unrelated to the Surface Transportation Assistance Act of 1978, are redrafted for clarity.

Accordingly, Part 1 of Title 49 of the Code of Federal Regulations is amended as set forth below.

(Sec. 9(e), Department of Transportation Act, 49 U.S.C. 1657(e))

Issued in Washington, D.C. on November 5, 1980.

Neil Goldschmidt,

Secretary of Transportation.

1. The *Subpart C—Delegations* table of contents is revised to read as follows:

Subpart C—Delegations

Sec.
1.41 Purpose.
1.42 Exercise of authority.
1.43 General limitations and reservations.
1.44 Reservation of authority.
1.45 Delegations to all Administrators.
1.46 Delegations to Commandant of the Coast Guard.
1.47 Delegations to Federal Aviation Administrator.

Sec.
1.48 Delegations to Federal Highway Administrator.
1.49 Delegations to Federal Railroad Administrator.
1.50 Delegations to National Highway Traffic Safety Administrator.
1.51 Delegations to Urban Mass Transportation Administrator.
1.52 Delegations to Saint Lawrence Seaway Development Corporation Administrator.
1.53 Delegations to Research and Special Programs Administrator.
1.54 Delegations to all Secretarial Officers.
1.55 Delegations to Deputy Secretary.
1.56 Delegations to Assistant Secretary for Policy and International Affairs.
1.57 Delegations to General Counsel.
1.58 Delegations to Assistant Secretary for Budget and Programs.
1.59 Delegations to Assistant Secretary for Administration.
1.60 [Reserved]
1.61 Delegations to Assistant Secretary for Governmental Affairs.
1.62 Delegations to the Director of Small and Disadvantaged Business Utilization.
1.63 Delegations to Director of Public Affairs.
1.64 Delegations to the Director of Transportation Research and Technology.
1.65 Authority to classify information.

2. In § 1.2 paragraph (a) is revised and paragraph (h) is added, to read as follows:

§ 1.2 Definitions.

As used in this Part, "Administrator" includes—

(a) The Coast Guard Commandant.

* * * * *

(h) The Research and Special Programs Administrator.

3. In § 1.3, paragraph (c) is deleted and paragraph (b) is amended by removing the words "(including the Transportation Systems Center)" directly following the words "Department is composed of the Office of the Secretary"; and subparagraph (b)(8) is revised, to read as follows:

§ 1.3 Organization of the Department.

* * * * *

(b) The Department is comprised of the Office of the Secretary and the following operating elements, the heads of which report directly to the Secretary:

* * * * *

(8) the Research and Special Programs Administration, headed by the Administrator.

4. In § 1.4 paragraph (i) is revised to read as follows:

§ 1.4 General responsibilities.

* * * * *

(i) *The Research and Special Programs Administration.* Is responsible for:

(1) Planning, developing, initiating and managing programs in all fields of transportation research and development. Maintaining the capability to perform research and analysis in transportation planning and socio-economic effects, program management, and technological support in response to request for line participation in DOT policy formulations. Particular efforts will be made on transportation systems problems, advanced transportation concepts, and on multimodal transportation. RSPA will develop and maintain a vital statistics and related transportation information data base;

(2) Exercising for the Secretary the multimodal hazardous materials (HM) program and prescribing and enforcing safety regulations for the transportation of gases or hazardous liquids by pipeline;

(3) Developing, managing, and evaluating programs and research activities for the security of passengers and cargo in the transportation systems and for the prevention of unlawful or other acts adversely affecting the efficiency or integrity of the Nation's transportation systems and providing leadership in the development and improvement of coordinated domestic and international transportation services;

(4) Providing leadership on all technical, navigation and communication, and systems engineering activities;

(5) Providing a point of contact for the Department with the academic community to encourage transportation research;

(6) Overseeing the effective discharge of the Secretary's statutory and administrative transportation responsibilities in all emergencies affecting the national defense and in national or regional crises; and

(7) Managing a Transportation Safety Institute which designs and conducts training programs responsible to the requirements of Government and industry as expressed by the operating elements of the Department.

5. Section 1.22 is revised to read as follows:

§ 1.22 Structure.

The structure of the Office of the Secretary, through the level of functional offices, is as follows:

(a) *Secretary and Deputy Secretary.* The Secretary and Deputy Secretary are assisted by the Executive Secretariat, the Contract Appeals Board, the Departmental Office of Civil Rights, the Office of Small and Disadvantaged Business Utilization, the Office of Public Affairs, and the Office of Transportation Research and Technology, all of which report to the Secretary. The Assistant Secretaries, the General Counsel, the Inspector General, and the Regional Representatives of the Secretary also report directly to the Secretary.

(b) *Office of the Assistant Secretary for Policy and International Affairs.* This Office is composed of the Offices of Industry Policy; Environment and Safety; Economics and Public Investment; International Policy and Programs; and Regulatory Policy.

(c) *Office of the General Counsel.* This Office is composed of the Offices of Legislation; Litigation; Regulation and Enforcement; Environmental, Civil Rights, and General Law; International Law; and the Board for Correction of Military Records.

(d) *Office of the Assistant Secretary for Budget and Programs.* This Office is composed of the Offices of Programs and Evaluation; and Budget.

(e) *Office of the Assistant Secretary for Governmental Affairs.* This Office is composed of the Offices of Congressional Affairs; Intergovernmental Affairs; Community Planning Assistance; Technology Sharing; and Consumer Liaison.

(f) *Office of the Assistant Secretary for Administration.* This Office is composed of the Offices of Personnel and Training; Management Planning; Automated Systems Policy; Administrative Operations; Security; Installations and Logistics; Financial Systems; and the Transportation Computer Center.

(g) *Office of Inspector General.* This Office is composed of the Offices of Surface Transportation Programs; Marine and Rail Programs; Aviation and Research Programs; DOT-Wide Programs; Regional Programs; Investigative Operations; Special Assignments; Policy and Standards; Planning and Procedures; Resources Management; Special Programs and Evaluations; and Regional Audit Offices; and Field Investigative Offices.

(h) *Regional Representatives of the Secretary.* These officials represent the Secretary in the field and constitute a principal point of contact for the exchange of information in regional, interagency, and intergovernmental affairs.

6. Section 1.23 is revised to read as follows:

§ 1.23 Spheres of primary responsibility.

(a) *Secretary and Deputy Secretary.* Overall planning, direction, and control of Departmental affairs including civil rights, contract appeals, small and disadvantaged business participation in Departmental programs, public affairs, and transportation research and technology.

(b) *Assistant Secretary for Policy and International Affairs.* Domestic and international transportation policy development, coordination, and guidance; forecasting and intermodal planning; Federal economic policy, regulatory and legislative review and evaluation; transportation energy, safety and environmental impact coordination and review; international technological cooperation; and technical assistance to developing countries.

(c) *General Counsel.* Legal services as the chief legal officer of the Department, legal advisor to the Secretary, the Office of the Secretary, and final authority within the Department on questions of law; professional supervision, including coordination and review, over the legal work of the legal offices of the Department; drafting of legislation and review of legal aspects of legislative matters; point of coordination for the Office of the Secretary and Department Regulations Council; advice on questions of international law; exercise of functions, powers, and duties as Judge Advocate General under the Uniform Code of Military Justice (Chapter 47 of Title 10, United States Code) with respect to the United States Coast Guard; advice and assistance with respect to uniform time matters; review and final action on applications for reconsideration of initial decisions not to disclose unclassified records of the Office of the Secretary requested under 5 U.S.C. 552(a)(3); promotion and coordination of efficient use of Departmental legal resources; recommendation, in conjunction with the Assistant Secretary for Administration, of legal career development programs within the Department; review and final action on application for correction of military records of the United States Coast Guard.

(d) *Assistant Secretary for Budget and Programs.* Preparation, review and presentation of Department budget estimates; liaison with OMB and Congressional Budget and Appropriations Committees; Departmental financial plans, apportionments, reapportionments, reprogrammings, allotments; program and systems evaluation and analysis; program evaluation criteria; program resource plans; analysis and review of legislative proposals and one-time reports and studies required by the Congress; budgetary and selected administrative matters relating to the immediate Office of the Secretary.

(e) *Assistant Secretary for Governmental Affairs.* Coordination of legislative and non-legislative relationships; Congressional affairs; communications and coordination with Federal, State and local government, industry and labor, and with citizens and organizations representing consumers; sharing of related technology in developing and promoting DOT programs; and coordination and technical assistance on intermodal planning matters.

(f) *Assistant Secretary for Administration.* Organization; delegations of authority; personnel ceiling control; management studies; personnel management; training; logistic and procurement policy (except for the responsibility listed for the Office of Small and Disadvantaged Business Utilization in this section); accounting and data systems management; financial information systems management; paperwork management; management information security; computer support and administrative support services for the Office of the Secretary and certain other components of the Department.

(g) *Inspector General.* Conduct, supervise, and coordinate audits and investigations; review existing and proposed legislation and make recommendations to the Secretary and Congress (Semi-annual reports) concerning their impact on the economy and efficiency of program administration, or the prevention and detection of fraud and abuse; recommend policies for and conduct, supervise, or coordinate other activities of the Department for the purpose of promoting economy and efficiency in program administration, or preventing and detecting fraud and abuse.

(h) *Executive Secretary.* Central facilitative staff for the immediate Office of the Secretary and the Secretarial officers.

(i) *Contract Appeals Board.* Hearings and decisions on appeals from decisions of Departmental contracting officers and on claims for extraordinary relief under Pub. L. 85-804.

(j) *Departmental Office of Civil Rights.* DOT Director of Equal Employment Opportunity; Department-wide contract compliance officer; Title VI (Civil Rights Act of 1964) coordinator; Department-wide compliance with related laws, Executive Orders, regulations, and policies, and formal complaints of discrimination.

(k) *Office of Public Affairs.* Public information and Departmental relations with the news media, the general public, and selected special publics.

(l) *Regional Representatives of the Secretary.* Interagency, intergovernmental, and Departmental coordination in the field; membership on Regional Councils and Field Coordination Groups.

(m) *Office of Small and Disadvantaged Business Utilization.* Responsible for the Department's implementation and execution of the functions and duties under sections 8 and 15 of the Small Business Act, as amended, (15 U.S.C. 637 and 644) and for other Departmental small and disadvantaged business policy direction.

(n) *Office of Transportation Research and Technology.* Research and technology advisor; planning and coordinating an overall Departmental research and technology program; research policy oversight; start-up management for the Department's Cooperative Automotive Research Program; research and technology prioritization process; and principal research and technology representative of the Secretary with persons and organizations outside of the Department.

7. Section 1.24, except paragraph (a), is revised to read as follows:

§ 1.24 Authority.

* * * * *

(b) Acting in his or her own name and title, each Assistant Secretary, the Inspector General, or the General Counsel, within his or her sphere of responsibility, is authorized to identify and define the requirements for, and to recommend to the Secretary, new or revised Departmental policies, plans, and proposals. Each of these officers is authorized to issue Departmental standards, criteria, systems and procedures that are consistent with applicable laws, Executive Orders, Government-wide regulations and policies established by the Secretary, and to inspect, review, and evaluate Departmental program performance and effectiveness and advise the Secretary regarding the adequacy thereof.

(c) Except for nondelegable statutory duties, including those which devolve as a result of succession to act as Secretary of Transportation, each Deputy Assistant Secretary, the Deputy Inspector General, and the Deputy General Counsel is authorized to act for and perform the duties of his or her principal in the absence or disability of the principal and as otherwise directed by the principal.

(d) *Inspector General.* The Inspector General shall report to and be under the general supervision of the Secretary and Deputy Secretary. In accordance with the statutory intent of the Inspector General Act to create an independent and objective unit, the Inspector General is authorized to make such investigations and reports relating to the administration of the programs and

operations of the Department as are, in the judgment of the Inspector General, necessary and desirable. Neither the Secretary nor the Deputy Secretary shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

8. In § 1.25 paragraph (b) is revised to read as follows:

§ 1.25 Relationships.

* * * * *

(b) *Exceptions.* There are exceptions to the normal staff role described in paragraph (a) of this section. In selected instances, the Secretary has specifically delegated to Assistant Secretaries authority which they may exercise on the Secretary's behalf. For example, the Secretary has delegated authority to the Assistant Secretary for Policy and International Affairs to decide on most requests to intervene or appear before administrative agencies, subject to the concurrence of the General Counsel. Also, from time to time, activities of an operational character may be delegated to an Assistant Secretary when the nature of the function or its stage of development makes it untimely to effect assignment to an operating administration.

9. Section 1.26 is revised to read as follows:

§ 1.26 Secretarial succession.

(a) The following officials, in the order indicated, shall act as Secretary of Transportation, in case of the absence or disability of the Secretary, until the absence or disability ceases, or, in case of a vacancy, until a successor is appointed:

(1) Deputy Secretary.

(2) General Counsel.

(3) Assistant Secretary for Policy and International Affairs.

(4) Assistant Secretary for Governmental Affairs.

(5) Assistant Secretary for Budget and Programs.

(6) Assistant Secretary for Administration.

(b) Without regard to the foregoing, a person directed to perform the duties of the Secretary pursuant to 5 U.S.C. 3347 shall act as Secretary of Transportation.

§ 1.42 [Amended]

10. Section 1.42 is amended by removing the words "The Deputy Under Secretary, the Deputy Under Secretary for Budget and Program Review," directly preceding the words "an Assistant Secretary," and adding", the Inspector General," immediately after "an Assistant Secretary."

11. In § 1.43, paragraph (b) is revised to read as follows:

§ 1.43 General limitations and reservations.

* * * * *

(b) Except as provided in § 1.42 and subject to paragraph (a) of this section and § 1.44, the Deputy Secretary, the Assistant Secretaries, the Inspector General, the General Counsel, and the Administrators exercise the powers and perform the duties delegated to them under this subpart.

12. In § 1.45, paragraph (a)(5) is amended by substituting the words "as amended and by Executive Order 11921 and by the Federal Emergency Management Agency, General Services Administration (FEMA/GSA)" for the words "and by the Office of Preparedness, General Services Administration"; and by removing the words "emergency transportation service or support thereof."

13. In § 1.45, paragraph (a) is further amended by renumbering subparagraph (10) as subparagraph (11) and by adding new subparagraphs (10) and (12), to read as follows:

§ 1.45 Delegations to all Administrators.

(a) Except as otherwise prescribed by the Secretary of Transportation, each Administrator is authorized to—

* * * * *

(10) Exercise the authority of the Secretary to accept or reject internal complaints of discrimination on the basis of race, color, religion, sex, national origin, or age arising within or relating to his or her organization.

(11) Review and approve for payment any voucher for $25 or less the authority for payment of which is questioned by a certifying or disbursing officer.

(12) Authorize and approve official travel and transportation for self, subordinates, and others performing services for, or in cooperation with, his or her operating administration. This authority may be redelegated in accordance with regulations issued by the Assistant Secretary for Administration.

14. In § 1.46, new paragraphs (aa), (bb), and (cc) are added at the end, to read as follows:

§ 1.46 Delegations to the Commandant of the Coast Guard.

The Commandant of the Coast Guard is delegated authority to—

* * * * *

(aa) Carry out the functions vested in the Secretary by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714(i)) for lands under the administration of the U.S. Coast Guard.

(bb) Carry out the functions vested in the Secretary by the Act of September 10, 1976 (90 Stat. 46 U.S.C. 420) relating to the issuance of permits exempting specific cargo-carrying vessels operating within the State of Alaska from all or part of 46 U.S.C. 88, 391, 391a, and 404 and the regulations issued thereunder.

(cc) Carry out the requirements of section 146 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599, 92 Stat. 2689) relating to foreign-built hovercraft in Alaska.

15. In § 1.47, paragraph (a) is amended by adding the words "(excluding Section 902(h))" directly following the words "Title VI, VII, IX"; paragraph (b) is amended by substituting the words "1531 et seq.), relating to aviation insurance" for the words "1931 et seq.), relating to War Risk Insurance."; and paragraph (f)(2) is amended by substituting the words "1742 note); and" for the words "1742 note)."; and a new paragraph (m) is added at the end thereof, to read as follows:

§ 1.47 Delegations to Federal Aviation Administrator.

The Federal Aviation Administrator is delegated authority to—

* * * * *

(m) Carry out the powers and duties of the Secretary under the Aviation Safety and Noise Abatement Act of 1979 (94 Stat. 50) to take various regulatory and nonregulatory actions concerning aviation noise control and abatement and safety in aviation.

16. Section 1.48 is revised to read as follows:

§ 1.48 Delegations to Federal Highway Administrator.

The Federal Highway Administrator is delegated authority to—

(a) Investigate and report on the safety compliance records of applicants seeking operating authority, or approval of transactions involving transfer of operating authority, from the Interstate Commerce Commission, and to intervene and present evidence concerning applicants' fitness in Commission proceedings under 49 U.S.C. 1653(e), so far as it relates to motor carriers.

(b) Administer the following sections of Title 23, U.S.C.:

(1)(i) 101(a); and

(ii) 101(b), (c), (d), and (e), except as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(2) 103, except as it involves the substitution of non-highway public mass transit projects authorized by section (e)(4);

(3) 104, including the apportionment of funds for Federal-aid highways once Congress approves estimates submitted by the Secretary;

(4) 105, except as subsections (a) and (g) involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(5) 106, except subsections (a), (c), and (d) as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(6) 107;

(7) 108, except as it involves mass transportaton projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(8) 109, except subsections (a), (g), and (h) as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(9) 110, except as it involves mass transportation projects authorized by sectons 103(e)(4), 142(a)(2), or 142(c);

(10) 111;

(11) 112, 113, 114, except as they involve transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(12) 115;

(13) 116, except subsections (a) and (c) as they involve mass transportaton projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(14) 117, except as it involves mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(15) 118, 119, 120;

(16) 121 and 122, except as they involve mass transportation projects authorized by sections 103(e)(4); 142(a)(2), or 142(c);

(17) 123;

(18) 124, except as it involves mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(19) 125, 126, and 127;

(20) 128, except as it involves mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(21) 129, 130, 131, 132, 134, 135, 136, 137, 138, and 139;

(22) 140, except subsection (a) as it involved mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(23) 141;

(24) 142, except as it involves mass transportation projects authorized by subsections (a)(2) and (c) of this section and by 103(e)(4);

(25) 143 and 144;

(26) 145, except as it involves mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(27) 146, 147, 148, 149, 150, 151, 152, 154, 155 and 156;

(28) 201 through 219 (Chapter 2);

(29) 301, 302, and 303;

(30) 304, 305, 306, except as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(31) 307 through 314 inclusive;

(32) 315 and 317, except as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(33) 318 through 322, inclusive; and

(34) 323 and 324, except as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c).

(c) Administer the following laws relating generally to highways:

(1) Sections 105, 107 (c), (d), (e), 123 (a), (b), 124(c), 126 (d), (e), (f), (g), 138(c), 140, 141, 142, 143, 144, 145, 147, 148, 149, 150, 151, 152, 153, 154, 167, 171, 209, Title IV as it relates to matters within the primary responsibility of the Federal Highway Administrator under the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689); and sections 502-504, Title V of the Highway Revenue Act of 1978.

(2) Sections 103, 104, 11(b), 128(b), 131, 133(b), 135, 136, 141, 147, 149, 154, 158, 159, 160, 161, 163, 203, 206, 401, and 402 of the Federal-Aid Highway Act of 1973, as amended.

(3) The Federal-Aid Highway Act of 1970, as amended (except section 118) (84 Stat. 1713).

(4) The Federal-Aid Highway Act of 1968, as amended (82 Stat. 815);

(5) The Federal-Aid Highway Act of 1966, as amended (80 Stat. 766);

(6) The Federal-Aid Highway Act of 1962, as amended (76 Stat. 1145, 23 U.S.C. 307 note);

(7) The Federal-Aid Highway Act of 1956, as amended (70 Stat. 374);

(8) The Federal-Aid Highway Act of 1954, as amended (68 Stat. 70);

(9) The Act of September 26, 1961, as amended (75 Stat. 670);

(10) The Highway Revenue Act of 1956, as amended (70 Stat. 387, 23 U.S.C. 120 note);

(11) The Highway Beautification Act of 1965, as amended (79 Stat. 1028, 23 U.S.C. 131 et seq., notes);

(12) The Alaska Omnibus Act, as amended (73 Stat. 141, 48 U.S.C. 21 note prec.);

(13) The Joint Resolution of August 28, 1965, as amended (79 Stat. 578, 23 U.S.C. 101 et seq., notes);

(14) Section 502(c) of the General Bridge Act of 1946, as amended (60 Stat. 847, 33 U.S.C. 525(c));

(15) The Act of April 27, 1962 (76 Stat. 59);

(16) Reorganization Plan No. 7 of 1949 (63 Stat. 1070); and

(17) Sections 102(b) (except subparagraph (2)) and (c); 105 (b)(1) and (c); 141; 146; 147; and 152 of the Federal-Aid Highway Act of 1976 (Pub. L. 94-280; 90 Stat. 425).

(d) Carry out sections 831-835 of Title 18 U.S.C. relating generally to explosives and other dangerous articles, so far as they pertain to investigations, records, inspections, and penalties with respect to the transportation or shipment of hazardous materials by motor carrier.

(e) Carry out Section 226 of the Interstate Commerce Act as amended (49 U.S.C. 325), relating generally to investigation of motor vehicle sizes, weights, and services to employees.

(f) Carry out sections 204(a) (1), (2), (3), (3)(a), and (5) of the Interstate Commerce Act, as amended (49 U.S.C. 304), relating generally to qualifications and maximum hours of service of employees and safety of operation and equipment of motor carriers.

(g) Carry out sections 221(a), 221(c), and 224 of the Interstate Commerce Act, as amended (49 U.S.C. 321 et seq.), relating generally to service of process, designation of agents to receive service of process, and identification of interstate motor vehicles so far as they pertain to private carriers of property by motor vehicle and carriers of migrant workers by motor vehicle other than contract carriers.

(h) Exercise the administrative powers under the Interstate Commerce Act with respect to powers and duties pertaining to motor carrier safety transferred to the Secretary from the Interstate Commerce Commission (49 U.S.C. 1655(f)(2)(B)(ii)).

(i) Administer the following laws relating generally to the reasonableness of tolls:

(1) Section 4 of the Act of March 23, 1906, as amended (34 Stat. 85, 33 U.S.C. 494);

(2) Section 503 of the General Bridge Act of 1946, as amended (60 Stat. 847, 33 U.S.C. 526);

(3) Section 17 of the Act of June 10, 1930, as amended (46 Stat. 552, 33 U.S.C. 498a);

(4) The Act of June 27, 1930, as amended (46 Stat. 821, 33 U.S.C. 498b); and

(5) The Act of August 21, 1935, as amended (49 Stat. 670, 33 U.S.C. 503 et seq.).

(j) Carry out the functions of the Secretary under the Appalachian Regional Development Act of 1965 (79 Stat. 5; 40 U.S.C. App.) except section 208.

(k) Carry out section 212(a) of the Interstate Commerce Act, as amended (49 Stat. 555, 49 U.S.C. 312(a)); relating generally to the suspension, change, or revocation of motor carrier certificates, permits, or licensee.

(l) Carry out the Act of September 21, 1966, Pub. L. 89-599, relating to certain approvals concerned with a compact between the States of Missouri and Kansas.

(m) Carry out the law relating to the Chamizal border highway (80 Stat. 1477).

(n) Carry out the Highway Safety Act of 1966, as amended (80 Stat. 731) and Chapter 4 of Title 23 U.S.C. as amended by section 207 of the Surface Transportation Assistance Act of 1978 for highway safety programs, research and development relating to highway design, construction and maintenance, traffic control devices, identification and surveillance of accident locations, and highway-related aspects of pedestrian and bicycle safety.

(o) Exercise the authority vested in the Secretary by Section 204(b) of the Federal Railroad Safety Act of 1970 (84 Stat. 972, 45 U.S.C. 433(b)) with respect to the laws administered by the Federal Highway Administrator pertaining to highway safety and highway construction.

(p) Carry out the functions vested in the Secretary by subsections (b) (except as it relates to conducting consultations with the Administrator of the Environmental Protection Agency), and (c) of section 18 of the Noise Control Act of 1972 (Pub. L. 92-574).

(q) Carry out the functions vested in the Secretary by section 5 (as it relates to bridges, other than railroad bridges, not over navigable waters), and sections 6 and 8(a) (as they relate to all bridges other than railroad bridges) of the International Bridge Act of 1972 (Pub. L. 92-434).

(r) Carry out the functions vested in the Secretary by the following sections of the Urban Mass Transportation Act of 1964 as amended (78 Stat. 302, 49 U.S.C. 1601 et seq.):

(1) Sections 3(a)(3), 3(e)(1), 5(g)(1), and 8 as they relate to urban planning (49 U.S.C. 1602 (a)(3) and (e)(1), 1603(a), and 1604(g)(1); and 1604(l)).

(2) Section 12(c)(11) relating to approval of boundaries of urbanized areas (49 U.S.C. 1608(c)(11));

(3) Section 18, relating to the formula grant program for non-urbanized areas, and Section 22, relating to intercity bus service.

(s) Exercise the authority vested in the Secretary by sections 101, 118, 119, 120(b), 123 and 124 of the Federal-Aid Highway Amendments of 1974 (Pub. L. 93-643, January 4, 1975; 88 Stat. 2281).

(t) Carry out the functions vested in the Secretary by 49 U.S.C. 1804(b) relating to consultation and cooperation with the Interstate Commerce Commission (ICC) concerning regulations governing the routing of hazardous materials by highway.

(u) Carry out the functions vested in the Secretary by 49 U.S.C. 1808 (a), (b), and (c), 1809 and 1810 relating to investigations, records, inspections, penalties, and specific relief so far as they apply to the transportation or shipment of hazardous materials by highway, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportaton of hazardous materials by highway.

(v) Carry out the functions vested in the Secretary by sections 18 (a) and (b) (as they relate to conducting consultations with the Administrator of the Environmental Protection Agency) of the Noise Control Act of 1972 (Pub. L. 92-574, 49 U.S.C. 1431).

17. Section 1.49 is amended by revoking paragraph (f), redesignating paragraphs (g) through (u) as paragraphs (f) through (t), revising the redesignated paragraphs (o) and (t), and adding new paragraphs (u) and (v) at the end thereof, to read as follows:

§ 1.49 Delegations to Federal Railroad Administrator.

The Federal Railroad Administrator is delegated authority to—

* * * * *

(o) Carry out the functions vested in the Secretary by subsection (b) (except as it relates to conducting consultations with the Administrator of the Environmental Protection Agency) and (c) section 17 of the Noise Control Act of 1972 (Pub. L. 92-574).

* * * * *

(t) Carry out the functions vested in the Secretary by sections 204(c); 401, except authority to issue subpoenas; 402; 403; 502; 503; 504; 505; 506, except (c); 507; 508; 511; 512; 513; 515; 517; 606; 610; 703; 704, except (c)(1); and 705; 707; 803; 810; 901; 905, as applicable, of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended.

(u) Carry out functions vested in the Secretary by sections 17(a) and (b) (as they relate to consultations with the Administrator of the Environmental Protection Agency) of the Noise Control Act of 1972 (Pub. L. 92-574, 49 U.S.C. 1431).

(v) Carry out the functions vested in the Secretary by the Rock Island Railroad Transition and Employee Assistance Act (Title I of Pub. L. 96-254) and by section 18 of the Milwaukee Railroad Restructuring Act (49 U.S.C. 916).

18. In § 1.49, paragraph (i) is amended by substituting the words "authority for general changes in freight rates and passenger fares" for the words "except with respect to individual rates and joint rates published or established with Alaska Railroad concurrence by tariff authorities other than the Alaska Railroad (49 U.S.C. 1655(i))"; paragraph (1) is amended by adding "except the authority to make findings required by section 3(a) of that Act and the authority to sign guarantees of certificates issued by trustees," directly following the words "(Pub. L. 91-663)."; paragraph (o) is amended by substituting the number "17" for the number "18"; and paragraph (t) is amended by removing the number "401," directly following the number 204(c), and removing the numbers "803" "805", and "810" directly following the number "706," and by the addition of "section 5 of the Department of Transportation Act (49 U.S.C. section 1654), except authority to issue subpoenas," directly following the words "as amended," at the end of the paragraph.

19. Section 1.50 is revised to read as follows:

§ 1.50 Delegations to National Highway Traffic Safety Administrator.

The National Highway Traffic Safety Administrator is delegated authority to—

(a) Carry out the National Traffic and Motor Vehicle Safety Act of 1966, as amended (80 Stat. 718; 15 U.S.C. 1381 et seq.).

(b) Carry out the Highway Safety Act of 1966, as amended (80 Stat. 731) including Chapter 4 of Title 23, United States Code, except for highway safety programs, research and development relating to highway design, construction and maintenance, traffic control devices, identification and surveillance of accident locations, and highway-related aspects of pedestrian and bicycle safety.

(c) Exercise the authority vested in the Secretary by section 210(2) of the Clean Air Act, as amended by section 10(b) of Pub. L. 91-604 (84 Stat. 1700).

(d) Exercise the authority vested in the Secretary by section 204(b) of the Federal Railroad Safety Act of 1970 (84 Stat. 972; 45 U.S.C. 433(b)) with respect to laws administered by the National Highway Traffic Safety Administrator pertaining to highway, traffic and motor vehicle safety.

(e) Carry out the Act of July 14, 1960, as amended (74 Stat. 526; 23 U.S.C. 313 note).

(f) Carry out the functions vested in the Secretary by the Motor Vehicle Information and Cost Savings Act of 1972, as amended (49 U.S.C. 1902 et seq.) except section 512.

(g) Carry out the functions vested in the Secretary by section 211(c) of the Highway Safety Act of 1973, Pub. L. 93–87, Title II (87 Stat. 282).

(h) Carry out the functions vested in the Secretary by section 108 of the Motor Vehicle and Schoolbus Safety Amendments of 1974 (Pub. L. 93–492, October 27, 1974, 88 Stat. 1482).

(i) Administer the following sections of Title 23, United States Code:

(1) 141, as it relates to certification of the enforcement of speed limits; and

(2) 154(a), (b), and (d).

(j) Carry out the functions vested in the Secretary by section 1(a) of Executive Order 11912.

(k) Carry out sections 129(g), 170, 202(4), (10), 206, 213, and Title IV, of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689) with respect to matters under the primary jurisdiction of the National Highway Traffic Safety Administrator.

(1) Ensure the prohibition of expenditures of funds for passive restraints systems as required by the Surface Transportation Assistance Act of 1978 are carried out.

20. Section 1.51 is revised to read as follows:

§ 1.51 Delegations to Urban Mass Transportation Administrator.

The Urban Mass Transportation Administrator is delegated authority to exercise the functions vested in the Secretary by:

(a) The Urban Mass Transportation Act, as amended (78 Stat. 302, 49 U.S.C. 1601 et seq.), except sections 18 and 22.

(b) Section 1 of Reorganization Plan No. 2 of 1968 (84 Stat. 1369).

(c) Section 10 of the Urban Mass Transportation Assistance Act of 1970, Pub. L. 91–453, 84 Stat. 962, 968).

(d) Sections 3 and 9 through 12 of the National Capital Transportation Act of 1969, as amended (Pub. L. 91–143, 83 Stat. 320).

(e) The following sections of Title 23, United States Code:

(1) 103 as it involves the withdrawal of Interstate routes and the substitution of non-highway public mass transit projects authorized by subsection (e)(4);

(2) 101(a) as it involves approval of boundaries of urban and urbanized areas, 104(f)(4), 105(d), 106(b) as it involves the Federal-aid urban system, and 134; and

(3) 101 (b), (c), (d), and (e); 105 (a) and (g); 106 (a), (c) and (d); 108; 109 (a), (g), and (h); 110; 112; 113; 114; 116 (a) and (c); 117; 121; 122; 124; 128; 140(a); 142; and 145 as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c).

(f) Sections 140, 146, 147, 164 and 165 of the Federal-Aid Highway Act of 1973, as amended (Pub. L. 93–87, Title I, 87 Stat. 250; Pub. L. 93–643, 88 Stat. 2281).

(g) Section 813 of the Housing and Community Development Act of 1974 (Pub. L. 93–383).

(h) Section 107 of the National Mass Transportation Assistance Act of 1974 (Pub. L. 93–503, November 26, 1974).

(i) Title II of the National Mass Transportation Assistance Act of 1974 (Pub. L. 93–503, November 26, 1974), except sections 204 and 205.

(j) Sections 804, insofar as it relates to 45 U.S.C. 744(e)(5); and 805, as applicable, of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94–210).

(k) Section 148 of the Federal-Aid Highway Act of 1976 (Pub. L. 94–280, 90 Stat. 425).

(l) The following sections of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689): 155, 316, 320, and Title IV (as it relates to matters within the primary responsibility of the Urban Mass Transportation Administrator).

§ 1.54 [Amended]

21. In § 1.54, paragraph (a) is amended by removing the words "the Deputy Under Secretary for Budget and Program Review," and inserting, "the Inspector General", after "the General Counsel"; and paragraph (b)(7) is amended by removing "]" immediately after "GS–16."

22. In § 1.55, paragraph (f) is revised to read as follows;

§ 1.55 Delegations to Deputy Secretary.

The Deputy Secretary may exercise the authority of the Secretary except where specifically limited by law, order, regulation, or instruction of the Secretary. In addition, the Deputy Secretary is delegated authority to—

* * * * *

(f) Authorize and approve official travel, including foreign travel, and transportation for himself, his subordinates and others performing services for or in cooperation with the Office of the Secretary.

§ 1.57 [Removed]

23. Section 1.57 is amended by removing the entire section.

§ 1.56 Redesignated as § 1.57.

24. Section 1.56 is amended by being renumbered as § 1.57. In the new § 1.57, paragraph (b) is amended by substituting the words "the General Counsel" for the word "he"; paragraph (e) is amended by substituting the words "Secretary's Board for the Correction of Military Records of the Coast Guard" for the words "the Coast Guard for the Correction of Military Records"; and paragraph (j) is amended by adding the words "or agencies" directly following the words "appear before Courts".

25. A new § 1.56 is inserted directly following § 1.55, to read as follows:

§ 1.56 Delegations to Assistant Secretary for Policy and International Affairs.

The Assistant Secretary for Policy and International Affairs is delegated authority to—

(a) Establish policy and maintain oversight of implementation of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4327) within the Department of Transportation.

(b) Oversee the implementation of Section 4(f) of the Department of Transportation Act of 1969 (49 U.S.C. 1653) and concur in determinations under Section 4(f) for certain major project actions.

(c) Represent the Secretary of Transportation on various interagency boards, committees, and commissions, to include: Architectural and Transportation Barriers Compliance Board; Advisory Council on Historic Preservation; Migratory Bird Conservation Commission; National Highway Safety Advisory Committee; Interagency Committee on Emergency Medical Services; the Federal Council on the Arts and the Humanities; and the Trade Policy Review Group.

(d) Except with respect to proceedings under section 4(e) of the Department of Transportation Act (80 Stat. 934) relating to safety fitness of an applicant, decide on requests to intervene or appear before administrative agencies to present the views of the Department subject to concurrence by the General Counsel.

(e) Carry out the functions of the Secretary pertaining to aircraft with respect to Transportation Orders T–1 and T–2 (32A CFR, Chapter VII) under the Act of September 8, 1950, as amended (64 Stat. 798, 50 U.S.C. App. 2061 et seq.) and Executive Order No. 10480.

(f) Serve as Department of Transportation member of the Interagency Group on International Aviation and, pursuant to Executive Order No. 11382, serve as Chair of the Group.

(g) Serve as second alternate representing the Secretary of Transportation to the Water Resources Council, as mandated under the Department of Transportation Act of 1966, Pub. L. 89–670 and to the Trade Policy Committee as mandated by

Reorganization Plan No. 3 of 1979 and Executive Order No. 12188.

(h) Carry out the functions vested in the Secretary by section 656 of the Department of Energy Organization Act which pertains to planning and implementing energy conservation matters with the Department of Energy. Serves as the Department's principal conservation officer.

§ 1.58 [Removed]

26. Section 1.58 is amended by removing the entire section.

§ 1.64 Redesignated as § 1.58

27. Section 1.64 is amended by being renumbered § 1.58.

28. In § 1.59, paragraph (a)(1) is amended by deleting the words "except the Transportation Systems Center" and ending the sentence folllowing the words "Office of the Secretary."; paragraph (a)(4) is amended by removing the entire paragraph; paragraph (c)(1) is amended by substituting the word "Assistant" for the words "Deputy Under" and the word "Programs" for the words "Program Review"; paragraph (c)(3)(i) is amended by substituting the figure $500 for the figure $150; paragraph (c)(6) is renumbered (c)(5); paragraph (c)(7) is renumbered (c)(6); paragraph (c)(8) is renumbered (c)(7); paragraph (c)(9) is renumbered (c)(8) and paragraph (c)(10) is renumbered paragraph (c)(9); paragraph (n) is amended by removing the entire paragraph, and paragraphs (b)(8), (e), (k), (l), and (m) are revised, to read as follows:

§ 1.59 Delegations to Assistant Secretary for Administration.

The Assistant Secretary for Administration is delegated authority for the following:

* * * * *

(b) *Personnel.* * * *

(8) Issue final interpretations for the Department and its administrations on matters arising under section 7117 of Title VII of the Civil Service Reform Act of 1978.

* * * * *

(e) *Security.* * * *

(1) Represent the Secretary on the National Communications Security Committee and Interdepartmental Committee on Internal Security.

(2) Issue identification media "by direction of the Secretary".

(3) Classify information in the interests of national defense.

(4) Take certain classified actions on behalf of the Department in connection with counter-audio programs.

(5) Authorize exceptions to investigative standards for National Defense Executive Reservists.

(6) Determine when emergencies, other than attack on the United States, justify activation of Personnel Security Regulations issued by the Secretary.

(7) Approve exceptions to the Personnel Security Regulations issued by the Secretary.

(8) Request the office of Personnel Management to modify investigative requirements in other areas.

* * * * *

(k) *Equal Employment Opportunity.* Exercise the authority of the Secretary to accept or reject internal complaints of discrimination on the basis of race, color, religion, sex, national origin, or age arising within or relating to the Office of the Secretary.

(l) *Building Management.* Carry out the functions vested in the Secretary by sections 1(b) and 4(b) (as appropriate) of Executive Order 11912.

(m) *Privacy.* Issue notices of Department of Transportation systems of records as required by the Privacy Act of 1974 (5 U.S.C. 552a(e)(4), (11)).

§ 1.60 [Removed]

29. Section 1.60 is amended by removing the entire section.

30. Section 1.61 is revised to read as follows:

§ 1.61 Delegations to Assistant Secretary for Governmental Affairs.

The Assistant Secretary for Governmental Affairs is delegated authority to:

(a) Establish procedures for responding to Congressional correspondence.

(b) Serve as the Department's point of contact in relationships with public and private organizations and groups devoted to consumer and community services or affairs.

(c) Serve as coordinator for intra-Departmental consumer affairs programs.

§ 1.62 [Removed]

31. Section 1.62 is amended by removing the entire section.

32. Section 1.63 is amended by adding at the end thereof a new paragraph (d), to read as follows:

§ 1.63 Delegations to Director of Public Affairs.

The Director of Public Affairs is delegated authority to:

* * * * *

(d) Carry out the functions to promote carpooling and vanpooling which were vested in the Federal Energy Administration by Section 381(b)(1)(B) of the Energy Policy and Conservation Act and transferred to the Department of Transportation by section 310 of the Department of Energy Organization Act of 1977.

§ 1.65 Redesignated as § 1.62

33. Section 1.65 is redesignated § 1.62 and revised to read as follows:

§ 1.62 Delegations to the Director of Small and Disadvantaged Business Utilization.

The Director of Small and Disadvantaged Business Utilization is delegated authority to:

(a) Exercise Departmental responsibility for the implementation and execution of functions and duties under sections 8 and 15 of the Small Business Investment Act, as amended (15 U.S.C. 637 and 644).

(b) Carry out the functions vested in the Secretary by section 906 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210), as amended.

34. A new § 1.64 is added, to read as follows:

§ 1.64 Delegations to Director of Transportation Research and Technology.

The Director of Transportation Research and Technology is delegated authority to carry out the Department of Transportation Act of 1966, as amended (80 Stat. 931), specifically sections 2 and 4, with respect to the promotion of research and development relating to transportation.

35. A new § 1.65 is added, to read as follows:

§ 1.65 Authority to classify information.

The following delegations of authority appear in Part 8:

(a) E.O. 12065 confers upon the Secretary of Transportation authority to originally classify information as SECRET and CONFIDENTIAL with further authorization to delegate this authority. (No official of the Department of Transportation has authority to originally classify information as TOP SECRET.)

(b) The following delegations of authority, which may not be redelegated, are hereby made:

(1) *Office of the Secretary (OST).* The Director of Investigations and Security.

(2) *U.S. Coast Guard.* The Commandant; Chief, Office of Operations.

(3) *Federal Aviation Administration.* The Administrator; Director of Investigations and Security.

(c) At such time as Defense Readiness condition Number Two or higher emergency condition may be declared, authority to originally classify information as Secret or Confidential is

automatically delegated to the officials named below. This authority, which may not be redelegated, is automatically cancelled when Defense Readiness Condition Number Three or lower emergency level is declared.

(1) *OST.* Deputy Secretary; Assistant Secretary for Policy and International Affairs; Assistant Secretary for Administration.

(2) *USCG.* Vice Commandant; Chief of Staff; Commander, Atlantic Area; Commander, Pacific Area; Commanders, Coast Guard Districts; Commander, Coast Guard Activities Europe; Chief, Intelligence and Security Division.

(3) *FAA.* Deputy Administrator; Directors, FAA Regions and Centers.

(d) Although the delegations of authority are expressed above in terms of positions, the authority is personal and is vested only in the individual occupying the position. The authority may not be exercised "by direction of" a designated official. The formal appointment or assignment of an individual to one of the identified positions or a designation in writing to act in the absence of one of these officials, however, conveys the authority to originally classify information.

(e) Previous delegations of authority to Department of Transportation officials to originally classify information as Secret and Confidential are hereby rescinded.

[FR Doc. 80-35390 Filed 12-17-80; 8:45 am]
BILLING CODE 4910-62-M

Federal Register

Thursday
December 18, 1980

Part III

Department of the Interior

Office of the Secretary

Department of Commerce

National Oceanic and Atmospheric Administration

Fish and Wildlife Coordination Act; Proposed Rulemaking and Availability of Draft Environmental Statement

DEPARTMENT OF THE INTERIOR

Office of the Secretary

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 410

Fish and Wildlife Coordination Act; Notice of Proposed Rulemaking and Availability of Draft Environmental Statement

AGENCY: National Oceanic and Atmospheric Administration, Commerce; Office of the Secretary, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This Notice invites public participation in the development of rules which would establish uniform procedures for Federal agency compliance with the Fish and Wildlife Coordination Act (FWCA). The President's Water Policy Message of June 6, 1978 and the President's Water Policy Memorandum dated July 12, 1978, directed the publication of these rules. A new 50 CFR Part 410 was proposed on May 18, 1979 (44 FR 29300).

Extensive public comment resulted in a revision of the proposal and preparation of a draft Environmental Impact Statement (EIS). These rules would standardize agency procedures and interagency relationships in the analysis of the impacts of Federal, or federally approved, water-related projects upon wildlife resources. They relate closely to the procedures established for compliance with the National Environmental Policy Act (NEPA).

The drafts EIS envisions the environment to be affected by the proposal as a process whereby wildlife and action agencies attempt to accomplish the consultation and equal consideration requirements of the FWCA without uniform procedures. Three major alternatives were evaluated for their probable contribution to improved consideration of wildlife conservation in the planning and decisionmaking processes of action agencies. Three other alternatives were considered, but eliminated from detailed study. The primary evaluation factor was ensuring consistent application of the FWCA in the most effective and efficient manner.

DATES: Written comments on both the proposed rules and draft EIS must be received no later than February 17, 1981.

ADDRESS: Comments should be addressed to Director, U.S. Fish and Wildlife Service (ES), Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Richard K. Robinson or Thomas J. Bond, U.S. Fish and Wildlife Service, Division of Ecological Services, 18th and C Sts., N.W., Washington, D.C. 20240; (202) 343-7292; or James R. Chambers, National Marine Fisheries Service, 3300 Whitehaven St, N.W., Page Building II, Washington, D.C. 20235; (202) 634-7490.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1979, a new 50 CFR Part 410 was proposed (44 FR 29300-29359). The proposal was intended to define the requirements and procedures that must be met for fully complying with the Fish and Wildlife Coordination Act. As a result of extensive public comment the proposal has been revised. In addition, it was decided to prepare an EIS.

The purpose of the proposed regulations is to establish uniform systematic procedures for the consideration of wildlife resource values in the planning and implementation of federally undertaken, funded, permitted or licensed projects that may affect wetlands, streams or other waterbodies. The regulations provide uniform interpretations; minimize delays in project planning by assuring that wildlife values are given thorough and timely consideration; provide guidance to applicants for Federal permits and licenses on how they may consult with wildlife agencies while planning their proposals; provide guidance for Federal action agency consideration of measures necessary to minimize overall adverse effects of a proposed project on wildlife resources; prescribe the use of techniques based upon habitat values for assessing impacts on wildlife resources and for evaluating mitigation measures; and assure interagency and public participation and review of Federal agency decisions affecting wildlife resources.

For further background, interested parties should refer to the Preamble to the May 18, 1979 proposal (44 FR 29300), keeping in mind that the text of this current proposal varies substantially from that of 1979.

II. Comparison With the Original Proposal

The proposed rules contain procedural guidance, interpretations and policies for proper implementation of the FWCA. All agencies with consultation responsibilities under the Act would be bound by the procedural provisions. While agencies outside of Interior and Commerce should view the interpretatons and policies as guidelines which they are invited to adopt, Interior and Commerce bureaus and offices would be bound by them (See § 410.10). However, in the case of any Federal agency, the Secretary could waive some of these provisions if they pose real problems § 410.42).

Important new provisions for reducing delay in the process of FWCA compliance have been added. Of special importance is the reporting time limit placed on the wildlife agencies by §§ 410.4(g) and 410.23(e). Lack of a written response within 30 days of an action agency request for consulation would be deemed notice that no report is forthcoming. Generic reviews by wildlife agencies of classes of actions are possible (§ 410.22). Large segments of the May 18, 1979, proposal which contained largely internal guidance for wildlife agencies of no significant importance to the public, were deleted.

Express statements of coverage in § 410.11 have been scaled back. Loans, loan guarantees, grants and technical assistance actions have been eliminated from the rules, as have water and power marketing decisions.

The Act and these rules would apply to actual work to be performed pursuant to these actions or decisions, provided: (1) Water bodies or wetlands would be affected; (2) a Federal permit, or license, or a renewal, modification or extension thereof is involved; and/or (3) a Federal project or modification or supplementation of plans for a previously authorized Federal project is involved. In these cases, the rules would apply through those Federal review programs, not to the assistance action or marketing decision process itself (see 410.3 for definitions of "Federal project" and "approval").

Discretion is provided to include federally recognized native American tribes and corporations in the planning process (§ 410.16).

Applicants for Federal permits and licenses would be strongly encouraged to consult with wildlife agencies prior to making formal application to the Regulatory Agency but would not be required to do so.

The revised rules are more expositive of the potential scope and content of wildlife agency reports (§ 410.23).

There are new Congressional reporting procedures regarding the content of agency reports and the implementation of the President's concurrent and proportionate funding directive (§§ 410.25; 410.34).

III. Rulemaking Requirements

The Department of the Interior and the Department of Commerce have determined that the rulemaking procedures of the Department of the Interior will be followed. The Department of the Interior has determined that this document is a significant rule but does not require a regulatory analysis under Executive Order 12044, and 43 CFR Part 14. A draft environmental impact statement has been prepared and is available from the Associate Director—Environment, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240; (202) 343-4767.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposal in the manner set forth above.

The joint authors of this document are:

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The May 18, 1979, proposal is withdrawn, and in its stead, it is proposed to amend 50 CFR, Chapter IV, by adding a new Part 410 in the manner set forth below.

Dated this 11th day of December 1980.

Robert L. Herbst,

Assistant Secretary of the Interior.

Richard A. Frank,

Administrator, National Oceanic and Atmospheric Administration.

PART 410—FISH AND WILDLIFE COORDINATION ACT

Subpart A—General Provisions

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Authority: Fish and Wildlife Coordination Act, Pub. L. 85-264, 72 Stat. 563 (16 U.S.C. 661, *et. seq.*); National Environmental Policy Act of 1969, sec. 102(2)(A) and (B), Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332(2)(A), (B)); 5 U.S.C. 552; Fish and Wildlife Act of 1956, sec. 7, 70 Stat. 1122 (16 U.S.C. 742f); President's Memorandum on Environmental Quality and Water Resources Management, July 12, 1978 (See also, Weekly Comp. of Pres. Doc. 105 (June 6, 1978)); 5 U.S.C. 301; 3 U.S.C.

Subpart A—General Provisions

§410.1 Scope.

This Part implements the National Environmental Policy Act (NEPA), 42 U.S.C. 4332, and section 1-4, 6, and 9 of the Fish and Wildlife Coordination Act (FWCA), 72 Stat. 563, as amended (16 U.S.C. 661-664, 666b, 666c (1976)). The FWCA recognizes that wildlife resources make a vital contribution to the Nation and that federal and non-federal water and water-related land resources developments will affect such resources. It mandates that wildlife conservation shall receive equal consideration and be coordinated with other features of water resource development programs throughout the action agencies' planning and decision-making processes. It requires such agencies, or applicants to such agenices, to first consult with state and federal wildlife agencies to ascertain what means and measures may be considered necessary by those agencies to prevent, mitigate, and compensate for project-caused losses of wildlife resources, as well as to enhance those resources. The FWCA further requires that reports and recommendations from wildlife agencies be presented to action agency decision-makers and (in the case of federal projects) the Congress, and that the action agencies shall give full consideration to those reports and recommendations. Action agencies are required to include in project plans such means and measures for wildlife conservation as they may find justifiable to obtain maximum overall project benefits to the public. The costs of such means and measures are to be considered integral to those of the project.

§410.2 Purpose.

The purpose of these rules is to ensure that measures proposed for wildlife conservation are fully and equally considered with other project features in agency decision-making processes by integrating such considerations into project planning, NEPA compliance procedures, financial and economic analyses, authorization documents, and project implementation. This part will—

(a) Establish a standard procedure to be followed by action agencies in achieving compliance with the FWCA in the development and consideration of alternative project plans which provide for the conservation of wildlife resources;

(b) Minimize delays in project authorization or approval decisions and require the development of environmentally sound project plans without needless waste of public and private resources, by establishing procedures for the timing and integration of FWCA compliance into decision-making processes while plans are still flexible;

(c) Ensure that planning and consideration of wildlife resource conservation measures address loss prevention, mitigation, compensation, and enhancement;

(d) Describe factors to be considered by an action agency in determining what wildlife conservation measures are justifiable to obtain maximum overall project benefits to the public;

(e) Require the use of techniques based upon wildlife habitat values as the means for assessing impacts on wildlife resources and for evaluating loss prevention, mitigation and compensation measures;

(f) Ensure that where comparative benefit-cost analyses of alternative project plans are required by law, they include the full costs of wildlife resource loss compensation measures, and, if quantifiable, the costs of uncompensated wildlife resource losses;

(g) Provide for orderly and prompt inter-agency review of, and public participation in, wildlife and action agency decisions on means and measures for wildlife resource conservation.

(h) Describe procedures for achieving "equal consideration" of wildlife conservation in project implementation.

§ 410.3 Definitions.

"Action agency" means a department, agency or instrumentality of the United States which plans, constructs, operates or maintains a project, or which plans for or approves a permit, lease, or license for projects.

"Approval" or "approve" means final action agency action on an application by a federal, state, or other applicant for a permit, lease, or license.

"Conservation" means the planned management of wildlife resources to prevent waste concurrent with their wise use. This term combines the meaning of the loss prevention, mitigation, and enhancement components of project planning, development, and implementation.

"Loss prevention" means designing and implementing a project to avoid adverse impacts on wildlife resources. (40 CFR 1508.20(a)).

"Mitigation" means lessening unavoidable losses of wildlife resources by implementing structural or operational features or by employing wildlife management techniques, the effectiveness of which are determined by the degree to which they replace wildlife habitat values lost. (40 CFR 1508.20(b)–(e)).

"Compensation" or "compensate" means implementing mitigation measures which, in the judgment of the relevant decision-maker, would fully restore project-induced losses to wildlife. If compensation measures include habitat replacement it should be "in kind", if possible. (40 CFR 1508.20(e).)

"Enhancement" means the improvement of wildlife resource values beyond that which exist without the project, and beyond that necessary for compensation.

"Federal project" means a project planned or constructed by, or on behalf of, a federal agency.

"Project" means any action, or planning or approval process relating to an action, which impounds, diverts, deepens the channel of, or otherwise controls, pollutes, or modifies any water body for any purpose whatsoever. Such water bodies include, without limitation, wetlands (see Classification of Wetlands and Deepwater Habitats of the United States, U.S. Dept. of the Interior, FWS–OBS–79–31 (1979); (see also 42 FR 62432 (Dec. 12, 1977)) and the waters of any stream, including their associated ground water, and estuarine or marine waters seaward to the outer margin of Outer Continental Shelf (OCS) or the Fisheries Conservation Zone (16 U.S.C. 1801), whichever is farther.

"Regional Directors" means the named officials, or designees, of the Fish and Wildlife Service (FWS), Department of the Interior, (including the Area Director for Alaska) and the National Marine Fisheries Service (NMFS), in the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, in whose geographic areas of jurisdiction the project may be located. For projects outside the U.S. territorial sea, "Regional Director" means the named official of both agencies whose area of jurisdiction is closest to the project. (See App. A for addresses and areas of jurisdiction of federal wildlife agency Regional Directors).

"Reporting Officer" means that action agency official responsible for formulating approvals, or for preparing the project report, obtaining public and agency views, and making recommendations on a proposed project to higher authority (if any) within the agency. Implementing procedures of action agencies will identify appropriate reporting officer(s).

"Wildlife agency" means the FWS, NMFS, and, if the project is to be sited within the boundaries of a state of the United States, the state agency(ies) exercising immediate and direct administration over the fish or wildlife resources of the particular state wherein the project is proposed to be, or has been, constructed. For projects to be sited outside the territorial sea, this term means the head of the wildlife agency(ies) of the state(s) nearest the project. As used herein, the term "states" includes the Territories and Possessions of the United States.

"Wildlife" and "wildlife resources" means birds, fish, mammals and all other classes of wild animals, and all types of aquatic and land vegetation upon which wildlife is dependent.

"Wildlife resources" include the biotic and abiotic factors upon which wildlife depends; i.e., habitat.

"Wildlife resources properties" means the water project or other lands, waters, or interests therein to be acquired, reserved, or otherwise set aside by a federal agency for the conservation of wildlife resources in connection with a federal project, pursuant to the provisions of section 3 and section 4 of the FWCA, or other law.

§ 410.4 Reducing delay.

Action and wildlife agencies will reduce delay in the process of complying with the FWCA by—

(a) Initiating FWCA compliance at the earliest, meaningful point (§ 410.22),

(b) Following a standard procedure in consulting with wildlife agencies (§§ 410.22, 410.23),

(c) Avoiding disputes over applicability of the FWCA (§ 410.11),

(d) Eliminating confrontation among agencies by (1) providing a record of decisions made on wildlife resource conservation issues (§ 410.24(a)), (2) avoiding last minute surprise in action agency decision-making on wildlife resource conservation decisions (§ 410.24(a)(1), (a)(5)), and (3) resolving inter-agency disputes at lower agency levels (§ 410.24(a)(5)),

(e) Conducting action agency reviews concurrently where two or more federal agencies will have jurisdiction over a project to which the FWCA applies (§ 410.15(a), (b)),

(f) Coordinating wildlife agency reviews of projects to which several environmental reviews which they may administer may apply (§§ 410.22(a)(2), 410.23(b)(1), (c)(3)), and

(g) Establishing time limits for FWCA review (§§ 410.23(b)(2) and 410.23(e)).

§ 410.11 Applicability of the FWCA.

(a) *General.* The FWCA applies to federal projects and to non-federal projects which are approved by an action agency. It applies to federal projects which are authorized by the federal construction agency itself, as well as those authorized by the Congress. Examples of projects covered by the FWCA are:

(1) Discharges of pollutants, including municipal, mining and industrial wastes or dredged or fill material, into water or wetlands;

(2) Those involving the construction, operation, or maintenance of channels, turning basins or other navigation features, canals, breakwaters, docks, piers, and marinas;

(3) Those involving the construction of dams, levees impoundments, and/or water diversion structures for flood control, hydroelectric power generation, water supply, cooling ponds, irrigation, recreation, fish and wildlife, or other purposes;

(4) Those which depend upon, or necessarily result in, a diversion, control or other modification of a stream or other body of water, such as: Changes in reservoir release and storage plans; diversions for or discharges from power plants; mineral exploration or extraction permits or leases on the OCS; reservoir rights-of-way on federal or Indian trust

lands; projects conducted in beds of intermittent streams, or those temporarily dewatered; water-related aspects of federal mining or mineral leases, or of mining plans adopted under the Surface Mining Control and Reclamation Act; highway construction, maintenance, or alteration; construction of pipelines and transmission lines;

(5) Those undertaken to abate damages or causes of erosion, storms, or floods (See § 410.22(a)(2)(iii));

(6) Those involving the rehabilitation of lining of water conveyance systems;

(7) Water resource and water quality planning programs.

(b) *Previously authorized or approved projects.* Prior authorization or approval of a project does not constitute a waiver, *per se,* of FWCA requirements. However, section 2(g) of the FWCA provides that section 2 of the FWCA does not apply to projects (or project units) authorized or approved prior to August 12, 1958, which were completed or substantially completed on August 12, 1958. A project or project unit is deemed to be substantially completed when sixty percent or more of then-estimated construction costs (as of August 12, 1958) had been obligated for expenditure. However, the FWCA does apply to projects (or project units) authorized or approved prior to August 12, 1958, which were not substantially completed at that time, and to projects (or project units) authorized or approved subsequent to August 12, 1958, regardless of their state of construction or whether completed. Section 2 of the FWCA applies to action agency initiation of a process of developing a report on the modification or supplementation of plans for previously authorized federal projects (whether or not constructed). It also applies to any application for the renewal or modification of a federal approval.

(c) *Agencies or agency projects specifically exempt from the FWCA.* The FWCA does not apply to:

(1) Projects wholly undertaken by and for the Tennessee Valley Authority;

(2) The small watershed program of the Soil Conservation Service (as authorized by Section 3 of the Watershed Protection and Flood Prevention Act of 1954);

(3) Federal impoundment projects where the aggregate maximum surface area of such impoundments is less than ten acres;

(4) Activities for or in connection with programs primarily for land management and use, carried out by federal agencies on lands under their jurisdiction, where control of water is only incidental to the action;

(5) Loan, money grant, loan guarantee, and technical assistance actions. However, where such projects require other water-related federal approvals, the FWCA applies through those programs.

§ 410.12 Applicability of this part.

Except as provided in this section, and §§ 410.13, 410.14, and 410.17, the procedures of this part shall apply to projects to which the FWCA applies (see § 410.11). The term "federal project" is used in this section in distinction to non-federal projects. Where only the term "project" is used, the provision in question applies to federal and non-federal projects.

(a) *Projects not authorized or approved.* For projects not yet approved or authorized for construction on the effective date of these rules, action agencies shall comply with the procedures and methods prescribed by this part which are applicable to the planning, approval, or implementation stages remaining on that date.

(b) *Authorized but not completed federal projects.* (1) This part will not apply to federal projects, or separately authorized units thereof, which were authorized for construction but not completed on the effective date of this Part unless the Principles and Standards Manual of Procedures issued pursuant to the President's Water Policy Initiatives of July 12, 1978, apply to such projects: (See 18 CFR 704.101) The Secretary of the Interior may nevertheless determine that this Part will apply to federal projects exempt from the Principles and Standards Manual if, after a review of evidence submitted in accordance with paragraph (b)(3) of this section and consultation with the affected state(s) and the action and wildlife agencies, the Secretary determines that—

(i) Authorized fish and wildlife conservation measures will not be installed or will not substantially compensate for fish and wildlife resource losses caused by the project,

(ii) The adverse impacts of the project upon wildlife resources are significant, and

(iii) Construction has not proceeded to the point that all options for wildlife conservation are practically foreclosed. Where appropriate, the Secretary of the Interior will consult with the Administrator of NOAA in making his determination.

(2) If this Part becomes applicable to a federal project in accordance with paragraph (b)(1) of this section, action agencies shall not make any irreversible or irretrievable committment of resources pending compliance with this Part which would foreclose the consideration of alternatives to compensate for wildlife losses.

(3) Within Ninety (90) days of a written request by the Secretary of the Interior, or such longer period of time as the Secretaries of the Interior and Commerce may agree upon, action agencies will submit the following information to the Secretary of the Interior with respect to each federal project and separately-authorized federal project unit which is otherwise exempt by reason of the applicability of exemptions to the Principles and Standards Manual (as referred to above):

(i) Its location, and the source and date of authorization;

(ii) The state of construction (if any) and the percentage of current total estimated project cost which has been expended;

(iii) A description of the mitigation and enhancement measures which were authorized and a discussion of any difficulties encountered which could defeat adoption of such measures;

(iv) Where mitigation and enhancement measures may be under consideration for future authorization an explanation of the status of planning and approval of such proposals within the action agency;

(v) If land acquisition for mitigation or enhancement was authorized, a statement of the percentage of the authorized amount which has been acquired and, if acquisition has not been concurrent and proportionate with acquisition and construction of other project features, an explanation of the reasons therefor;

(vi) A ranking of those projects most in need of Secretarial action under paragraph (b)(1) of this section, stating the rational for such ranking and listing those not under active consideration for construction;

(vii) a statement whether the project meets the criteria for discretionary coverage referred to in paragraph (b)(1) of this section and whether the procedure of this part should be applied.

(4) Federal projects for which a General Plan has not been executed shall be considered incomplete, within the meaning of this paragraph (c), but only the provisions of Subpart C will apply to such projects if they are otherwise completed.

(c) *Completed or approved projects.* The procedures of this part will not be applied to review wildlife conservation issues surrounding projects or project units, once they have been approved or completed. However, this part applies to the following actions proposed for

completed or approved projects, if those actions meet the definition of "project":

(1) Action agency initiation of a process of developing a report or plan on the modification or supplementation of plans for the design or operation of a federal project;

(2) Applications for renewal, modification, or relicensing of a non-federal project.

(d) *Non-federal projects approved by federal agencies.* The following provision of this part will not apply to non-federal project applications:

(1) Section 410.22(a)(2)(i);
(2) Section 410.25(b);
(3) Section 410.31;
(4) Section 410.32;
(5) Section 410.34.

(e) *Waivers by NMFS or States.* Where, in the judgment of a Regional Director of NMFS or the head of a state wildlife agency, their involvement in the procedures set forth in this part would be inappropriate in a given case, or (in the case of a state) generically, he or she may waive those requirements as applied to said agency.

§ 410.13 Comprehensive water resources plannning requirements.

This part will not apply to non-project-specific aspects of federal comprehensive water or related land resources planning programs. However, the objectives of the FWCA, as stated in § 410.21, should be taken into account in such comprehensive planning programs. Wildlife agencies will be involved in such programs as provided in Subpart D of this part.

§ 410.14 State action under federally-approved programs.

This part shall not apply to state actions, or Federal review thereof, made under federally approved programs created by Federal law. Action agency procedures for inter-agency referral of matters which it undertakes to review in such programs will be deemed to constitute the consultation required by the FWCA. Such programs include sections 402, 404, and 208 of the Clean Water Act.

§ 410.15 Relation to other environmental review requirements.

(a) Compliance with NEPA and the Principles and Standards of the Water Resources Council are complementary to, but not a substitute for, compliance with the FWCA or these rules. To the maximum extent possible, the reports and recommendations of wildlife agencies will be forwarded to the action agency in time to be addressed in environmental assessments or draft environmental impact statements (EIS), the draft and final decision documents (40 CFR 1505.2), and Principles and Standards analyses.

(b) If a permit is required, but has not been applied for, under sections 402 or 404 of the Clean Water Act, sections 9 or 10 of the River and Harbor Act of 1899, or section 102(a) and 103(a) of the Marine Protection, Research, and Sanctuaries Act of 1972, for projects of, or pending approval before, a federal agency, that agency should encourage the filing and processing of such other permit applications simultaneously with the planning or approval process for the project pending review before them, in order to avoid repetitive reviews by wildlife agencies and to encourage the lead agency concept. (40 CFR 1508.16; § 410.22(a)(2)).

(c) Many statutory authorities require consultation with the Department of the Interior and/or Commerce on the impacts of federal actions upon wildlife resources. Federal, state, or private agencies or individuals are encouraged to adopt and employ the procedures or methods prescribed by these rules to obtain the full loss prevention, mitigation, and enhancement potential of projects, whenever authorized.

§ 410.16 Coordination with Indian tribes.

Although Indian Tribes are not state agencies given a statutory role in the FWCA planning process, action agencies should invite all federally-recognized groups of Indians, Aleuts and Eskimos whose lands, water, water rights, or hunting and fishing rights may be affected by a project to become involved in the procedures of Subparts B and C of this part. (40 CFR 1501.1(d)(2)).

§ 410.17 Emergencies.

Except as provided in § 410.22(a)(2)(iii), the extent to which some or all projects undertaken in emergencies shall be governed by this part shall be determined in accordance with § 410.41. (40 CFR 1506.11).

Subpart B—FWCA Compliance Procedure

§ 410.21 Equal consideration.

Equal consideration of wildlife resource values in project planning, approval, and implementation is the essence of the FWCA compliance process. It requires action agencies to involve wildlife agencies throughout their planning, approval, and implementation process for a project. It highlights the need to utilize a systematic approach to analyzing and establishing planning objectives for wildlife resource needs and problems, and in developing and evaluating conservation alternative conservation plans. Wildlife resource conservation will be achieved by preventing project-caused losses of wildlife resources, compensating for unavoidable wildlife resource losses, and enhancing wildlife resource values. Compliance with the equal consideration mandate requires:

(1) *Consultation* between action agencies (or applicants to them) and wildlife agencies on measures necessary to conserve wildlife in project planning, construction, and operation;

(2) *Reporting* by wildlife agencies on the effects of the project and its alternatives upon wildlife resources and on measures recommended to conserve wildlife resources in connection with the project and its alternatives;

(3) Full *consideration* by the action agencies of measures recommended to conserve wildlife resources, both with regard to the proposed project and its alternatives;

(4) *Implementation* of justifiable conservation measures.

§ 410.22 Consultation.

(a) *Initiation.* Action agency requests for initiation of compliance with the FWCA will be made as follows:

(1) *Applicants for approval of a non-federal project.* (i) Implementing procedures of action agencies shall strongly encourage applicants for those non-federal approvals enumerated below to consult with federal and affected state wildlife agencies prior to filing an application with the action agency (40 CFR 1501.2(d). This pre-application procedure applies to projects which involve drainage, dredging, filling, inundation, or other modification of wetlands (including water bodies) affecting more than ten acres; create impoundments greater than fifty acres (regardless of terrain or habitat type); or involve one-half mile of dredging or stream channel modification. The intent of this paragraph is to assist applicants in designing environmentally sound projects without waste of their planning resources, and to minimize the potential for delay in the processing of applications. Action agency implementing procedures shall advise that such requests should be made by the applicant at the earliest stages of its project planning, and that its submissions to wildlife agencies should indicate the general work or activity being considered, its purpose(s), and the general area in which it is contemplated. The information provided to wildlife agencies should be specific enough to allow them to identify possible effects on wildlife and to identify potential conservation measures (including alternatives), and yet be general and

flexible enough that, should it choose to do so, the applicant could incorporate justifiable conservation measures into its application to the action agency. Wildlife agencies will provide to the potential applicant a brief analysis of potential project effects upon wildlife resources and will suggest modifications or alternatives. The detail of analysis and refinement of recommendations will be related to the level of detail of the proposed plan. The wildlife agencies shall identify any areas of concern or analysis that require further detail or study. The results of this analysis should be integrated in or accompany the action agency's NEPA environmental assessment or statement.

(2) *Action Agencies.* Action agencies with separate jurisdiction over a project may coordinate compliance with this section and § 410.23 through a lead agency or agencies designated in accordance with NEPA regulations (40 CFR 1501.5), or, where not so designated, through an action agency which obtains the concurrence of other action agencies to act in that capacity. Action agencies should consult with wildlife agencies at the same time when projects pending before them separately would have cumulative impact. (40 CFR 1508.7). Subject to the agreement of the appropriate wildlife agency official (see § 410.23(a)), an action agency or agencies may comply with this section and § 410.23 jointly with respect to a number of similar individual projects pending before them which are within a given geographical area, administrative unit, or segment of a comprehensive plan. Notwithstanding any applicant consultation which may occur under paragraph (a)(1) of this section, and irrespective of any later lead agency agreement, action agencies shall initiate compliance with this Subpart B by providing notice to the appropriate wildlife agency officials as follows:

(i) *Federal Projects.* Action agencies shall notify the Regional Directors of both federal wildlife agencies and the head of the state wildlife agency (through OMB Circular A-95 procedures, or otherwise) upon initiation of studies or actions which may lead to the authorization of a federal project. This also applies to the initiation of planning for the modification or supplementation of project reports on previously authorized projects. (See § 410.11(b)). Action agencies shall invite all wildlife agencies to participate actively throughout the planning process.

(ii) *Federally-approved projects.* Appropriate written notice of preliminary permit (FERC) and early site review (NRC) applications, as well as NRC and FERC construction license and permit or renewal applications, will be forwarded for comment to both the Secretaries of the Interior and of Commerce, or their delegates, and to the head of the wildlife agency or agencies for the state(s) wherein the proposed construction may occur. Appropriate written notice of all other applications to federal agencies for approvals shall be forwarded to the Regional Directors, or their delegates, of both federal wildlife agencies and to the head of the wildlife agency for the state(s) wherein the proposed construction may occur.

(iii) *Emergencies.* (A) If a major disaster is declared by the President under authority of the Disaster Relief Act Amendments of 1974, the designated Federal Coordinating Office (FCO) of the Federal Emergency Management Agency (FEMA) will consult with the Regional Directors and the head of the affected state wildlife agency to determine the need for FWCA compliance during the course of the emergency. When continuing detailed coordination is determined necessary by wildlife agencies, the FCO will provide facilities for a wildlife agency coordinator(s) at the Disaster Field Office (DFO). Field level coordination will occur between the designated wildlife coordinator(s) and the FEMA Public Assistance Officer (PAO) responsible for the DFO. In the event of unresolved conflicts between the wildlife coordinator(s) and the PAO, the matter will be referred to the Federal Coordinating Officer, who will resolve the matter after consultation with the Regional Director(s) and the head of the state wildlife agency(s).

(B) Procedures for FWCA compliance in other action agency emergency programs, or actions in emergency situations, will be identified during the period for approval of implementing procedures. (§ 410.42(a)).

(3) *Wildlife agencies.* A wildlife agency may request an action agency to comply with the requirements of this Part when it believes such compliance is required.

(b) *Coordinated planning.* (1) Wildlife and action agencies shall utilize a systematic approach in analyzing wildlife resource needs and problems, establishing planning goals therefor, and developing and evaluating alternative resource management plans.

(2) Wildlife agencies will cooperate with action agencies in the development of analyses, recommendations, and reports to action agencies on means and measures for the conservation of wildlife resources.

(3) Action agencies shall provide wildlife agencies adequate opportunity to prepare FWCA reports and recommendations and to transmit them to the action agency for timely consideration in NEPA environmental assessments, draft EIS's findings of fact, and other such decision documents.

§ 410.23 Reporting.

(a) *Authority.* (1) Except in the case of projects approved by the NRC and FERC, the authority to transmit formal FWCA reports and recommendations of the Secretary of the Interior is exercised by the FWS Regional Directors, or their delegates. In the case of NRC and FERC-approved projects, such authority is exercised for the Secretary of the Interior by the Assistant Secretary for Policy, Budget, and Administration, acting upon the recommendations of the FWS and the Office of Environmental Project Review. In all cases, including NRC and FERC, formal FWCA reports of NMFS—representing the Secretary of Commerce—and the State wildlife agency are sent directly to the action agency.

(2) The state wildlife agency(s) which will report under this section should be designated by the States during the period for approval implementing procedures, and will be published as an appendix to this part.

(b) *Timing.* (1) Consistent with NEPA regulations (40 CFR 1501.6 and 1502.25) and other law which may require reporting within a specified period of time, wildlife agencies shall, to the maximum extent possible, forward their reports and recommendations to action agencies within an agreed-upon time frame sufficient to permit preliminary action agency decisions on incorporation of the substance of those recommendations into project plans, and to permit analysis of such reports and recommendations in the draft decision document and the environmental assessment or draft EIS. See § 410.24(a). To the maximum extent possible, preparation and transmittal of FWCA reports will be coordinated and combined with the preparation and transmittal of reports or their reviews required of the Department of the Interior or National Oceanic and Atmospheric Administration (NOAA) by other applicable federal environmental review requirements, including—

(i) Endangered Species Act of 1973,

(ii) Estuary Protection Act,

(iii) Section 6(a) of the Federal Water Project Recreation Act,

(iv) Coastal Zone Management Act,

(v) Sections 208, 303, 402, 404, and of the Clean Water Act of 1977,

(vi) Sections 5(d), 7(a) and 7(b) of the Wild and Scenic Rivers Act,

(vii) 150(b) of the Water Resources Development Act of 1976 (creation of wetland areas using dredged material).

Memoranda of understanding or agreements which may provide time limits for the referral of FWCA reports and recommendations for certain classes of projects appear in Appendices B and C.

(2) An action agency, or an applicant thereto, may request the official within a wildlife agency who is responsible for reporting (See § 410.23(a)) to set time limits for the transmittal of the wildlife agency's reports under this section. Wildlife agencies will give due consideration to the time requirements of action agencies and the applicant, as well as its own need for a reasonable time to conduct a responsible review of the effects of the project and to prepare recommendations.

(c) *Content.* Wildlife agencies will prepare and submit reports that describe project-caused and cumulative (40 CFR 1508.7) effects upon wildlife resources and identify alternative means and measures necessary to conserve wildlife resources. These "FWCA reports" may be provided to action agency serially, addressing successive levels of action agency planning detail. The scope of these reports will be proportionate to the significance of project efforts upon wildlife resources.

(1) If, after consultation with other wildlife agencies, a wildlife agency believes that from the standpoint of wildlife resources of interest to it, project and cumulative effects are insignificant and that (in the case of federal projects) no potential exists for enhancement measures, notice will be given to the action and (where appropriate) the other wildlife agencies in accordance with paragraph (e) of this section.

(2) When project and/or cumulative effects are believed to be significant, wildlife agency reports should describe some or all of the following, depending upon the type of project, the availability of adequate information, and the significance of such effects:

(i) A summary of the surveys, investigations and assessments conducted by the wildlife agency;

(ii) The specific assessment methods, assumptions, and data used to arrive at assessment conclusions;

(iii) Wildlife problems and needs, and recommended wildlife resource planning goals;

(iv) Positive and negative effects upon wildlife resources of the proposed (or selected) plan and alternative project plans, and the conservation measures recommended for each. Wildlife agencies will focus on the needs of, and effects of such projects upon, wildlife resources and their productivity and related values measured using habitat-based evaluation systems. Other information may be furnished, as appropriate.

(v) Conservation measures which may have been earlier identified as necessary by action and wildlife agencies, and a review of any action agency disposition of wildlife agency recommendations which may have been made prior to the current FWCA report;

(vi) The features of project design, construction, or operation which may not be sufficiently developed that their effects can be properly assessed;

(vii) Areas requiring further study to identify project effects and necessary conservation measures;

(viii) Coordination and studies necessary to complete consultation and to monitor implementation of conservation measures (40 CFR 1505.3);

(ix) If known, the dollar costs of acquisition, operation, maintenance, management, and replacement of recommended wildlife conservation measures;

(x) The environmental effects and probable effectiveness of recommended measures, and the results expected for wildlife resources;

(xi) Cost-effectiveness of any recommended alternative mitigation plans which the wildlife agency believes will obtain compensation;

(xii) The alternative(s), if any, preferred from the standpoint of wildlife conservation.

(3) When anlyzing project effects, wildlife agencies will take into account other applicable water-related project planning and review requirements, such as: Executive Orders 11988 (floodplains) and 11990 (wetlands); section 73 of the Water Resources Development Act of 1974 (non-structural alternatives); Indian trust environmental review requirements; the Marine Protection, Research and Sanctuaries Act of 1972; section 102(b) of the Clean Water Act; Federal Water Policy; the potential effects of the proposed project upon federal property and public trust interests, including federal water rights; state and federal outdoor recreation and fish and wildlife plans (see 16 U.S.C. 460*l*–1, 460*l*–2, 460*l*–8, 669e, 777e).

(4) Where the project in question is a federal project which was authorized by a specific Act of Congress before August 12, 1958, FWCA reports shall contain a discussion of how any land acquisition or project modifications recommended therein are compatible with project purposes.

(d) *Public participation.* Where significant wildlife resource issues are involved, wildlife agencies will invite public participation in the process of developing FWCA reports and recommendations in accordance with guidelines which they develop. Such procedures shall not cause delay in action agency reviews.

(e) *Non-reporting.* If a wildlife agency does not wish to report (see paragraph (c)(1) of this section), is unable to report, or is unable to do so within a stautorily-required or an agree-upon period of time, a lack of written response within thirty days of its receipt of an action agency request for consultation shall be deemed notice that no report is forthcoming. Such non-reporting would not relieve action agencies of the requirements of the FWCA, but shall be deemed a waiver of those provisions of § 410.24 which relate to that wildlife agency's recommendations.

(f) *Follow-through.* Once wildlife agency reports are sent to action agencies, all wildlife agencies should actively pursue such means as will ensure that studies necessary to assess project effects and to design compensation measures are undertaken.

§ 410.24 Consideration.

(a) *Action agency findings.* The procedures contained in this subsection will facilitate early identification and resolution of wildlife resource conservation issues at lower levels of action and wildlife agencies, thus avoiding the potential for delay caused by unexplained or last-minute disclosure, and appeal, of mitigation decisions. (40 CFR 1500.5(b))

(1) The reporting officer shall prepare for the administrative record (i.e. in findings of fact, a DEIS or Environmental Assessment, E.O. 11988 Notice, or a project plan or planning report, where applicable) written findings on which of the measures recommended by wildlife agencies with respect to the selected alternative and its alternatives are and are not believed to be justified, and why. This documentation will also include:

(i) A summation of measures which would be necessary to compensate for wildlife resources losses caused by project alternatives,

(ii) A finding whether the selected alternative compensates for losses to wildlife resources, their productivity, and related values,

(iii) The justification for tradeoffs made between wildlife conservation measures and other project features in arriving at the selected project alternative,

(iv) An identification of any issues of disagreement remaining between the action agency and the wildlife agencies.

(2) In addition to the matter required for federal projects by section 2(f) of the FWCA (16 U.S.C. 662(f)), the reporting officer will display in any cost-benefit analysis which is being prepared the acquisition, operation, maintenance, replacement, and management costs of wildlife resource loss compensation measures proposed by each wildlife agency for alternatives under consideration. The reporting officer shall also discuss the environmental effects of such compensation measures and (where quantifiable) treat uncompensated damages to fish and wildlife resources as a cost chargeable to the project. All such costs (monetary and non-monetary) shall be estimated over the life of the project, regardless of whether the U.S. Treasury or non-federal parties will bear them.

(3) In making the findings required by paragraphs (a)(1) and (a)(2) of this section, the reporting officer and each higher action agency decision-making authority should use the criteria established in paragraph (b) of this section.

(4) Where the findings required by paragraphs (a)(1) and (a)(2) of this section have not been disclosed in a draft EIS (40 CFR 1502.14(f), 1502.16(f)), a publicly circulated planning document, or in public or adjudicatory hearings, the reporting officer shall publish those findings in the Federal Register or other appropriate media (40 CFR 1506.6) and afford the public reasonable opportunity to present its views. In the case of FERC and NRC-approved projects, opportunities for administrative or court review of the findings of action agency initial or final decision-makers will not be considered compliance with this paragraph.

(5) The reporting officer shall transmit the information required by paragraphs (a)(1) through (a)(3) of this section to counterpart officials in the wildlife agency(ies) concerned for an agreed-upon period of time, not to exceed 30 days, for comment prior to final action agency action on the matter; preferably prior to public hearings which the agency would hold as part of its review process. If there are differences at this stage between a wildlife agency and the action agency on the reporting officer's disposition of wildlife agency recommendations, the wildlife agency may request the action agency to hold a public hearing on the matter or make these findings a subject to be addressed at hearings otherwise planned. Action agency implementing procedures shall require an ensuing reconsideration of the matter and, if such hearing are deemed appropriate by the action agency, full consideration of information generated by such public hearings. Differences should be resolved at the lowest possible levels. Those not resolved in this manner shall be made a matter of record and, if requested by either the action or wildlife agency, promptly referred to higher authority of both agencies for attempted resolution prior to final action agency action. Where memoranda of understanding or agreement do not already so provide, implementing procedures shall provide a means of complying with this paragraph.

(6) If, despite best efforts, wildlife agencies cannot identify loss prevention, mitigation, and enhancement measures in time to ensure that wildlife resource conservation options are not foreclosed, action agencies shall include in their recommendations to higher authorities the requirements necessary to ensure that, once identified and described, these measures will be proposed for authorization or approval and, if authorizied and funded or approved, will be implemented. Once a project is authorized or approved under these circumstances, action agencies should avoid committing resources which foreclose adoption of alternative conservation measures until all reasonable efforts have been made to obtain and consider wildlife agency reports, and to seek authorization or approval of justified measures.

(b) *Justification for adopting or rejecting mitigation or enhancement measures.* (1) Action agencies are required by the FWCA to make findings on all recommended wildlife conservation measures, and to decide which of those they deem "justified" to be included in projects to obtain maximum overall project benefits to the public. These findings of justification are made as part of the public interest review conducted by action agencies with regard to a project, in which decisions are made to adopt or reject wildlife resource conservation measures using substantive social, environmental, and economic reasons. Maximum overall project benefits include both quantifiable and non-quantifiable economic, social, and environmental benefits.

(2) NEPA and the FWCA expanded the organic authorities of action agencies to provide them authority to consider and adopt mitigation and enhancement measures, though wildlife conservation may not have been a "purpose" for which a federal project was authorized, or though non-federal project approvals could not otherwise have been conditioned to require mitigation or enhancement. In the case of federal projects undertaken the Department of the Interior, the Fish and Wildlife Act of 1956, 70 Stat. 1122 (16 U.S.C. 742f(4)), supplements such authority. Action agencies must regard wildlife resource loss prevention and compensation as a project and programmatic objective. However, for federal projects authorized by specific act of Congress before August 12, 1958, modifications to obtain wildlife conservation goals must be compatible with other authorized project objectives.

(3) With the exception of the enhancement component, the costs of wildlife resource conservation measures are not treated as benefits for the purposes of benefit-cost analysis; they are to be considered as avoiding or abating costs (losses) to existing resources and values, and are therefore treated as intergral project costs in benefit-cost and repayment calculations. Enhancement of baseline wildlife resources and values does not occur until all project-caused wildlife resource losses are offset. Projects and their wildlife conservation features may create recreational benefits, the value of which is so considered in benefit-cost analysis.

(4) Findings directed at quantifying the need for and effectiveness of wildlife resource mitigation measures shall be made using assessment and evaluation techniques based upon wildlife habitat values. Monetary or "user-day" evaluations will not be used to determine the extent of wildlife resources lost to a project, or whether given management measures compensate for project-caused losses to wildlife resources. Enhancement measures may be evaluated using other techniques, but should be measured using habitat-value-based techniques, where possible.

(5) Measures for wildlife resource loss prevention or mitigation cannot be considered unjustified solely because—

(i) The action agency or some other agency may not have adopted a habitat-based wildlife impact assessment and evaluation procedure,

(ii) Those measures, either alone or collectively, do not have a favorable monetary benefit-cost ratio, or would render the project benefit-cost ratio unfavorable,

(iii) Project beneficiaries or other non-federal entities are unwilling or unable to fund the appropriate share of federal project costs necessary to prevent or compensate for wildlife resource losses,

(iv) There are other proposed uses for land or waters recommended for wildlife compensation purposes, unless

their proposed use is found to be more in the public interest than the proposed wildlife measure, or

(v) Recommended wildlife resource properties or compensation measures are outside the immediate project boundaries.

(6) Justifiable means and measures for wildlife resource loss prevention and mitigation shall be incorporated as conditions or stipulations in action agency approvals where the practical effect of not doing so is that the means and measures will not be adopted.

§ 410.25 Requests for project authorization or approval.

(a) The reports, recommendations, and findings required by §§ 410.23 and 410.24 shall be made an integral part of action agency reports submitted to (1) the Office of Management and Budget and the Congress in connection with a Congressional construction authorization proposal, and (2) to action agency final decision-maker(s) in the case of projects they may approve or authorize without Congressional action.

(b) Reports and findings submitted by action agencies to the Congress in connection with Federal project construction authorization legislation will contain the following:

(1) A separate, detailed description of alternative mitigation measures which will attain compensation for wildlife resource losses, using a habitat-value based evaluation; whether or not such an alternative has been recommended by the action agency. The implementation costs of such alternatives will be displayed, including operation, maintenance, and replacement costs computed over the life of the project. When a compensation plan has not been recommended by the action agency, it will set forth a comparison of those types of costs for its preferred alternative with those of a compensation plan.

(2) A recommendation for any necessary authority to expend appropriated funds for implementation of wildlife resource mitigation measures concurrent and proportionately with project implementation, including the authority to expend appropriated funds for operation, maintenance, and replacement of mitigation features throughout the life of the project.

(3) Recommended legislation creating an account in the Treasury for deposit of reimbursed mitigation costs and their transfer to the agency managing the mitigation measures.

(4) Where a wildlife resource mitigation plan has not been prepared and authority for implementation of all potential mitigation would not be provided by the project authorization or other legislation, a provision should be recommended establishing the authority to implement such mitigation, once determined.

(5) The concurrent and proportionate mitigation report required by OMB Circular A-11.

(6) Provision for indexing of any cost ceilings placed upon mitigation expenditures

Subpart C—Project Implementation

§ 410.31 Congressional liaison.

Wildlife agencies will make themselves available to testify in authorization and appropriations committee hearings concerning proposals for Congressional authorization or funding of wildlife conservation measures.

§ 410.32 General plans for management of wildlife resource properties.

A General Plan is a document that designates the lands which are to be transferred as wildlife resource management properties and generally describes the use of such properties for wildlife management purposes. The objective of General Plans is to ensure a realization of authorized wildlife resource conservation measures. Two or more agencies may have legislative jurisdiction over areas so transferred for different purposes. Wildlife management thereon would be carried out primarily by an agency designated in the manner set out below.

(a) *The determination of which agency shall manage wildlife resource properties.* If the statutory authorization for a federal project provides that the wildlife resource properties are to be a component of the National Wildlife Refuge System, *per se*, it will be managed by or through FWS. (90 Stat. 199). Unless the project authorization specifically provides which federal or state agency shall have primary responsibility for managing the wildlife resources of these wildlife resource properties, the Secretary of the Interior makes a threshold determination whether the area in question has value to the National Migratory Bird Management Program, and this in turn determines which agency is eligible to undertake lead wildlife management responsibilities within the area.

(1) *Areas with value to the National Migratory Bird Management Program.* When the Secretary of the Interior concludes that wildlife resource properties have value to the National Migratory Bird Management Program, the Secretary must be afforded an opportunity to administer the area (i) by or through an agency of the Department of the Interior, (ii) in accordance with a cooperative agreement with the appropriate state wildlife agency, or (iii) by cooperative agreement with another public or private agency or organization, including a federally-recognized group of Indians, Aleuts, or Eskimos. The FWCA provides that the costs of administering the area are to be budgeted for and supplied by the action agency. The Secretary need not assume responsibility for management of wildlife resource properties which have value to the National Migratory Bird Management Program. Moreover, if he or she and an appropriate state agency jointly agree that the state wildlife agency should assume responsibility for managing such properties, action agencies may transfer such responsibility directly, subject to a General Plan.

(2) *Other properties.* When the Secretary concludes that the wildlife resource properties do not have value for the National Migratory Bird Management Program, the state wildlife agency must be afforded the opportunity to assume management of the lands, without cost for administration.

(b) *Development and approval of general plans.* The agency or organization which will have primary wildlife resource management jurisdiction of the area should normally be requested to initiate development of a draft general plan. General plans shall be approved at the same time as the document which transfers administration of the lands from the primary jurisdiction agency to the agency or organization designated in accordance with paragraph (a) of this section. Regardless of which agency will manage the wildlife resources of the area, the General Plan must be approved or modified jointly by—

(1) The head of the primary jurisdiction agency,

(2) The Secretary of the Interior, and

(3) The head of the wildlife agency of the state wherein the proposed project may be or is constructed.

Where the FWS and NMFS agree that wildlife resources of interest to NMFS would be substantially affected by management of the wildlife resource property which is the subject of the General Plan, it must also be signed by the Administrator of NOAA.

(c) *Reports.* Any agency administering wildlife resource properties may be requested to prepare annual reports to action and federal wildlife agencies demonstrating how authorized wildlife conservation measures and the General Plan are being implemented and how

compensation and enhancement is being achieved.

§ 410.33 Study or modification of authorized or approved projects.

Post-authorization or post-approval wildlife resource studies should be made either by wildlife agencies, or after consultation with wildlife agencies. In conjunction with the monitoring provided for in NEPA regulations (40 CFR 1505.3), post-construction studies should evaluate the impact of any non-implementation of measures recommended by wildlife agencies, the effectiveness of implemented wildlife resource conservation measures, and the need for added conservation measures. Wildlife agencies have a continuing obligation to ensure that wildlife resource conservation measures and follow-up studies are implemented. All reports, findings, and determinations resulting from such studies shall be incorporated into any reports on modification or supplementation of plans for previously authorized projects and employed in complying with the FWCA and these rules. See § 410.11(b).

§ 410.34 Implementation of authorized mitigation at federal projects.

(a) *Budgeting for operation, maintenance, and replacement of mitigation measures.* Annual funding requests for operation, maintenance, and replacement of authorized wildlife resource mitigation measures will be computed by the agency administering such measures, reviewed by the wildlife agencies, and referred by FWS to the action agency for inclusion in its annual appropriations requests to the Office of Management and Budget (OMB).

(b) *Concurrent and proportionate implementation of mitigation.* Action agencies will consult with wildlife agencies on their annual funding requests for implementation of mitigation, and will include in the budget submission which is required by OMB Circular A-11, section 13.2(m), funding requests for—

(1) Installation, operation, maintenance, and replacement costs of mitigation measures, to be spent at least concurrent and proportionately with similar costs to the major project features;

(2) Mitigation land acquisition no later than, and proportionately to, land acquisition for other project features;

(3) Carrying out measures contemplated by 40 CFR 1508.20(b), (c), (d), as soon as reasonably possible, and prior to project completion.

Subpart D—Implementation of This Part

§ 410.41 Effect of this part.

(a) *Upon agencies of the Interior and Commerce Departments.* When these rules become effective, they will be binding upon the agencies of the Departments of the Interior and Commerce, except to the extent that variances may be approved by the Secretary of the Interior in accordance with §§ 410.42(a)(5) and 410.42(b).

(b) *Action agencies.* (1) Except as variances may be granted in accordance with §§ 410.42(a)(5) and 410.42(b), the following procedural provisions of this Part will become binding upon action agencies upon the effective date of this part:

(i) Section 410.12
(ii) Section 410.15(a) and (b)
(iii) Section 410.22
(iv) Section 410.24, except as noted in § 410.41(b)(2);
(v) Section 410.25
(vi) Section 410.32(b)
(vii) Section 410.33
(viii) Section 410.34
(ix) Section 410.42
(x) Section 410.43

(2) The following provisions are to be considered guidelines for action agencies which action agencies should propose to adopt as part of their implementing procedures:

(i) Section 410.24(a)(3)
(ii) Section 410.24(b)(5)
(iii) Section 410.16
(iv) Section 410.15(c)

(3) The remaining provisions constitute the interpretation of the Departments of Interior and Commerce of the Act and its requirements.

§ 410.42 Action agency implementing procedures.

(a) The President's directive requires that, within three months of the publication (not effective) date of these rules, action agencies shall propose to the Secretary of the Interior existing or proposed procedures which would implement this Part. Action agencies will first identify in that proposal the typical classes of projects undertaken or approved by them which are referred to in §§ 410.11, 410.14, and 410.17 of Subpart A. For each class of projects so identified, and not exempt by application of § 410.14, action agencies shall provide responses to the following.

(1) What are the statutory and U.S. Code citations under which authority the class of projects may be authorized or approved?

(2) What specific procedures exist, or are proposed, to satisfy the provisions of this Part listed in § 410.41(b) (give specific CFR or other citations to appropriate sections of action agency procedures)? Where possible, a flow chart of action agency procedures should be provided showing where these requirements would apply.

(3) Does the law applicable to the action agency positively bar the adoption of any of those provisions, either generally or as applied to a particular class of projects?

(4) How would implementing procedures be adopted—by codified regulation, by a public proceeding, or by other instructions—and what time delay may be required by procedural preconditions to their adoption?

(5) If any provisions listed in § 410.42(b) are believed to be inappropriate for a class of projects, are there reasons why such classes should be exempt, or is there an alternative which satisfies the substance and intent of the provisions?

(b) The Secretary will publish in the Federal Register a notice of action agency submissions in response to paragraph (a) of this section and provide the public other notice in accordance with 40 CFR 1506.6(a)(1), (a)(3)(1) and (a)(3)(ii). The Secretary will provide the public adequate opportunity to comment thereon. In consultation with the Administrator of NOAA and the head of the Federal agency in question, the Secretary of the Interior will resolve any differences or interpretation and applicability of this Part which may arise and cannot be resolved by staff during the process of approval of implementing procedures.

(c) The Secretary will act upon implementing procedures which are proposed in accordance with paragraph (a) of this section and are consistent with the requirements of this part within one hundred fifty (150) days of the publication date of this part.

§ 410.43 Comprehensive planning requirements.

Action agencies will review the comprehensive water and related land resources and water quality planning programs administered by them to determine what level(s) of wildlife agency involvement therein are presently provided for by written action agency procedures. Action agencies will report such determinations to the Secretary of the Interior and, if necessary, propose to the Secretary new coordination procedures for wildlife agency involvement in such programs, including (but not limited to) those authorized by, or referred to as

(a) Water Resources Planning Act of 1965,

(b) Sections 201, 208, 303, and 314 of the Clean Water Act of 1977,

(c) Type IV studies of the Soil Conservation Service,

(d) Coastal Zone Management Act of 1972,

(e) Federal Land Policy and Management Act,

(f) Land and Water Conservation Fund Act,

(g) Wild and Scenic River Act,

(h) Soil Conservation and Domestic Allotment Act,

(i) Forest and Renewable Resources Planning Act of 1974,

(j) Urban Studies of the Corps of Engineers,

(k) National Forest Managment Planning Act of 1976,

(l) Soil and Water Resource Conservation Act of 1977,

(m) Surface Mining Control and Reclamation Act,

(n) Outer Continental Shelf Lands Act.

[FR Doc. 80-39287 Filed 12-17-80; 8:45 am]
BILLING CODE 4310-55-M

federal register

Thursday
December 18, 1980

Part IV

Department of Transportation

Federal Aviation Administration

Rotorcraft Regulatory Review Program
Notice No. 1; Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 21180; Notice No. 80-25]

Rotocraft Regulatory Review Program Notice No. 1

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to add now rotorcraft airworthiness standards and update existing criteria in the areas of instrument flight rule (IFR) certification and ice protection certification. It also proposed revisions to the applicability sections of Parts 27 and 29 which allow for increased utilization for rotorcraft engaged primarily in utility or cargo operations and provides additional protection for rotorcraft carrying 10 or more passengers. The rotorcraft industry is the fastest growing segment in aviation today. The increasing use and the advent of IFR flight in rotorcraft demonstrates the need to review these parts. This notice is based on a number of proposals discussed at the Rotorcraft Regulatory Review Conference held December 10–14, 1979, in New Orleans, LA, and the Rotorcraft Regulatory Review Meeting held August 18–20, 1980, in Washington, D.C. These proposals offer regulatory alternatives which would result in significant cost savings for rotorcraft manufacturers and operators, and represent a significant step in the FAA's program to reduce regulatory burdens through development alternatives.

DATES: Comments must be received on or before April 17, 1981.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 21180; 800 Independence Avenue SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

Comments delivered must be marked: Docket No. 21180.

Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Keenan, Regulatory Review Branch, AVS-22, Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; Telephone: (202) 755-8714.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the date specified above will be considered by the Administrator before taking action on the proposed rule. The proposed 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 substantive public contact with FAA personnel concerned with this rule making will be fixed in the docket. Commenters wishing to have FAA acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments on Docket No. 21180." The postcard will be dated, time stamped, and returned to the commenter.

For convenience, each proposal in this notice is numbered separately. The FAA requests that interested persons, when submitting comments, refer to proposals by these numbers and by the section to which they relate.

Availability of This Notice

Any person may obtain a copy of this notice of proposed rule making (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 notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Historical Background

On January 5, 1979, the FAA gave notice of its Rotorcraft Regulatory Review Program and invited all interested persons to submit proposals for consideration during its forthcoming Rotorcraft Regulatory Review Conference (Notice 79-1; 43 FR 23925). In that notice, the FAA announced that it would prepare a conference agenda containing a compilation of the proposals submitted and other information on the conference arrangements.

The FAA received 613 proposals in response to Notice 79-1, of which 569 were placed on the conference agenda. The remaining 44 proposals were excluded because they fell outside the scope of the review program or for other reasons outlined in Notice 79-1. A separate printing of six other proposals inadvertently omitted from the compilation was distributed at the conference.

In Notice 79-1A, published March 2, 1979, the FAA extended the period for submission of proposals relating to Notice 79-1 by 60 days to May 31, 1979. This action was in response to a Helicopter Association of America (HAA) letter dated February 12, 1979, which stated that they did not have sufficient manpower to translate the grassroots comments into constructive proposals and justifications within the time alloted. This action was further supported by a letter from the United Kingdom Civil Aviation Authority (CAA) dated February 14, 1979, which stated that staffing limitations prevented anything more than a broad survey of the proposals. They requested an extension of 90 days.

In light of these comments, the FAA concluded that it was in the public interest to encourage a thorough review of the regulations and that good cause existed for extending the date for submission of proposals.

On October 22, 1979, the FAA announced that the Rotorcraft Regulatory Review Conference would be held in New Orleans, Louisiana from December 10–14, 1979, and that the conference agenda and compilation of proposals were available (Notice 79-1B; 43 FR 60747).

On November 23, 1979, the FAA announced a change in the agenda for the Rotorcraft Regulatory Review Conference to divide the specialty areas into three separate sessions rather than four (Notice 79-1C; 43 FR 67136). Over 155 persons attended the conference which convened on December 10, 1979, remaining in session until each proposal had been discussed. A transcript of those discussions has been placed in the docket.

On March 24, 1980, the FAA received a letter from the Helicopter Association of America and the Aerospace

Industries Association of America, Inc., requesting a meeting to present material to the FAA in an effort to assure themselves that the industry logic was understood by the Rotorcraft Review Team. The FAA gave careful consideration to the request and determined it would be in the best interest of all concerned to provide the requested meeting. The FAA also felt that all interested persons should be afforded the same opportunity to listen to and comment on the industry logic. Accordingly, Notice 79-1D (44 FR 43202; June 26, 1980) announced a Rotorcraft Review Meeting to be held August 18-20, 1980, in Washington, D.C. The meeting began at 9:00 a.m. on August 18, 1980, and remained in session through August 20, 1980. A copy of the transcript has been placed in the docket.

The FAA plans for the Rotorcraft Regulatory Review Program contemplate publication of six notices of proposed rulemaking. This first notice includes proposals dealing with the applicability sections of Parts 27 and 29 of the Federal Aviation Regulations (FAR), plys IFR certification and icing criteria. The second notice will cover flight and systems proposals. The third notice will cover powerplant proposals. The fourth notice will cover the airframe proposals and the fifth notice will cover operations and maintenance proposals. The final notice, if needed, will pick up on all deferred proposals.

Regulatory Structure

Both Parts 27 and 29 of the FAR's deal with certification of civil rotorcraft. Part 27 currently deals with rotorcraft that are under 6,000 pounds and Part 29 deals with rotorcraft over 6,000 pounds. Within Part 29, there are two categories—A and B.

Category A provides the most rigid rules, requiring independent engines, fuel systems and electrical systems. Category A also requires that no single failure in these areas can cause simultaneous loss of two or more engines.

Category B of Part 29 deals with rotorcraft under 20,000 pounds. These rotorcraft may be single- or multiengine and are not limited in the number of passenger seats. Category B rotorcraft are not required to have the capability for continued flight in the event of an engine failure.

The Proposals

It is important to clearly define the nature of the rotorcraft addressed in these proposals as early as possible in the rulemaking process because of the potentially far-reaching effects on and the interface with the remainder of the rotorcraft rules. Applicability is therefore being included in the first notice. Also, in view of projections for increased usage of rotorcraft in IFR and icing conditions, these subjects are considered high priority and are included in this first notice. This proposal is part of the ongoing regulatory program of the FAA to upgrade type certification standards for rotorcraft consistent with the advancing state of the art of aircraft and aircraft engines.

Economic Impact

A preliminary evaluation has been prepared examining the potential economic impacts of the regulatory changes proposed in this notice. The results of the preliminary evaluation are summarized here and a copy of the evaluation report has been placed in the docket. The evaluation examines the effects and potential impacts of the following proposed changes to Parts 27 and 29 of the Federal Aviation Regulations (FAR)—

1. Formal adoption within the FAR of airworthiness standards and related operational limitations that will enable electing users to safely utilize conforming rotorcraft in Instrument Flight Rule (IFR) conditions;

2. Formal adoption within the FAR of airworthiness standards and related operational restrictions that will enable electing users to safely uilize conforming rotorcraft in icing conditions; and

3. Revisions to the applicability sections of Parts 27 and 29 to limit the number of passengers for which normal category and category B rotorcraft may be certificated, to require category A certification for any rotorcraft design to carry 10 or more passengers, to remove the 20,000-pound weight limit on category B rotorcraft, and to remove the height-velocity operating limitation from category B rotorcraft.

On the basis of the preliminary evaluation, the only changes proposed in this notice that are expected to have considerable impacts on rotorcraft manufacturers or operators are those included in the revisions to the applicability sections of Parts 27 and 29. The nine passenger limit for normal category rotorcraft will impose no cost impacts until it is possible to produce vehicles that are not only technically but also commercially feasible. Removal of the 20,000-pound weight limit on category B rotorcraft will provide opportunities for increased revenues to operators through the availability of helicopters designed to category B standards but with higher gross weights and payloads than are currently permitted.

Removal of height-velocity as an operational limitation on category B rotorcraft will provide operators with opportunities for increased revenues from greater utilization of category B rotorcraft in utility and cargo missions.

The requirement for category A certification of rotorcraft with 10 or more passengers will increase cost to manufacturers and operators of such rotorcraft up to 20,000 pounds gross weight.

Uncertainties and Assumptions. It is difficult to anticipate when the impacts of these proposed changes to airworthiness standards will be felt, how many aircraft will be impacted, or the size of the impacts if and when they are ever realized. In the past, helicopter development programs normally lasted from 3 to 5 years after the commitment date, which would suggest that the impacts of the proposed rule changes would start to be seen in the prices of new production helicopters between 1983 and 1985. However, a recent report prepared for the Helicopter Association of America asserted that "* * * manufacturers have either applied for civil type certificates for all those helicopters and their derivatives which are likely to come into existence in the next few years * * * or the advanced design are not sufficiently defined to allow a thorough analysis of performance, acoustic levels, and operating costs." (Bolt, Baranek and Newman, Inc., Report No. 4226 "Economic Impact of Proposed FAA Helicopter Noise Regulation (NPRM 79-13)" January 1980, Cambridge, Massachusetts, page viii.) Accordingly, while the impacts of these proposed changes might be seen as early as 1983 or 1985, it seems more likely that they will not occur until 1988 or 1990. They types and numbers of new helicopters to be produced in that time frame are equally difficult to predict. Moreover, the potential progress in helicopter technology over the next 5 to 10 years makes the estimation of actual cost impacts highly speculative. Accordingly, it was necessary to adopt a set of assumptions that are representative of potential future industry conditions and to estimate costs on the basis of current year costs. It was also necessary to assume that changes will be achieved in the context of current technology, in terms of current capabilities, and in terms of technology in which new requirements would be embedded. These assumptions are that—

(a) Estimates are in 1980 dollars.

(b) Costs are developed on a "per certification" basis. That is, the costs developed herein should be multiplied by the number of expected Part 27 and/

or Part 29 rotorcraft certifications as appropriate for the relevant time period.

(c) Onetime certification cost estimates are the maximum amount for an average sized Part 27 or Part 29 rotorcraft.

(d) A 3-year development period is assumed. Onetime design, test, and demonstration costs are assigned to and spread over the development period.

(e) All incremental production costs/savings and revenue increases/decreases are assigned to operators. One-half of the amount is assigned to the year of production/purchase and the full amount is assigned in each succeeding year.

(f) Production starts in the first year after development (year 4). The first year production quantity for Part 27 rotorcraft is assumed to be 100 units. The first year production for Part 29 rotorcraft is assumed to be 50 units.

(g) Annual production of Part 27 rotorcraft in the following years is assumed to be 200 units. Annual production for Part 29 rotorcraft is assumed to be 100 units in each following year.

(h) Total Part 27 rotorcraft production is assumed to be 500 units and Part 29 production is assumed to be 250 units for allocation of onetime production costs/savings to individual rotorcraft. These costs/savings are assigned to operators in the year of purchase.

(i) Increases or decreases in rotorcraft weight are valued at $300 per pound per unit produced.

(j) Increases or decreases in rotorcraft payload are valued at $300 per pound per rotorcraft per year.

(k) Multiengine rotorcraft in the 6,000 to 20,000-pound weight range that are certificated to category B standards will require a 20 percent increase in engine power in order to provide equivalent payload capacity over a reasonable portion of the operating envelope when certificated and operated under category A standards.

(1) An increase in a rotorcraft engine power rating by one shaft horsepower will cost the manufacturer $160 per aircraft. This includes the cost of upgrading the transmission.

Discussion. The adoption in Parts 27 and 29 of certification standards and operational limitations related to IFR approval of rotorcraft is considered to have no economic impact since there will really be no change in current operating practices or standards. IFR certification is not mandatory, so the applicant has the opportunity to evaluate whether the provisions of IFR capability in a given model rotorcraft will be sufficiently attractive in the market that it will help achieve revenues, profits, and market-share objectives. Moreover, many rotorcraft have been approved for IFR under earlier interim standards that are so similar to the proposed standards that this proposal does not materially alter the economic requirements. The formal adoption of the interim standards into the FAR is considered to benefit manufacturers by providing a more stable design standard.

The adoption of certification standards and operating limitations that will allow dispatch into and operation in icing conditions has no economic impact. Since certification for icing is not required, this proposal opens a new option for enhancing rotorcraft utilization. The manufacturer and the operator can determine what advantages this additional capability offers in given weather conditions and mission requirements and can decide whether adoption of this capability offers an economic advantage.

The applicability proposal presents a difficult economic situation to assess in precise monetary terms because of the many facets of the proposal, the many variables involved in certification and operation, and the inability to quantify safety in economic terms. Nonetheless, the following assessment can be made.

(a) *Removal of the present 20,000-pound category B weight limit.* This feature of the proposal would allow operation of category B helicopters at higher gross weights than those permitted under the present rule. The economic evaluation report provides an estimate of, as an example, an annual benefit to an operator of $600,000 for a 2,000-pound increase in cargo or passenger weight capacity. Accordingly, if 50 rotorcraft with this improved capability are produced in the first year after certification, and 100 are produced in each of the second and third years, then the annual industry increases in revenue would be $15 million, $60 million, and $120 million, respectively.

(b) *Nine passenger limit for normal category.* This aspect of the proposal would apply a nine passenger limit for certification in the normal category where none presently exists. Present helicopters certified in the normal category have passenger seating capacities of less than nine and the FAA is not aware of any projected helicopters with seating capacities of 10 or more in the 6,000-pound gross weight category. Therefore, there appears to be no significant economic impact associated with this aspect of the proposal. Rotorcraft technology has advanced to the point that helicopters under 6,000 pounds with 10 or more passenger seats may be technically feasible. However, considering the constraints that would be imposed on the range/payload tradeoffs in order to stay below 6,000 pounds, it appears that such a rotorcraft would not offer any competitive advantage over rotorcraft already in production and would offer no opportunity for model derivation.

(c) *Removal of height-velocity as a limitation for Part 29, Category B.* This feature of the proposal is judged to represent a moderate savings to operators because of greater utilization and less restriction in the ways in which rotorcraft can be used for utility and cargo application, confined area operations, etc.

(d) *Requirement for Part 29, category A certification with ten or more passengers.* This element of the proposal would necessitate certification and operation under category A requirements for new rotorcraft with passenger seating capacity of 10 or more. It would alter the eligibility for certification of rotorcraft up to 20,000 pounds. The economic impact of this proposal is characterized by many variables. The impact of the category A operational requirement would vary over the operating envelope of the rotorcraft. For operations in cold ambient conditions at sea level heliports with large surface areas, there would be no economic impact since the category A and category B weight limits for operating in this condition would be similar. Any major impact on operating payload would tend to occur in hot day, high altitude ambient conditions while operating from confined heliports near the maximum weight capabilities of the helicopter. Rather than accept a performance loss for category A, manufacturers may elect to provide their passenger carrying operators with the payload capability which would have been available from category B. This will necessitate increased engine power and transmission input drive substantiation for one-engine-inoperative situations and would essentially be a one-time cost passed on by the manufacturer to the purchaser. The cost will vary by the environmental conditions for which the rotorcraft is marketed, the size of the rotorcraft and engine, the amount of additional power the manufacturer elects to provide, and factors such as the growth potential of current engines.

Performance tradeoffs and therefore engine power tradeoffs are possible for various combinations of weight, altitude, temperature, and category A takeoff distance. However, assuming a 20 percent power increase would provide an equivalent payload to that currently

existing with category B throughout a reasonable portion of the envelope, a 700 SHP engine would require a 140 SHP increase.

Applying an average cost factor of $160 per SHP increase gives a cost increase of $22,400 per engine or $44,800 for each twin engine rotorcraft. If the purchase price of the rotorcraft were $1.5 million, the cost to provide the increased power and performance would be 3 percent of the cost of the helicopter. Using the assumed production rates for Part 29 rotorcraft, 50 helicopters would be affected in the first year of production of each certificated model and 100 in succeeding years. This results in 300 rotorcraft being affected and an increase in cost of $11,200,000 for the first 3 years of production. In addition, there may be some increase in fuel consumption as a result of operating the more powerful engines at a lower percentage of power during normal conditions. Assuming a turbine powered multiengine helicopter consuming fuel at 700 pounds per hour at a cost of $1.50 per gallon, a 5 percent increase in fuel consumption would equate to an additional 35 pounds per hour or approximately $7.95 per hour increased operating costs. For a helicopter operating 500 hours per year, the annual increase would be approximately $3,977. If 50 helicopters are produced in the first year after certification, and 100 are produced in each of the succeeding 2 years, the operating cost increase would be approximately $1,293,000 for the first 3 years. Thus, each rotorcraft model certificated under these provisions shares a total cost impact of approximately $12.5 million over the first 3 years of production and operation.

The increase in power would have other beneficial effects in terms of category B performance and increase cruise and V_{NE} speeds if the rotorcraft were certified for operation in both categories. (Therefore, although there may be some moderate to major costs associated with the 10-passenger, category A requirements, they may be minimized or offset by other benefits and gains in safety.)

The foregoing is a summary of information and analysis presented in the draft regulatory evaluation in the docket for this rulemaking action. Commentators are requested to provide additional or alternative cost impact information where appropriate, i.e., where the requirement will have sufficient impact on the overall cost of the development program or on the cost of manufacture to have a measurable effect on unit price. Commentators are encouraged to avoid general comments and impact estimates, but to address particular changes with clear statements of the technical requirements and the related cost impacts.

The Proposed Amendments

Accordingly, it is proposed to amend Part 27 and 29 of the Federal Aviation Regulations (14 CFR Parts 27 and 29) as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. By revising § 27.1(a) by deleting the period at the end of § 27.1(a) and continuing that paragraph to read as follows:

§ 27.1 Applicability.

(a) * * * that have a passenger seating configuration, excluding pilot seats, of nine seats or less.

* * * * *

Explanation: This change is incorporated to retain consistency with proposed § 29.1 See the explanation for proposed § 29.1.

2. By deleting the word "and" at the end of § 27.141(b)(1); by adding a new § 27.141(b)(3); and by adding a sentence to the end of § 27.141(c) to read as follows:

§ 27.141 General

* * * * *

(b) * * *

(3) Sudden, complete control system failures specified in § 27.695 of this part; and

* * * * *

(c) * * * Requirements for helicopter instrument flight are contained in Appendix A of this part.

Explanation: The powered control system failure condition proposed in § 27.141(b)(3) results from an HAA/AIA proposal which was added at the Rotorcraft Regulatory Review Conference in New Orleans. The HAA proposed consideration of single powered control system failures in the general flight characteristics requirements of § 27.141(b). The FAA endorses this proposal and has referenced the single failure design requirements of § 27.695 for consistency. Rotorcraft must be capable of continued safe flight in the event of any single failure of a powered control system. Adoption of this proposal would prevent loss of control and dangerous flight conditions in the event of any such failure and would ensure continued safe flight.

A sentence is added to § 27.141(c) to provide a regulatory reference to the IFR criteria proposed for adoption in this notice. A substantively identical change is also proposed for § 29.141.

Ref: Proposals 24, 26, 181, 182, 574, 575; Committee I.

§ 27.1419 [New]

3. By adding a new § 27.1419 to read as follows:

§ 27.1419 Ice protection.

(a) If certification with ice protection provisions is desired compliance with this section must be shown.

(b) The rotorcraft must demonstrate the capability to safely operate in the continuous maximum and intermittent maximum icing conditions determined under Appendix B of Part 29 of this chapter within the rotorcraft flight envelope. An analysis must be performed to establish, on the basis of the rotorcraft's operational needs, the adequacy of the ice protection system for the various components of the rotorcraft.

(c) In addition to the analysis and physical evaluation prescribed in paragraph (b) of this section, the effectiveness of the ice protection system and its components must be shown by flight tests of the rotorcraft or its components in measured natural atmospheric icing conditions and by one or more of the following tests as found necessary to determine the adequacy of the ice protection system:

(1) Laboratory dry air or simulated icing tests, or a combination of both, of the components or models of the components.

(2) Flight dry air tests of the ice protection system as a whole, or its individual components.

(3) Flight tests of the rotorcraft or its components in measured simulated icing conditions.

(d) The ice protection provisions of this section are considered to be applicable primarily to the airframe and rotor systems. For the powerplant installation, certain additional provisions of Subpart E of this part may be applicable.

(e) A means must be identified or provided for determining the formation of ice on critical parts of the rotorcraft. Unless otherwise restricted, the means must be available for nighttime as well as daytime operation. The rotorcraft flight manual must describe the means of determining ice formation and must contain information necessary for safe operation of the rotorcraft in icing conditions.

Explanation: Recent IFR certification and operation of normal category rotorcraft make icing certification a logical follow-on. Normal category rotorcraft must be able to operate safely

in the natural icing environment if certification with ice protection provisions is desired. The icing environment in which normal and transport category rotorcraft must operate is the same. Appropriate icing criteria identical to that of proposed § 29.1419 is therefore proposed for Part 27 rotorcraft. See the explanation for proposed § 29.1419.

Ref: Proposals 92 and 275; Committee I.

4. By adding an Appendix A to Part 27 to read as follows:

Appendix A—Airworthiness Criteria for Helicopter Instrument Flight

I. *General.* A normal category helicopter may not be type certificated for operation under the instrument flight rules (IFR) of this chapter unless the helicopter meets the design and installation requirements contained in this appendix.

II. *Definitions.* (a) V_{YI} means instrument climb speed, utilized in lieu of V_Y for compliance with the climb requirements for instrument flight.

(b) V_{NEI} means instrument flight never exceed speed, utilized in lieu of V_{NE} for compliance with maximum limit speed requirements for instrument flight.

(c) V_{MINI} means instrument flight minimum speed, utilized in complying with minimum limit speed requirements for instrument flight.

III. *Trim.* It must be possible to trim the cyclic, collective, and directional control forces to zero at all approved IFR airspeeds, power settings, and configurations appropriate to the type.

IV. *Static longitudinal stability.*— (a) *General.* The helicopter must possess positive static longitudinal control force stability at critical combinations of weight and center of gravity at the conditions specified in paragraphs IV(b) or (c) of this appendix as appropriate. The stick force must vary with speed so that any substantial speed change results in a stick force clearly perceptible to the pilot. The airspeed must return to within 10 percent of the trim speed when the control force is slowly released for each trim condition specified in paragraph IV(b) of this appendix.

(b) *For single pilot approval:*

(1) *Climb.* Stability must be shown in climb throughout the speed range 20 knots either side of trim with—

(i) The helicopter trimmed at V_{YI};

(ii) Landing gear retracted (if retractable); and

(iii) Power required for limit climb rate (at least 1,000 fpm) at V_{YI} or maximum continous power, whichever is less.

(2) *Cruise.* Stability must be shown throughout the speed range from 0.7 to 1.1 V_H or V_{NEI}, whichever is lower, not to exceed ±20 knots from trim with—

(i) The helicopter trimmed and power adjusted for level flight at 0.9 V_H or 0.9 V_{NEI}, whichever is lower; and

(ii) Landing gear retracted (if retractable).

(3) *Slow cruise.* Stability must be shown throughout the speed range from 0.9 V_{MINI} to 1.3 V_{MINI} or 20 knots above trim speed, whichever is greater, with—

(i) The helicopter trimmed and power adjusted for level flight at 1.1 V_{MINI}; and

(ii) Landing gear retracted (if retractable).

(4) *Descent.* Stability must be shown throughout the speed range 20 knots either side of trim with—

(i) The helicopter trimmed at 0.8 V_H or 0.8 V_{NEI} (or 0.8 V_{LE} for the landing gear extended case), whichever is lower;

(ii) Power required for 1,000 fpm descent at trim speed; and

(iii) Landing gear extended and retracted, if applicable.

(5) *Approach.* Stability must be shown throughout the speed range 20 knots either side of trim with—

(i) The helicopter trimmed at the recommended approach speed or speeds;

(ii) Landing gear extended and retracted, if applicable; and

(iii) Power required to maintain a 3° glide path and power required to maintain the steepest approach gradiant for which approval is requested.

(c) Helicopters approved for a minimum crew of two pilots must comply with the provisions of paragraphs IV(b)(2) and IV(b)(5) of this appendix.

V. *Static lateral-directional stability.*—(a) Static directional stability must be positive throughout the approved ranges of airspeed, power, and vertical speed. In straight, steady sideslips, directional control position must increase proportionally with angle of sideslip, up to ±10° from trim. At greater angles of sideslip up to that at which full directional control is employed, or the maximum sideslip angle appropriate to the type is obtained, increased directional control position should produce increased angles of sideslip.

(b) During sideslips up to ±10° from trim throughout the approved ranges of airspeed, power, and vertical speed there must be no negative dihedral stability perceptible to the pilot through lateral control motion or forces. Longitudinal cyclic movement with sideslip must not be excessive.

VI. *Dynamic stability.*—(a) For single pilot approval—

(1) Any oscillation having a period of less than 5 seconds must damp to one-half amplitude in not more than one cycle.

(2) Any oscillation having a period of 5 seconds or more but less than 10 seconds must damp to one-half amplitude in not more than two cycles.

(3) Any oscillation having a period of 10 seconds or more but less than 20 seconds must be damped.

(4) Any oscillation having a period of 20 seconds or more or any aperiodic response may not achieve double amplitude in less than 20 seconds.

(b) For helicopters approved with a minimum crew of two pilots—

(1) Any oscillation having a period of less than 5 seconds must damp to one-half amplitude in not more than two cycles.

(2) Any oscillation having a period of 5 seconds or more but less than 10 seconds must be damped.

(3) Any oscillation having a period of 10 seconds or more or any aperiodic response may not achieve double amplitude in less than 10 seconds.

VII. *Stability augmentation system (SAS).*—(a) If a SAS is used, the reliability of the SAS must be related to the effects of its failure. The occurrence of any failure condition which would prevent continued safe flight and landing must be extremely improbable, or it must be shown that after any failure condition of the SAS that is not extremely improbable—

(1) The helicopter is safely controllable and is capable of prolonged instrument flight without undue pilot effort. Additional unrelated probable failures or combinations of failures must be considered; and

(2) The flight characteristics requirements in Subpart B of Part 27 are met throughout a practical flight envelope.

(b) The SAS must be designed so that it cannot create hazardous deviation in flight path or produce hazardous loads on the helicopter during normal operation or in the event of malfunction or failure, assuming corrective action begins within an appropriate period of time. Where multiple systems are installed, subsequent malfunction conditions must be considered in sequence unless their occurrence is shown to be improbable.

VIII. *Equipment, systems, and installation.* In addition to the basic equipment and installation requirements specified in §§ 29.1303, 29.1309, and 29.1431 though Amendment 29–14, the following equipment must be installed:

(a) *Instruments.*

(1) In place of the requirement of § 29.1303(h), a magnetic gyro stabilized direction indicator;

(2) In place of the requirement of § 29.1303(i), an instantaneous vertical speed indicator (IVSI); and

(3) In place of the rate-of-turn indicator required by § 29.1303(g), a standby attitude indicator which meets the requirements of §§ 29.1303(g)(1) through (7). If standby batteries are provided, they may be charged from the aircraft electrical system if adequate isolation is incorporated. The system must be designed so that the standby batteries may not be used for engine starting.

(b) *Miscellaneous requirements.*

(1) Instrument systems and other systems essential for IFR flight that could be adversely affected by icing must be provided with adequate ice protection, whether or not the rotorcraft is certificated for operation in icing conditions.

(2) There must be means in the generating system to automatically de-energize and disconnect from the main bus any power source developing hazardous overvoltage.

(3) Each required flight instrument using a power supply must have a visual means integral with the instrument to indicate the adequacy of the power being supplied.

(4) When multiple systems are required, each system must be grouped, routed, and spaced so that physical separation between systems is provided to ensure that a single malfunction will not adversely affect more than one system.

(5) For single pilot IFR—

(i) Only the required flight instruments for the pilot may be connected to the operating system provided for the pilot; and

(ii) Instruments which require a static source must be provided with a means of selecting an alternate source and that source must be calibrated.

(6) Dual pilot IFR. For systems that operate the required flight instruments which are located at each pilot's station—

(i) Means must be provided to connect the required instruments at the first pilot's station to operating systems which are independent of the operating systems at any other flight crew stations, or other equipment;

(ii) The equipment, systems, and installations must be designed so that one display of the information essential to the safety of flight which is provided by the instruments will remain available to the pilots, without additional crewmember action, after any single failure or combination of failures that is not shown to be extremely improbable; and

(iii) Additional instruments, systems, or equipment may not be connected to the operating systems for the required instruments, unless provisions are made to ensure the continued normal functioning of the required instruments in the event of any malfunction of the additional instruments, systems, or equipment which is not shown to be extremely improbable.

IX. *Rotorcraft Flight Manual.* A Rotorcraft Flight Manual or Rotorcraft Flight Manual IFR Supplement must be provided and it must contain the following:

(a) *Limitations.* The approved IFR flight envelope, the IFR flight crew composition, the revised kinds of operation, and the steepest IFR precision approach gradient for which the helicopter is approved.

(b) *Procedures.* Required information for proper operation of IFR systems, and the recommended procedures in the event of stability augmentation or electrical system failures.

(c) *Performance* If V_{YI} differs from V_Y, climb performance at V_{YI} and with maximum continuous power throughout the ranges of weight, altitude, and temperature for which approval is requested.

Explanation: IFR certification standards for civil helicopters have been under development for many years. In 1952 a list of necessary IFR characteristics was set forth in paragraph 6.120-2(b) of a proposed CAM 6 supplement. In 1959, the list was updated, applied to the Cessna CH-1C (IFR), and found substantially sound for single pilot certification of that model in 1960. Since that time, the Civil IFR Standard has been updated periodically and applied during nearly 20 civil IFR helicopter type certification programs. This Appendix A proposal for helicopter instrument flight represents a consolidation of FAA, manufacturer, and user experience gathered since 1952 and refined in several versions of "The Interim Standard" for IFR certification of helicopters. Sources considered in drafting this proposal include the IFR military experience, military handling qualities specifications, including MIL-H-8501A, General Requirements for Helicopter Flying and Ground Handling Qualities, where applicable, experience of the research and development community, including simulation programs and variable stability helicopter studies, SFAR 29-2 operational experience, the type certification experience mentioned previously, the December 15, 1978, FAA Airworthiness Criteria for Helicopter Instrument Flight, and the HAA IFR proposal of December 4, 1979.

As discussed at the Rotorcraft Review Conference, the December 15, 1978, FAA Airworthiness Criteria for Helicopter Instrument Flight was substituted in its entirety for FAA proposals 151 and 413. The HAA counterproposal to the December 15 standard was compared and assessed in each of its requirements during drafting of this appendix. Portions of both the December 15 and HAA criteria are considered inappropriate for incorporation into a regulatory standard. Examples, techniques, and acceptable means of compliance are excluded in order that one acceptable means of compliance would not become the only acceptable means of compliance. Acceptable compliance procedures contained in the proposals, but not incorporated into the proposed appendix, will be included in a forthcoming revision to FAA Order 8110.32, Engineering Flight Test Guide for Transport Category Helicopters.

The proposed appendices for Parts 27 and 29 differ slightly. As is the case in the December 15, 1978, interim IFR standard, the handling qualities requirements for normal category two-pilot operation are relieving in two areas, static longitudinal stability and dynamic stability. The HAA proposed relief for two-pilot operation in both normal and transport categories. This would allow transport category two-pilot requirements which are less stringent than the single pilot requirements of normal category. It is inappropriate to permit less stringent handling qualities for transport category than for normal category, regardless of crew requirements. The concept of FAA's December 15, 1978, standard has been retained in this area and the appendices would provide lower requirements for the two-pilot condition in normal category only. Language in the normal category static stability requirement for two pilots is considered inappropriate for consideration in rule making. Phraseology such as "objectionable handling qualities" is overly subjective and is not enforceable as a minimum standard. In its place, positive static longitudinal stability is required for two pilots during cruise and approach conditions only. The proposed language retains the flexibility for the manufacturer to design around areas of instability for cruise through designation of V_{MINI} and V_{NEI} and through optimization of speed and gradient during approach. Areas of relaxed stability during climb, slow cruise, and descent could be found acceptable under the general flight characteristics requirements of Subpart B.

The climb condition is recognized as a critical demanding maneuver which typically represents a difficult design area for static longitudinal stability. If relief for the added two-pilot complement is to be meaningful, it must be addressed during climb. The FAA recognizes that during IFR climb pilots are highly attentive and the direction of motion of the vehicle is generally toward an open sector of airspace and away from contact with the surface. It is therefore considered appropriate to include relaxed two-pilot stability requirements for the climb condition.

Flight characteristics requirements should provide the capability to fly an equally accurate instrument approach regardless of whether the helicopter is certified for one or two pilots. The FAA considers static longitudinal stability an essential handling quality requirement during approach, and for this reason the single and two-pilot requirements during approach are identical. In addition, the static longitudinal stability paragraphs are reworded to provide a consistent format, and an airspeed reference is added to the descent requirement for the landing gear extended case in order that stability not be required beyond typical values for V_{LE}. A 3° approach path is specified for compatability with existing facilities and 3° remains the minimum requirement. Steeper approach angles were considered and are tied to demonstrations of static longitudinal stability in the proposal. The FAA does not intend to permit lower stability or a lower safety level for steep approach gradients. As such, steeper approach gradients are included under the approach stability stick force requirements of paragraph (IV)(b)(5).

The control system friction requirements contained in both FAA and HAA proposals are relaxed to allow greater return bands at high speed. The FAA considers the requirements to provide both positive slope and adequate margin at high speed an important but difficult design requirement which typically results in shallow cyclic position gradients. As such, the limit on cyclic friction band of ± 10 knots is unnecessarily restrictive and this requirement would be expanded to ± 10 percent of trim speed. This would result in no significant degradation in the level of safety for high cruise and descent conditions, but provides necessary relief for design.

The static lateral stability requirements are separated from directional stability in this proposal and are discussed as dihedral stability. Directional stability requirements would be incorporated without substantive change. The dihedral stability requirement of this proposal is intended as a compromise between the December 15 FAA proposal and the HAA counterproposal. Positive dihedral stability results in increasing right cyclic position and force when sideslipping with relative wind from the right. Stability definitions are not considered appropriate for the appendix and this feature is not included in the proposal. The FAA acknowledges that slightly relaxed dihedral stability is not necessarily detrimental to static and dynamic modes in rotorcraft, but the amount of relaxation must be constrained by control system sensitivity and by aircraft response characteristics, not by a fixed percent of cyclic travel. The intent of the proposal is to allow slightly negative dihedral stability that is within control system sensitivity, friction and component tolerances provided it is perceived as neutral up to ±10° of sideslip from trim. Fixed percentages of control system movement may or may not represent a significantly unstable gradient for any given helicopter. The FAA cannot permit a negative dihedral characteristic which results in reversed pilot force cues during sideslip conditions. Such a characteristic results in a reversal in pilot perception and a source of considerable pilot confusion. Significant reversals in dihedral stability can also modify the lateral-directional dynamic characteristic to further introduce pilot confusion. The appendix as proposed would permit a very small amount of dihedral instability throughout the range of control system deadband, but would constrain it as a function of individual control system and rotorcraft design.

Dynamic stability requirements in the proposal are essentially indentical to those from the December 15 standard for single pilot oscillatory conditions. The two-pilot oscillatory condition for periods exceeding 20 seconds is far more stringent than that for oscillations with a period between 10 and 20 seconds and provides no relaxation from the single pilot requirement. Minimum requirements for damping ratio should be inversely proportional to oscillatory frequency, and the two-pilot requirement for oscillations with a period greater than 20 seconds is not proposed. This feature is consistent with the HAA counterproposal.

Aperiodic response requirements are incorporated into the proposed amendment without the subjective references to pilot opinion utilized in previous proposals. Pilot perception of aperiodic responses is similar to that for oscillatory responses which exceed a 20-second period and typically result in gradual rates of divergence over the first few seconds of aircraft motion. Although lower in attitude rate and acceleration level than the oscillatory modes, aperiodic requirements have been held to the same level of divergence as oscillations with a 20-second period due to their more insidious nature. This concept provides safe and specific limits on aperiodic divergence. Greater rates of divergence are permitted for the normal category, two-pilot case.

Pilot delay times for stability system malfunction testing are excluded from this proposed amendment, as these criteria are more appropriately addressed in flight test guidance material. Representative time delays for typical designs will be included in a forthcoming revision to FAA Order 8110.32, Engineering Flight Test Guide for Transport Category Helicopters. Section VIII of this appendix is intended to establish criteria for equipment, systems, and their installations that are applicable to all rotorcraft, regardless of certification basis, when initially approved for IFR flight. The FAA has determined that Part 29, Subpart F through Amendment 29–14 and the additional criteria in section VIII of this appendix are adequate design criteria for IFR approved rotorcraft. The additional criteria in this appendix would require a gyro stabilized magnetic direction indicator in place of the gyro stabilized nonmagnetic direction indicator, an instantaneous vertical speed indicator in place of a standard vertical speed indicator, a standby attitude indicator with source of power independent of rotorcraft electrical system in place of rate-of-turn indicator, protection from icing effects for instruments affected by icing conditions, overvoltage protection for the electrical system, system separation for multiple systems to preclude a single fault causing loss of multiple systems, independence of the pilot's operating systems from other systems for single pilot approvals, an alternate static source for single pilot approvals, and instrument installation criteria for dual pilot approvals substantially identical to that required for transport airplanes.

Subpart F of Part 29 through Amendment 29–14 has been selected as the base on which IFR instrumentation criteria is built. Because navigation in instrument flight must be precise, the nonstabilized magnetic indicator, which is subject to many errors, is inadequate as the primary source of directional information, but it must remain as an emergency source. The standard directional gyro is also inadequate as

the primary source of directional information because of drift and the requirement to set it by reference to some other precise reference. Therefore, a gyro stabilized magnetic direction indicator would be required.

The standard vertical speed indicator exhibits a significant delay in its indication. This delay is acceptable in rotorcraft VFR flight but unacceptable for IFR flight. More precise vertical speed information is needed to maintain flight path control in IFR conditions. Therefore, an instantaneous vertical speed indicator would be required. Section 29.1303(g) requires a rate-of-turn and slip-skid indicator, but allows in place of the rate-of-turn indicator a standby attitude indicator, provided it is independently powered from the rotorcraft's electrical system. Because total loss of the normal electrical system has proven to be probable, the FAA determined several years ago that transport aircraft in air carrier service must have an independently powered standby attitude indicator to assure continued safe flight in IFR conditions. A source of continued attitude reference is more important to rotorcraft IFR flight because of the natural instability of rotorcraft. Therefore, this appendix would require a standby attitude indicator.

Gross inaccuracies in altitude and airspeed indicators resulting from icing could be disastrous in IFR flight. Therefore, icing protection would be required by this appendix. Overvoltage of the electrical system could cause the failure of all electrically powered instruments and equipment. This could result in an extremely hazardous condition and this appendix requres overvoltage protection. Multiple systems are required because it is probable that at least one system would fail. Separation of such systems would preclude a single cable fault from causing a multiple system failure, and this appendix would so require. Independence of the pilot's operating systems from other systems to preclude such other system faults from possibly causing the loss of the pilot's system has been a requirement for IFR approved airplanes for many years, and this appendix would require it for single pilot IFR approval. Because loss of the pilot's static system could prove critical, an alternate calibrated source is considered essential for single pilot IFR approvals. This appendix requires an alternate source. As in various fixed wing applications, a protected, calibrated alternate static source could also be used to demonstrate compliance with the ice protection requirements of paragraph VIII(b)(1) of the appendix. The criteria for dual pilot IFR approval relative to instrument installations has been well established and proven in transport airplanes for many years. Proposal 376 of the rotorcraft regulatory review recommended that proven criteria be made a part of the rotorcraft transport rules and this proposal would utilize proven criteria for dual pilot IFR approval.

All flight manual requirements are consolidated from the FAA standard of December 15 into Section IX of the proposed amendment for clarity of presentation.

A requirement to incorporate cruise performance information into the IFR flight manual requirments was considered by FAA. Cruise performance information is not currently required by either fixed or rotary wing certificate standards. However, fixed wing manufacturers routinely provide this information to the pilot in a flight manual format. The FAA considers the availability of cruise performance information necessary for helicopter IFR flight and encourages and expects the manufacturers to provide this information.

Current Part 91 rules require the operating pilot to compute fuel requirements for IFR flights. Some helicopter manufacturers, however, have not provided the necessary information either in flight manuals or by other means. The result is that some operating pilots may have no method by which to compute fuel requirements for compliance with the operating rules. Flight manual cruise performance information for rotorcraft was addressed at the New Orleans conference during discussion of Proposals 146, 149, and 409 and was again discussed in the Rotorcraft Regulatory Review Meeting in Washington, D.C., on August 20, 1980. In those discussions, the HAA supported the concept of providing accurate cruise performance information for IFR flight and agreed to obtain from its manufacturers a commitment to provide this information, and to forward that commitment in writing to the FAA.

If cruise performance information is provided for helicopters in the manner discussed by the HAA, there will be no significant difference between helicopter cruise considerations and the current fixed wing condition. In order to retain consistency with the fixed wing standards, a requirement for cruise performance information is not included in this notice.

A similar requirement is also proposed for Appendix A to Part 29.

Ref. Proposals 151, 376, and 413; Committees I and II.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

5. By revising §§ 29.1(a)(2) and 29.1(a)(3) to read as follows:

§ 29.1 Applicability.

(a) * * *

(2) Rotorcraft that meet the requirements for transport category B. Category B rotorcraft may not be certified with more than nine passenger seats. Category B rotorcraft with maximum gross weights greater than 20,000 pounds must be multiengine rotorcraft certified under the category A powerplant and system isolation requirements of Subparts D, E, and F of this part; or

(3) Multiengine rotorcraft that meet the requirements for transport category A and B.

* * * * *

Explanation

To summarize the present regulatory position and to expand on the background already presented, there are two rules (Parts 27 and 29) that regulate the certification of rotorcraft. Part 27 deals with rotorcraft that are under 6,000 pounds. Part 29, in effect, deals with rotorcraft that are over 6,000 pounds.

In Part 29, there are two categories of rotorcraft certification, category A and category B. Category A provides the most rigid rules, requiring independent engines, fuel systems and electrical systems. Category A requires that no single failure in these areas can cause simultaneous loss of more than one engine.

Category B of Part 29 deals with the certification of rotorcraft that are under 20,000 pounds. Currently these rotorcraft may be single or multiengine and may carry any number of passenger seats. Category B rotorcraft are not required to have the capability for continued flight in the event of an engine failure and must only demonstrate a safe landing to a defined surface after drift-down or autorotation.

The proposed changes to Parts 27 and 29 will provide a dividing line for rotorcraft based upon the number of passenger seats installed. A Part 27 rotorcraft must still be under 6,000 pounds. It is proposed, however, to add an additional limitation that the rotorcraft be equipped with nine or less passenger seats. Under the proposal, if the rotorcraft is equipped with more than nine passenger seats, it must be certificated under category A of Part 29.

The proposed rules will remove the restriction of 20,000 pounds on category B rotorcraft if certain design features are incorporated and will remove height-velocity as a category B limitation.

Under Part 29, a rotorcraft may be certificated under both categories A and B. At one gross weight, it may be certificated to carry more than nine passengers under category A provided it is able to continue flight in the event of an engine failure. It may also be certificated under category B to carry nine passengers or less with cargo, and take off at a higher gross weight that would not assure continued flight capability, but must demonstrate a safe landing to a defined surface in the event of an engine failure.

Statement of Proposal. Conference Proposals 5 through 8 and 152 through 155 contain suggested changes to the basic certification categories for rotorcraft. These proposals suggest that an overall deficiency exists in the current rules by addressing the need for a utility category for helicopters over 6,000 pounds and a need for consistency between fixed wing and rotary wing safety standards imposed when carrying passengers. These and other conference proposals generally support the concept and the content of the normal category certification standard contained in current Part 27 of this chapter. Two proponents suggest raising the 6,000-pound weight limit to 12,500 pounds and three proponents propose a maximum of nine passenger seats for normal category. Three proponents favor eliminating the 20,000-pound gross weight limit of category B. After considering each proposal and its applicable discussion, this consolidated proposal was drafted. This proposal in conjunction with other related proposals included in this notice would: (a) Remove the 20,000-pound weight limit of category B, but require multiengine category A design features for gross weights above 20,000 pounds; (b) remove height-velocity as a limitation for category B, but retain height-velocity capabilities as information to the pilot; and (c) limit Part 27 and transport category B certification to passenger seating configurations of nine seats or less, excluding pilot seats.

Current practice typically involves certification of multiengine transport category rotorcraft of less than 20,000 pounds to both category A and category B requirements. This proposal changes the word "or" in § 29.1(a)(3) to "and" in order to clearly indicate the continued eligibility of a multiengine rotorcraft model for certification in both categories A and B under the proposed amendment. The word "and" at the end of current § 29.1(a)(2) is changed to "or" in order to provide consistency with changed § 29.1(a)(3).

Background Information

1. *Definitions.* "Category A" means multiengine rotorcraft incorporating engine isolation design features of Part 29 and utilizing scheduled takeoff and landing operations under a critical engine failure concept which assures adequate designated surface areas and adequate performance capabilities for continued safe flight in the event of engine failure.

"Category B" means single or multiengine rotorcraft for which landing is assumed in the event of an engine failure. Category B rotorcraft have no certified performance level or guaranteed stay-up-ability in the event of engine failure.

2. *Discussion.* Category A design requirements are contained primarily in the propulsion and systems sections of Part 29. They guarantee engine, fuel system, and electrical system independence so that no single failure in these areas can cause simultaneous loss of more than one engine. When category A design is shown, it allows consideration of only one engine failure at a time during critical conditions such as height-velocity, takeoff, and landing tests.

Category A flight operations include a critical engine failure concept or V_1 concept similar to Part 25 or Appendix A to Part 135 of this chapter whereby runway lengths are scheduled so that, in the event an engine fails during takeoff at low speed, the rotorcraft is provided adequate surface conditions for landing. If the engine fails at some higher speed, the rotorcraft can continue the takeoff with guaranteed climb performance capabilities. Runway lengths for Category A landing operations are scheduled in a manner similar to that for takeoff. Unlike fixed wing aircraft, helicopters may require a significantly longer landing distance with an engine inoperative than with all engines operating. Category A landing distances are schedules so that an engine can fail at any point and the rotorcraft can be satisfactorily landed at the destination facility. In Category A, occupants are assured of a safe flight capability with an engine failure at any point during flight.

Category B operations include no continued takeoff, continued flight, or destination landing capability in the event of engine failure. Operationally, if an engine fails in a category B rotorcraft, you do the best you can under the circumstances. Landing is assumed.

A direct parallel to category B may be drawn with single engine fixed wing aircraft or other fixed wing aircraft with nine passenger seats or less. When an engine fails, landing is assumed.

A parallel to category A may be drawn with fixed wing aircraft having 10 or more passenger seats. An engine failure can occur at any point after V_1 and continued safe flight is assured.

Need for the Proposal. This proposal is a result of expanded helicopter capabilities and the general usage of helicopters in a manner different than that envisioned when the regulations differentiating between normal and transport category helicopters were formulated. Civil Air Regulations Draft Release No. 55–11, April 25, 1955, noted that the rotorcraft certification rule in effect at the time, Part 6 of the Civil Air Regulations, was based largely on experience with relatively small rotorcraft. No distinction was made between small and large rotorcraft or between rotorcraft intended for general and air carrier service. Part 6, therefore, was not suitable for the larger rotorcraft under development at that time. Consequently, Part 7 of the Civil Air Regulations was proposed to address rotorcraft which would be larger in size and intended for use in air carrier service. Three categories of rotorcratt were proposed in Draft Release No. 55–11, a "Normal Category" for relatively small rotorcraft and two transport categories, "A and B," applicable to large rotorcraft intended for air carier service. Normal category rotorcraft were considered eligible for all VFR passenger and cargo operations for hire, except in certificated scheduled and irregular air carrier service. The size of normal category rotorcraft was limited by a 6,000-pound maximum weight. Transport category A rotorcraft were considered eligible for all types of operations including air carrier service under both VFR and IFR conditions. There was no limitation on maximum weight, but category A rotorcraft would be required to be multiengine and would be subject to appropriate performance operating limitations when used in air carrier service. Transport category B rotocraft were considered eligible for air carrier and other operations only under VFR conditions. When used in air carrier service, transport category B rotorcraft would be subject to performance and route limitations. In addition, a 17,500-pound maximum weight limit (later revised to 20,000 pounds) was proposed for category B rotorcraft. It was proposed that category B rotorcraft be single or multiengined and it was intended that the provisions

of category B be essentially similar to Part 6 already in effect at the time.

The concept of Transport Category Rotorcraft Airworthiness Regulations (with further subdivisions A and B) became affective with the adoption of Civil Air Regulations Part 7 on August 1, 1956. As previously noted, the originally proposed limit of 17,500 pounds for category B rotorcraft was changed to 20,000 pounds at that time, based on the expectations and advice of manufacturers. Both rotorcraft categories A and B were adopted into the rule with height-velocity as a limitation to assure a high level of safety for passenger carrying rules. The height-velocity envelope defines combinations of air speed and altitude at which safe landing is possible in the event of an engine failure. However, incorporation of height-velocity as a limit for category B later inhibited large helicopter usage in various utility applications. The regulations regarding applicability and category have remained basically unchanged with the recodification of Parts 6 and 7 to Federal Aviation Regulations 27 and 29, respectively.

The preamble to Part 7 recognizes the desirability of having significant operating experience with large rotorcraft prior to adopting specific airworthiness requirements. However, it further notes the benefit in terms of safety to be obtained by initial establishing "broad objective standards" and allowing wide discretion in approving unanticipated features. It was this basis on which the decision was made to adopt the proposed certification requirements by category of rotorcraft. In the intervening 25 years since the categorization of rotorcraft was formulated, considerable operating experience has been gained. During this period, significant improvements in rotorcraft capabilities have been made and the usage of rotorcraft has evolved somewhat differently than that originally envisioned. This proposal, accordingly, would update the certification rules to recognize those improvements, current uses, and future projections by recognizing the expanded uses and capabilities of transport category rotorcraft and recognizing a level of safety defined in terms of passenger capacity.

The proliferation of helicopter operations in a utility/cargo role, as distinguished from the basic task of transporting people between places, is well established. In addition, improvements in rotorcraft performance and efficiency have provided a capability for productive operations in category B at gross weights above 20,000 pounds. This capability, however, cannot be realized under the present rules which limit category B certification to helicopters of 20,000 pounds or less.

In the case of one large helicopter in excess of 20,000 pounds, certification to category A, per se, was inappropriate and it was necessary to apply category B type special conditions recognizing the rotorcraft's use solely in utility/cargo operations with no passenger carrying capability.

The need, therefore, clearly exists to utilize the increased capability of helicopters with appropriate design features for the utility role by permitting certification above 20,000 pounds in category B. In keeping with the concept of a category oriented primarily to utility/cargo helicopters, the productivity can be further enhanced by removing the heigh-velocity requirements as an operating limitation for category B if appropriate restrictions are placed on the number of passengers carried. Related proposals are presented to accomplish this. These proposals would allow substantial growth in payload capacity consistent with industry projections for utility usage of helicopters.

As previously noted, the second major aspect of the applicability rules needing revision is that pertaining to passenger capacities. Contrary to earlier projections, the widespread transportation of fare-paying passengers in regularly scheduled helicopter air carrier service has not materialized. Operations under the category A performance concept are almost nonexistent. Most helicopter passenger-carrying operations are presently conducted under category B. Load-carrying capabilities of current transport category B helicopters permit carrying 10 or more passengers without the continued flight protection following engine failure provided by category A requirements. Carrying 10 or more passengers without this level of protection is inconsistent with the air carrier level of safety already in existence for fixed wing aircraft.

Under the original transport rotorcraft rule, FAA provided needed relief to helicopters by not requiring continued takeoff (category A) performance standards for all passenger carrying applications. Since that time, significant improvements have been made in the performance capability of helicopters and helicopter engines. The payload weight penalty for Category A operations as opposed to Category B has decreased as these improvements occurred. Therefore, helicopters can and should be operated at the same level of performance as their fixed wing counterparts. If passenger-carrying helicopters are to be accepted by the traveling public on an equal basis with fixed wing aircraft, they must provide passengers with a continued flight capability equivalent to that established for other aircraft. Accordingly, this proposal would eliminate the present disparity between helicopters and other aircraft carrying 10 or more passengers. This would be accomplished by limiting future certification of Part 29 category B, and Part 27 rotorcraft to nine passenger seats or less, thereby requiring rotorcraft with 10 or more passenger seats to be certified to Part 29 category A.

The total effect of these proposed changes would be to fill a need for an improved level of safety for rotorcraft passengers and to increase productivity of rotorcraft engaged in utility/cargo operations. This is consistent with the presidential and federal guidelines for formulating regulations and with FAA's dual responsibilities regarding aviation safety and the enhancement of air commerce.

Alternatives

1. *Weight Limitations.* The primary alternative considered at the Conference was to increase the Part 27 weight limit from 6,000 pounds to 12,500 pounds. While this would provide relief for aircraft between 6,000 and 12,500 pounds, it would not provide the needed relief for utility rotorcraft over 12,500 pounds. Because of the evolution of rotorcraft technology and use, a certification rule is needed which will provide for utility helicopters without regard to upper weight limits. The changes proposed in this notice would provide the needed relief throughout the weight range while continuing to assure the desired levels of safety for various types of operations.

2. *Passenger Seating Limitations.* At the Conference, the rotorcraft industry opposed using passenger seating capability to differentiate between categories. Industry representatives stated that the very same aircraft may have both 8 and 12 passenger seat configurations, and to invoke additional certification requirements only because of a few additional seats is not appropriate. The general philosophy behind this proposal on passenger seat limitations is that the higher the level of danger and the more people who fall within the endangered class the higher the level of safety should be. Because of the potentially hazardous conditions during failures as simple and as probable as the malfunctioning of a helicopter engine in flight and the large class of persons potentially affected, both size and number of passenger seats

are considered relevant. The greater the number of passengers, the greater the potential loss of life in an accident. The greater the size and inertia of an aircraft, the greater the potential hazard to persons on the ground in the event of an accident.

A nine passenger line of demarcation has been determined for Parts 23 and 135 fixed wing aircraft, and has been justified under those amendments. The FAA has no evidence to indicate this number should not apply equally to rotorcraft.

Normal category rotorcraft carry relatively few passengers and constitute relatively little danger to persons on the surface in the event of an engine failure. Transport category rotorcraft have larger rotor systems with greater energy. They are, in general, less maneuverable, less capable of successfully autorotating to confined areas, and constitute a greater potential threat to persons on the surface in the event of an accident. For these reasons, the highest level of safety, transport category A, is proposed for rotorcraft carrying 10 or more passengers. A complementary requirement limiting passenger seats to nine or less is proposed for consistency in Part 27. Although helicopters presently certified in the normal category have passenger seating capacities of less than nine and the FAA is not aware of a forthcoming 10 passenger normal category helicopter in the 6,000-pound gross weight classification, the technology is available to produce such a helicopter. This proposal would establish Part 27 certification boundaries at 6,000 pounds gross weight and nine passenger seats.

The need for a rotorcraft utility category is well recognized. By limiting passenger capability of category B to nine or less, relaxed design standards may be reasonably justified. In this proposal, relief if provided to category B for both design and operational considerations below 20,000 pounds gross weight and for operational considerations above 20,000 pounds. Category B provisions allow carrying of some passengers for utility, work-related duties, or for other reasons without altering any category B flight requirements. Only large numbers of passengers, 10 or more, are prohibited. This restriction is necessary because height-velocity will no longer be a limitation for category B and a safe flight path following engine failure will no longer be assured for all flight conditions. Large numbers of passengers must be protected at all times against an accident resulting from engine failure. This philosophy is consistent with that contained in Parts 23 and 25 and Appendix A of Part 135; however, for rotorcraft, the utility category is restructured with no ties to pre-existing fixed wing concepts to allow realization of the unique operating capabilities of both large and small rotorcraft in utility roles.

Effect of Proposal. The effect of adopting this proposal would be to shift the safety emphasis toward large passenger carrying operations. Safety levels would be relaxed for the utility rotorcraft and increased for the 10 or more passenger rotorcraft. This action would provide certification standards for rotorcraft consistent with current operational needs and developmental projects. It would allow increased productivity for utility rotorcraft by deleting height-velocity as a limitation, thereby permitting many types of application which were previously prohibited.

Rotorcraft are projected to be carrying more and more passengers in business, commuter, and air carrier roles. This proposal would provide a clear and consistent 10 passenger division point for continued takeoff capability with engine failure for all fixed or rotary wing aircraft. The weight penalty to rotor craft for operation under the improved safety level of category A is parallel to that already experienced by fixed wing aircraft operating at the 10 passenger level and above. The tradeoffs between performance and weight are essentially the same in fixed and rotary wing aircraft. This proposal upgrades rotorcraft performance standards to those of their fixed wing counterparts. The economic and safety considerations of the continued takeoff philosophy for 10 or more passengers are discussed in considerable detail in NPRMS 67–11 (32 FR 5698; April 7, 1967) and 68–37 (34 FR 210; January 7, 1969) and in the preamble to Amendment 135–18 (35 FR 10098; June 19, 1970). Pertinent rulemaking philosophy and FAA's response to industry comments contained therein apply equally to this notice. In spite of dire predictions to the contrary, the current fixed wing air taxi industry is thriving under the 10 passenger requirement.

Enforcement. No unusual problems or penalties associated with enforcement of these proposed rule changes are anticipated.

Ref: Proposals 1, 5, 6, 7, 8, 152, 153, 154, and 155; Committees I and II.

6. By revising § 29.79(a) to read as follows:

§ 29.79 Limiting height-speed envelope.

(a) If there is any combination of height and forward speed (including hover) under which a safe landing cannot be made under the applicable power failure condition in paragraph (b) of this section, a limiting height-speed envelope must be established for—

(1) *Category A.* Combinations of weight, pressure altitude, and ambient temperature for which takeoff and landing are approved; and

(2) *Category B.* (i) Altitude, from standard sea level conditions to the maximum altitude for which takeoff and landing are approved.

(ii) Weight, from the maximum weight (at sea level) to the highest weight approved for takeoff and landing at each altitude covered by paragraph (a)(2)(i) of this section. For helicopters, this weight need not exceed the highest weight allowing hovering out-of-ground-effect at each altitude.

* * * * *

Explanation: The proposed revision to the height-velocity (HV) requirement is necessitated by revisions to the applicability section of Part 29, removal of height velocity as a limitation for transport category B in proposed § 29.1517 of this notice, and a corresponding proposal under consideration to specify HV weight requirements for normal category. Removal of HV as a limitation for transport category B effectively deletes the necessity to demonstrative HV capability to take off and landing WAT (Weight, Altitude, Temperature) limit conditions. This action, if adopted alone, would create an area subject to considerable interpretation in regard to aircraft weights selected by the applicant for demonstration of a HVC diagram. Even though HV is proposed as performance information and not as a limitation, specific weight requirements for demonstration of HV capability are needed to assure this information encompasses the gross weight capabilities of the helicopter and is therefore meaningful to the pilot throughout the conditions in which the pilot will operate. This proposal would place a lower limit on the weight selected for demonstration of HV capability and that weight would correspond to the takeoff and landing weight limit or the out-of-ground-effect hover capability of the helicopter, whichever is less. For additional background information regarding this proposal see the explanation under proposed § 29.1 "Applicability."

Ref: Proposals 5 and 8, Committee I.

7. By deleting the word "and" at the end of § 29.141(b)(1), adding a new § 29.141(b)(3), and adding a sentence to the end of § 29.141(c) to read as follows:

§ 29.141 General.

* * * * *

(b) * * *

(3) Sudden, complete control system failures specified in § 29.695 of this part; and

(c) * * * Requirements for helicopter instrument flight are contained in Appendix A of this part.

Explanation: See the explanation for proposed § 27.141.

8. By removing § 29.877 and marking it "reserved".

§ 29.877 [Reserved]

Explanation: This proposal deletes § 29.877 "Ice protection." A related proposal would establish the transport category rotorcraft icing requirements in a new § 29.1419 "Ice protection," for consistency of section numbering with Parts 23 and 25 which contain icing certification requirements for fixed-wing aircraft in §§ 23.1419 and 25.1419, respectively. The proposed § 29.1419 contains updated and revised icing requirements compared to those in § 29.877 as explained in that proposal. An additional related proposal would establish icing requirements for normal category rotorcraft in § 27.1419.

Ref: Proposals 92 and 275; Committee I.

9. By revising § 29.1321(b) to read as follows:

§ 29.1321 Arrangement and visibility.

* * * * *

(b) Each instrument necessary for safe operation, including the airspeed indicator, gyroscopic direction indicator, gyroscopic bank and pitch indicator, slip-skid indicator, altimeter, rate-of-climb indicator, rotor tachometers, and the indicator most representative of engine power, must be grouped and centered as nearly as practicable about the vertical plane of the pilot's forward vision. In addition, for rotorcraft approved for IFR flight—

(1) The instrument that most effectively indicates attitude must be on the panel in the top center position;

(2) The instrument that most effectively indicates direction of flight must be adjacent to and directly below the attitude instrument;

(3) The instrument that most effectively indicates airspeed must be adjacent to and to the left of the attitude instrument; and

(4) The instrument that most effectively indicates altitude or is most frequently utilized in control of altitude must be adjacent to and to the right of the attitude instrument.

* * * * *

Explanation: Several conference proposals recommended making § 29.1321(b) equivalent to § 25.1321(b). One proposal recommended a 5 inch presentation be the minimum size for an attitude instrument, all instruments required by § 29.1303 be included in § 29.1321(b) grouping requirements, and the words "manifold pressure indicator" be changed to "power plant integrity indicator". Discussions at the conference acknowledged that the arrangement recommended by this proposal was generally used in existing rotorcraft, but several commenters expressed opposition to making it a requirement in transport category rotorcraft. There was much opposition to requiring a 5 inch attitude presentation. Although there was general agreement that the "manifold pressure indicator" should be changed to an indicator that was most representative of engine power, no agreement could be reached on what would constitute a power plant integrity indicator, and most participants indicated that they did not want it to be a specified instrument. The words "manifold pressure indication" are changed to "indicator most representative of engine power" in this proposal to make it equally applicable to turbine powered rotorcraft.

Instrument arrangement and visibility requirements for transport category airplanes are equally necessary for equal safety in transport category rotorcraft in IFR flight. The arrangement and visibility requirements (Basic "T" concept) of Part 25 of this chapter has been adopted in this proposal. Several IFR helicopter models have been FAA approved with the vertical velocity indicator in the upper right-hand portion of the display, a position normally reserved for the altimeter. This configuration was first approved on the IFR Gazelle in 1975 and has been carried forward to additional models since that time. For helicopters, this arrangement has been readily interpreted by pilots and has not resulted in cockpit confusion during IFR operations. This proposal includes the option to incorporate the instrument most frequently utilized for control of altitude in lieu of an altimeter in the basic instrument T. This flexibility is needed to permit the altimeter, vertical speed indicator, or possible future instrument designs to be incorporated into the basic IFR flight instrument display for helicopters. The instrumentation requirement is not needed for flight under visual flight rules; therefore, this proposed requirement in transport category rotorcraft is limited to rotorcraft approved for IFR flight.

The FAA agrees that attitude indicators must be effective in their presentation, but that size does not determine effectiveness, and therefore is dropping the proposed 5 inch attitude indicator requirement.

The standard gyroscopic turn-and-bank indicator is composed of two totally independent indicators, a rate-of-turn indicator and a "slip-skid indicator", frequently misidentified as a bank indicator. The rate-of-turn indicator has proven to be less effective in a rotorcraft than in a fixed wing aircraft while the slip-skid indicator has been found to be both necessary and effective in rotorcraft. Accordingly, the regulatory requirements for location of the turn and bank indicator relative to the vertical plane of the pilot's forward vision is amended to require only the "slip-skid indicator."

Ref: Proposals 369, 370, and 371; Committee II.

10. By adding a new § 29.1419 to read as follows:

§ 29.1419 Ice protection.

(a) If certification with ice protection provisions is desired, compliance with this section must be shown.

(b) The rotorcraft must demonstrate the capability to safely operate in the continuous maximum and intermittent maximum icing conditions determined under Appendix B of this part within the rotorcraft flight envelope. An analysis must be performed to establish, on the basis of the rotorcraft's operational needs, the adequacy of the ice protection system for the various components of the rotorcraft.

(c) In addition to the analysis and physical evaluation prescribed in paragraph (b) of this section, the effectiveness of the ice protection system and its components must be shown by flight tests of the rotorcraft or its components in measured natural atmospheric icing conditions and by one or more of the following tests as found necessary to determine the adequacy of the ice protection system:

(1) Laboratory dry air or simulated icing tests, or a combination of both, of the components or models of the components.

(2) Flight dry air tests of the ice protection system as a whole, or its individual components.

(3) Flight tests of the rotorcraft or its components in measured simulated icing conditions.

(d) The ice protection provisions of this section are considered to be applicable primarily to the airframe and rotor systems. For the powerplant installation, certain additional

provisions of Subpart E of this part may be applicable.

(e) A means must be identified or provided for determining the formation of ice on critical parts of the rotorcraft. Unless otherwise restricted, the means must be available for nighttime as well as daytime operation. The rotorcraft flight manual must describe the means of determining ice formation and must contain information necessary for safe operation of the rotorcraft in icing conditions.

Explanation: This proposal would establish the transport category rotorcraft icing requirements in a new § 29.1419 for consistency of section numbering with Parts 23 and 25. A related proposal would delete the existing § 29.877 "Ice protection."

This proposal implements existing FAA policy. The current § 29.877 implies that certification of helicopters with limited ice protection or in an icing environment somewhat less severe than the most severe defined natural conditions is feasible. Contrary to the intent of the recodification, which was essentially a format change, this implication was inadvertently included during the change from CAR 7 to Part 29. This implication is also contrary to current policy.

Considerable exchange has taken place through various mediums, including the regulatory review meetings in New Orleans and Washington, DC, relative to the possibility of limited icing certification or to some type of operational evaluation similar to that currently authorized by Special Federal Aviation Regulation (SFAR) 29-2 for helicopter IFR.

The possibility of limited icing certification has been carefully considered. The difficulty in forecasting the severity of icing conditions as well as the difficulty in relating the effects of reported icing conditions among different types of aircraft, and in particular between fixed and rotary wing aircraft, makes certification for limited icing conditions improbable at this time. Other concerns also militate against limited icing certification. Limited approvals have been made in other operating situations where the pilot has control of the limiting conditions. However, such is not the case with icing. Also, with limited ice protection or with a limited environmental approval, critical situations beyond the capability of the rotorcraft to operate safely may be readily encountered without viable escape alternatives.

The possibility of authorizing an operational icing evaluation similar to that permitted in SFAR 29-2 for IFR has been given serious and careful consideration. The situation in which SFAR 29-2 was approved is not comparable to the present situation regarding icing. There was considerable basis and experience with IFR certifications before SFAR 29-2 was approved; no helicopters have been certified in the U.S. for operation in icing. The limitations involved in an SFAR 29-2 operation are controllable by the pilot, the icing environment is not. The same concerns which apply to limited icing approvals are pertinent in this case. A limited icing operational approval by the United Kingdom Civil Aviation Authority has been suggested as a basis for rulemaking by the FAA. The United Kingdom approval is contingent on operation in a specific geographical area with unique environmental conditions which always provide an escape route in the event excessive icing conditions are encountered. Such a unique case would not be applicable to this proposal. The FAA must consider a much broader spectrum of conditions and applications for certification criteria. Therefore, limited icing approval is not included in this proposal.

On the other hand, the state-of-the-art in helicopter ice protection as displayed in military and foreign helicopter tests has shown that certification of helicopters in icing to the level of safety of fixed wing aircraft is feasible. It is therefore proposed to replace the existing § 29.877 with essentially the same icing environment criteria that has been used for certification of fixed wing aircraft in § 25.1419, with minor changes to adapt it to rotorcraft. The changes to convert § 25.1419 to the proposed § 29.1419 consist of—

(a) Substituting the word "rotorcraft" in place of "airplane" throughout the section;

(b) Changing reference to Appendix C of Part 25 in paragraph (b) to Appendix B of Part 29;

(c) Adding the words "within the rotorcraft flight envelope" in paragraph (b) in order to recognize the inherent altitude limitations of helicopters with regard to the altitude envelope of Appendix B;

(d) Deleting reference to turbine engines in paragraph (d), since Subpart E of this part addresses both reciprocating and turbine engines; and

(e) Adding a new paragraph (e) which contains a requirement for a means of indicating or of identifying the formation of ice on the critical parts of the rotorcraft. This is necessary as it would not be possible to visually ascertain the formation of ice on critical parts such as rotor blades or engine inlets in order to activate ice protection systems. Information for safe operation of the rotorcraft in icing conditions must also be included in the Rotorcraft Flight Manual.

(f) Adding Appendix B.

At the rotorcraft review conferences, the suggestion was made to defer rule making pending completion of ongoing icing research and development (R&D). Considerable R&D has been completed with FAA participation. This R&D has established the basic feasibility of operating helicopters with adequate ice protection systems in a natural icing environment. With this recognized, much of the R&D is now oriented toward refining techniques and reducing the time and cost associated with icing testing. The proposed rules simply define the icing environment, and the FAA sees no reason to defer rule making for icing certification in light of increased usage of helicopters in IFR and projected icing certification plans. A suggestion was also made at the rotorcraft review conference that the icing environment (Appendix C to Part 25 or Appendix B as proposed for this part) should be reassessed since it was defined by NACA 25 or 30 years ago.

Numerous icing certifications and years of operational experience with fixed wing aircraft have verified the soundness of the natural icing envelope, even though it was defined many years ago. This proposal recognizes that helicopters have a need to operate in the same basic environment as their fixed wing counterparts, except for high altitude portions of the envelope exclusive to the fixed wing aircraft.

A substantively identical change is also proposed for § 27.1419.

Ref: Proposals 92 and 275; Committee I.

11. By revising the lead-in to § 29.1517 to read as follows:

§ 29.1517 Limiting height-speed envelope.

For category A rotorcraft, if a range of heights exists at any speed, * * *

* * * * *

Explanation: See the explanation for proposed § 29.1

12. By deleting the word "and" at the end of § 29.1587(b)(5); by redesignating § 29.1587(b)(6) as § 29.1587(b)(7), and adding a new § 29.1587(b)(6) to read as follows:

§ 29.1587 Performance information.

* * * * *

(b) * * *

(6) The height-speed envelope; and

* * * * *

Explanation: See the explanation for proposed § 29.1.

13. By adding an Appendix A to Part 29 to read as follows:

Appendix A—Airworthiness Criteria for Helicopter Instrument Flight

I. *General.* A transport category helicopter may not be type certificated for operation under the instrument flight rules (IFR) of this chapter unless it meets design and installation requirements contained in this appendix.

(a) V_{YI} means instrument climb speed, utilized in lieu of V_Y for compliance with the climb requirements for instrument flight.

(b) V_{NEI} means instrument flight never exceed speed, utilized in lieu of V_{NE} for compliance with maximum limit speed requirements for instrument flight.

(c) V_{MINI} means instrument flight minimum speed, utilized in complying with minimum limit speed requirements for instrument flight.

II. *Trim.* It must be possible to trim the cyclic, collective, and directional control forces to zero at all approved IFR airspeeds, power settings, and configurations appropriate to the type.

III. *Static longitudinal stability.* (a) *General.* The helicopter must possess positive static longitudinal control force stability at critical combinations of weight and center of gravity at the conditions specified in paragraphs IV (b) through (f) of this appendix. The stick force must vary with speed so that any substantial speed change results in a stick force clearly perceptible to the pilot. The airspeed must return to within 10 percent of the trim speed when the control force is slowly released for each trim condition specified in paragraphs IV (b) through (f) of this appendix.

(b) *Climb.* Stability must be shown in climb throughout the speed range 20 knots either side of trim with—

(1) The helicopter trimmed at V_{YI};

(2) Landing gear retracted (if retractable); and

(3) Power required for limit climb rate (at least 1,000 fpm) at V_{YI} or maximum continuous power, whichever is less.

(c) *Cruise.* Stability must be shown throughout the speed range from 0.7 to 1.1 V_H or V_{NEI}, whichever is lower, not to exceed ± 20 knots from trim with—

(1) The helicopter trimmed and power adjusted for level flight at 0.9 V_H or 0.9 V_{NEI}, whichever is lower; and

(2) Landing gear retracted (if retractable).

(d) *Slow cruise.* Stability must be shown throughout the speed range from 0.9 V_{MINI} to 1.3 V_{MINI} or 20 knots above trim speed, whichever is greater, with—

(1) The helicopter trimmed and power adjusted for level flight at 1.1 V_{MINI}; and

(2) Landing gear retracted (if retractable).

(e) *Descent.* Stability must be shown throughout the speed range 20 knots either side of trim with—

(1) The helicopter trimmed at 0.8 V_H or 0.8 V_{NEI} (or 0.8 V_{LE} for the landing gear extended case), whichever is lower;

(2) Power required for 1,000 fpm descent at trim speed; and

(3) Landing gear extended and retracted, if applicable.

(f) *Approach.* Stability must be shown throughout the speed range 20 knots either side of trim with—

(1) The helicopter trimmed at the recommended approach speed or speeds;

(2) Landing gear extended and retracted, if applicable; and

(3) Power required to maintain a 3° glide path and power required to maintain the steepest approach gradient for which approval is requested.

IV. *Static lateral-directional stability.* (a) Static directional stability must be positive throughout the approved ranges of airspeed, power, and vertical speed. In straight, steady sideslips, directional control position must increase proportionally with angle of sideslip up to ± 10° from trim. At greater angles of sideslip up to that at which full directional control is employed, or the maximum sideslip angle appropriate to the type is obtained, increased directional control position should produce increased angles of sideslip.

(b) During sideslips up to ± 10° from trim throughout the approved ranges of airspeed, power, and vertical speed there must be no negative dihedral stability perceptible to the pilot through lateral control motion or forces. Longitudinal cycle movement with sideslip shall not be excessive.

V. *Dynamic stability.* (a) Any oscillation having a period of less than 5 seconds must damp to one-half amplitude in not more than one cycle.

(b) Any oscillation having a period of 5 seconds or more, but less than 10 seconds, must damp to one-half amplitude in not more than two cycles.

(c) Any oscillation having a period of 10 seconds or more but less than 20 seconds must be damped.

(d) Any oscillation having a period of 20 seconds or more or any aperiodic response may not achieve double amplitude in less than 20 seconds.

VI. *Stability augmentation system (SAS).* (a) If a SAS is used, the reliability of the SAS must be related to the effects of its failure. The occurrence of any failure condition which would prevent continued safe flight and landing must be extremely improbable, or it must be shown that after any failure condition of the SAS that is not extremely improbable—

(1) The helicopter is safely controllable and is capable of prolonged instrument flight without undue pilot effort. Additional unrelated probable failures or combinations of failures must be considered; and

(2) The flight characteristics requirements in Subpart B of Part 29 are met throughout a practical flight envelope.

(b) The SAS must be designed so that it cannot create hazardous deviation in flight path or produce hazardous loads on the helicopter during normal operation or in the event of malfunction or failure, assuming corrective action begins within an appropriate period of time. Where multiple systems are installed, subsequent malfunction conditions must be considered in sequence unless their occurrence is shown to be improbable.

VII. *Equipment, systems, and installation.* In addition to the basic equipment and installation requirements specified in Subpart F of Part 29 through Amendment 29–14, the following equipment must be installed:

(a) *Instruments.* (1) In place of the requirement of § 29.1303(h), a magnetic gyro stabilized direction indicator;

(2) In place of the requirement of § 29.1303(i), an instantaneous vertical speed indicator (IVSI); and

(3) In place of the rate-of-turn indicator required by § 29.1303(g), a standby attitude indicator which meets the requirements of §§ 29.1303(g)(1) through (7). If standby batteries are provided, they may be charged from the aircraft electrical system if adequate isolation is incorporated. The system must be designed so that the standby batteries may not be used for engine starting.

(b) *Miscellaneous requirements.* (1) Instrument systems and other systems essential for IFR flight that could be adversely affected by icing must be provided with adequate ice protection, whether or not the rotorcraft is certificated for operation in icing conditions.

(2) There must be means in the generating system to automatically de-energize and disconnect from the main bus any power source developing hazardous overvoltage.

(3) Each required flight instrument using a power supply must have a visual means integral with the instrument to indicate the adequacy of the power being supplied.

(4) When multiple systems are required, each system must be grouped, routed, and spaced so that physical separation between systems is provided

to ensure that a single malfunction will not adversely affect more than one system.

(5) For single pilot IFR—

(i) Only the required flight instruments for the pilot may be connected to the operating system provided for the pilot; and

(ii) Instruments which require a static source must be provided with a means of selecting an alternate source and that source must be calibrated.

(6) Dual pilot IFR. For systems that operate the required flight instruments which are located at each pilot's station—

(i) Means must be provided to connect the required instruments at the first pilot's station to operating systems which are independent of the operating systems at any other flight crew stations, or other equipment;

(ii) The equipment, systems, and installations must be designed so that one display of the information essential to the safety of flight which is provided by the instruments will remain available to the pilots, without additional crewmember action, after any single failure or combination of failures that is not shown to be extremely improbable; and

(iii) Additional instruments, systems, or equipment may not be connected to the operating systems for the required instruments, unless provisions are made to ensure the continued normal functioning of the required instruments in the event of any malfunction of the additional instruments, systems, or equipment which is not shown to be extremely improbable.

XIII. *Rotorcraft Flight Manual.* A Rotorcraft Flight Manual or Rotorcraft Flight Manual IFR Supplement must be provided and it must contain the following:

(a) *Limitations.* The approved IFR flight envelope, the IFR flight crew composition, the revised kinds of operation, and the steepest IFR precision approach gradient for which the helicopter is approved.

(b) *Procedures.* Required information for proper operation of IFR systems, and the recommended procedures in the event of stability augmentation or electrical system failures.

(c) *Performance.* If V_{YI} differs from V_Y, climb performance at V_{YI} and at maximum continuous power throughout the ranges of weight, altitude, and temperature for which approval is requested.

Explanation: See the explanation for proposed Appendix A of Part 27.

14. By adding an Appendix B to Part 29 to read as follows:

Appendix B

(a) *Continuous maximum icing.* The maximum continuous intensity of atmospheric icing conditions (continuous maximum icing) is defined by the variables of the cloud liquid water content, the mean effective diameter of the cloud droplets, the ambient air temperature, and the interrelationship of these three variables as shown in Figure 1 of this Appendix. The limiting icing envelope in terms of altitude and temperature is given in Figure 2 of this Appendix. The interrelationship of cloud liquid water content with drop diameter and altitude is determined from Figures 1 and 2. The cloud liquid water content for continuous maximum icing conditions of a horizontal extent, other than 17.4 nautical miles, is determined by the value of liquid water content of Figure 1, multiplied by the appropriate factor from Figure 3 of this Appendix.

(b) *Intermittent maximum icing.* The intermittent maximum intensity of atmospheric icing conditions (intermittent maximum icing) is defined by the variables of the cloud liquid water content, the mean effective diameter of the cloud droplets, the ambient air temperature, and the interrelationship of these three variables as shown in Figure 4 of this Appendix. The limiting icing envelope in terms of altitude and temperatures is given in Figure 5 of this Appendix. The interrelationship of cloud liquid water content with drop diameter and altitude is determined from Figures 4 and 5. The cloud liquid water content for intermittent maximum icing conditions of a horizontal extent, other than 2.6 nautical miles, is determined by the value of cloud liquid water content of Figure 4 multiplied by the appropriate factor in Figure 6 of this Appendix.

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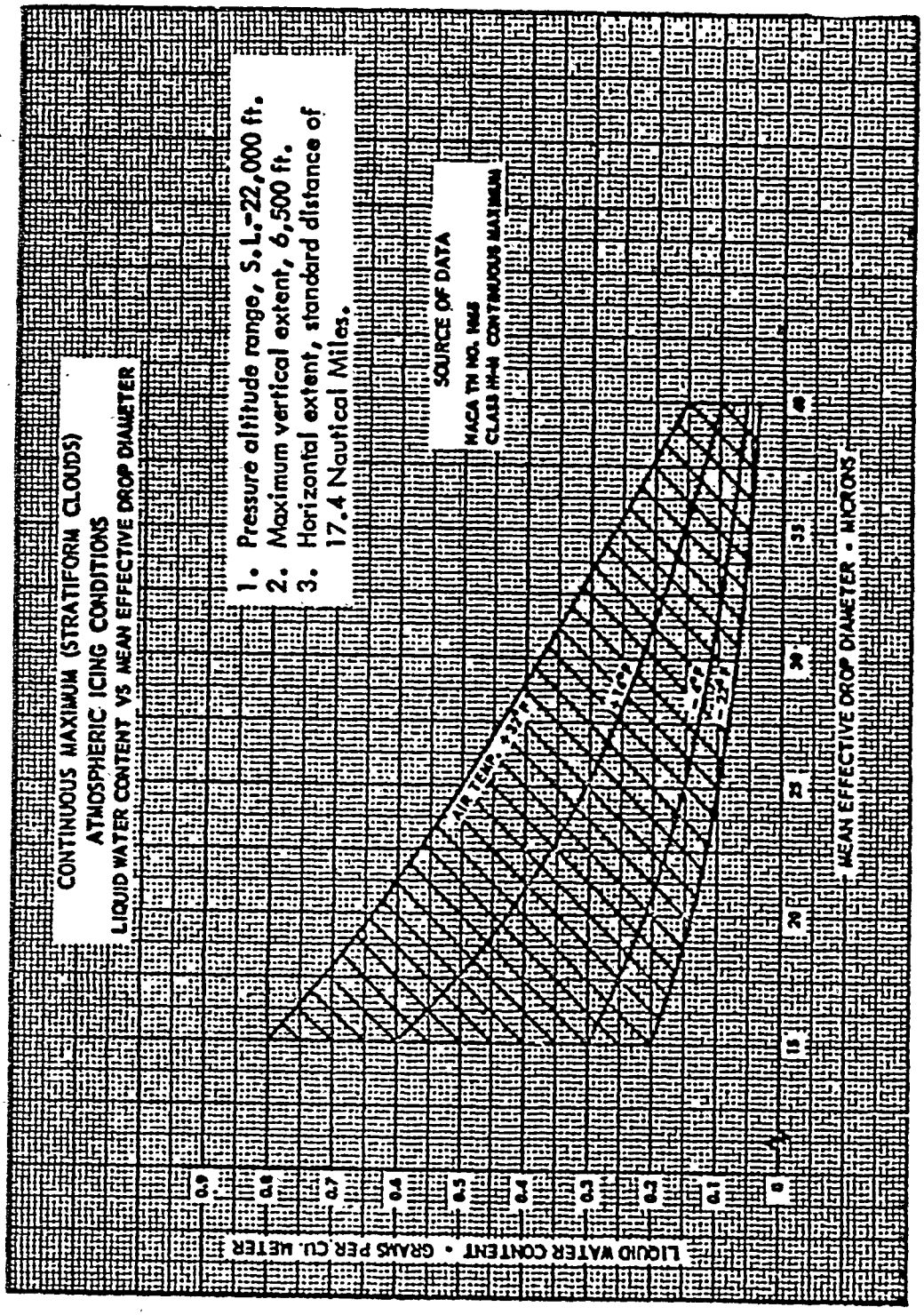
CONTINUOUS MAXIMUM (STRATIFORM CLOUDS)
ATMOSPHERIC ICING CONDITIONS
LIQUID WATER CONTENT VS MEAN EFFECTIVE DROP DIAMETER
1. Pressure altitude range, S.L.-22,000 ft.
2. Maximum vertical extent, 6,500 ft.
3. Horizontal extent, standard distance of 17.4 Nautical Miles.
SOURCE OF DATA
NACA TN NO. 1855
CLASS IV-M CONTINUOUS MAXIMUM
AIR TEMP. +32°F
+16°F
0°F
-32°F
LIQUID WATER CONTENT • GRAMS PER CU. METER
0.9
0.8
0.7
0.6
0.5
0.4
0.3
0.2
0.1
0
10
20
30
40
MEAN EFFECTIVE DROP DIAMETER • MICRONS

FIGURE 1.

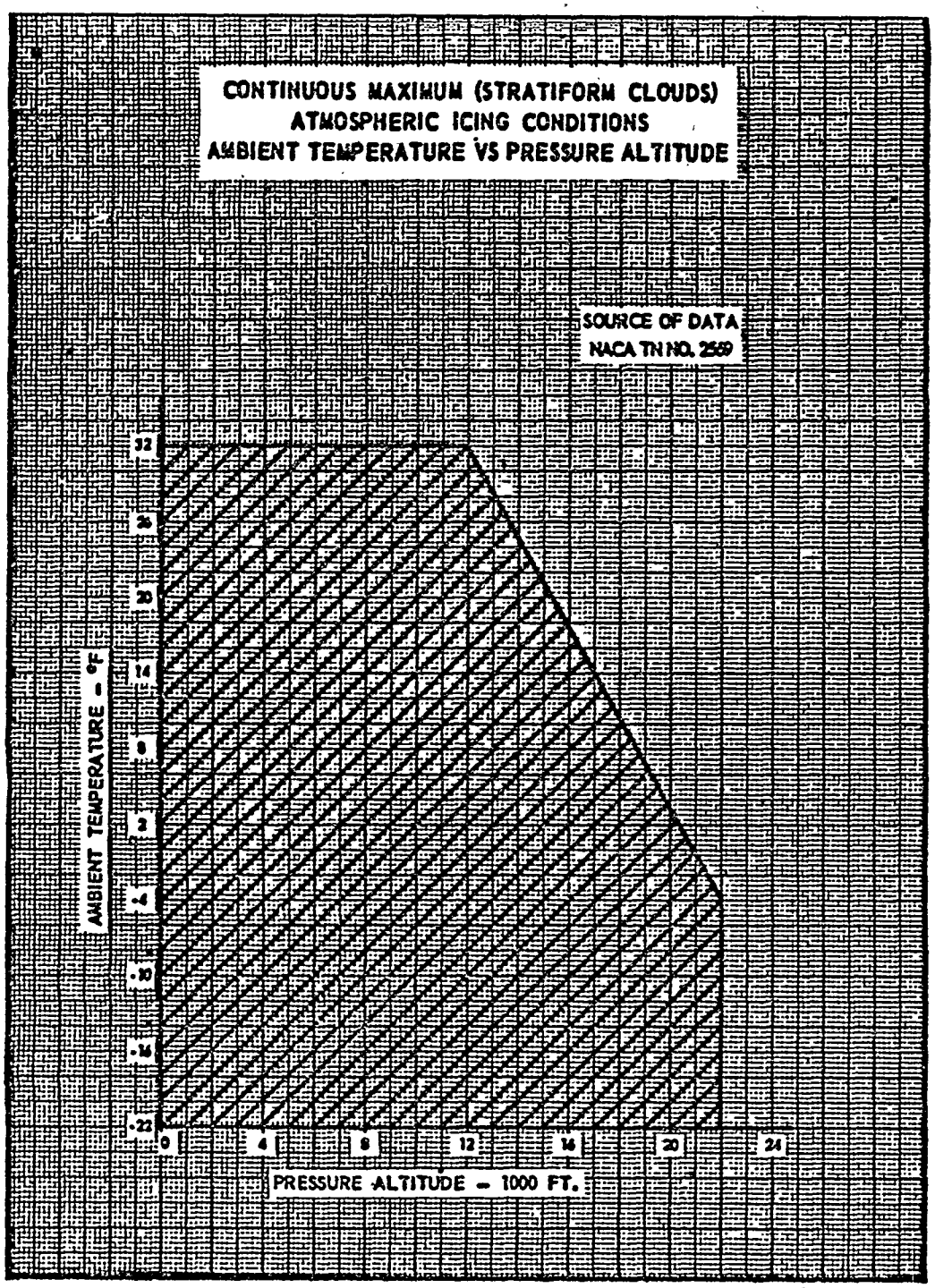
CONTINUOUS MAXIMUM (STRATIFORM CLOUDS)
ATMOSPHERIC ICING CONDITIONS
AMBIENT TEMPERATURE VS PRESSURE ALTITUDE
SOURCE OF DATA
NACA TN NO. 2569
AMBIENT TEMPERATURE - °F
32
26
20
14
8
2
-4
-10
-16
-22
0
4
8
12
16
20
24
PRESSURE ALTITUDE - 1000 FT.

FIGURE 2.

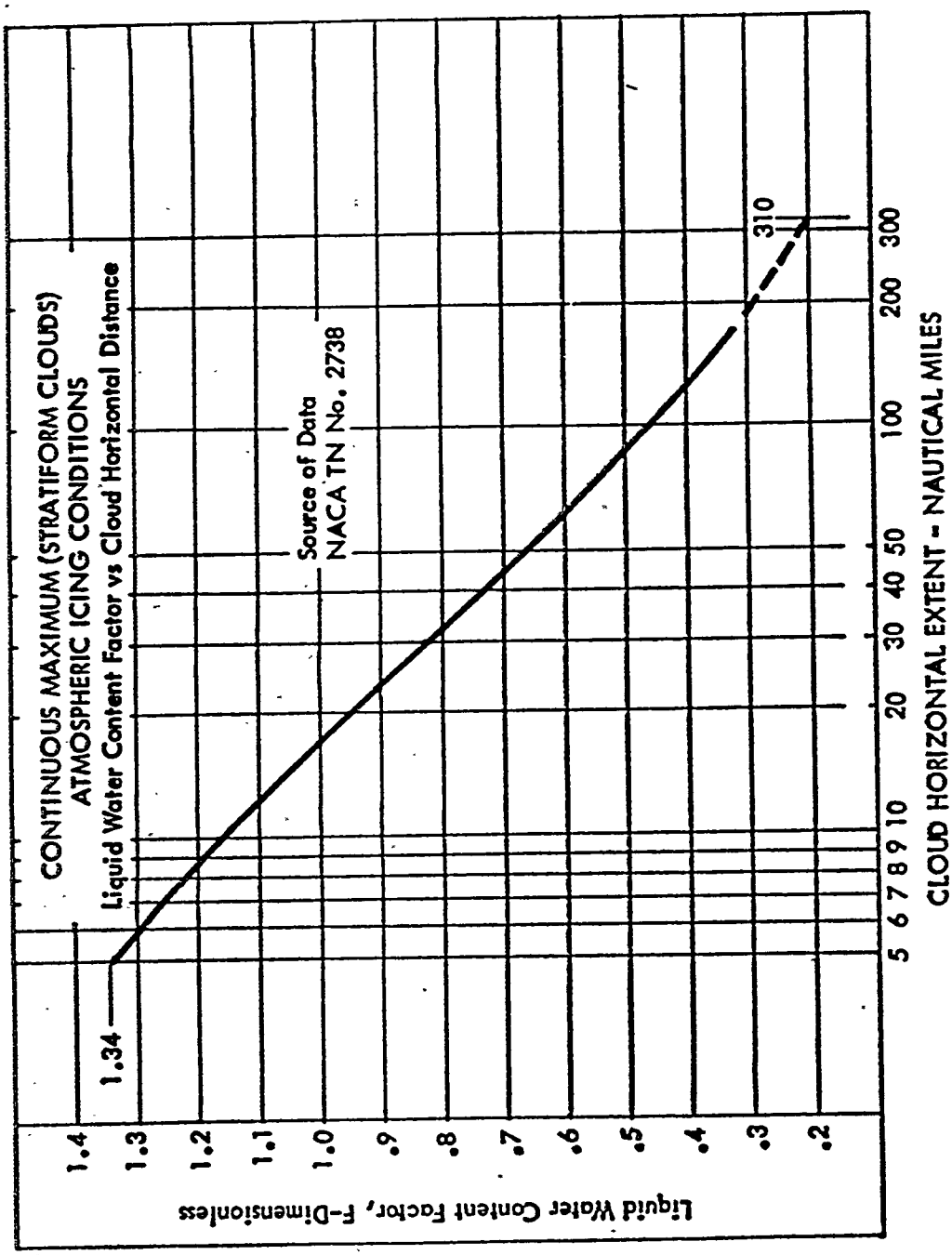
CONTINUOUS MAXIMUM (STRATIFORM CLOUDS)
ATMOSPHERIC ICING CONDITIONS
Liquid Water Content Factor vs Cloud Horizontal Distance
Source of Data
NACA TN No. 2738
1.34
310
Liquid Water Content Factor, F-Dimensionless
1.4
1.3
1.2
1.1
1.0
.9
.8
.7
.6
.5
.4
.3
.2
5 6 7 8 9 10 20 30 40 50 100 200 300
CLOUD HORIZONTAL EXTENT - NAUTICAL MILES

FIGURE 8.

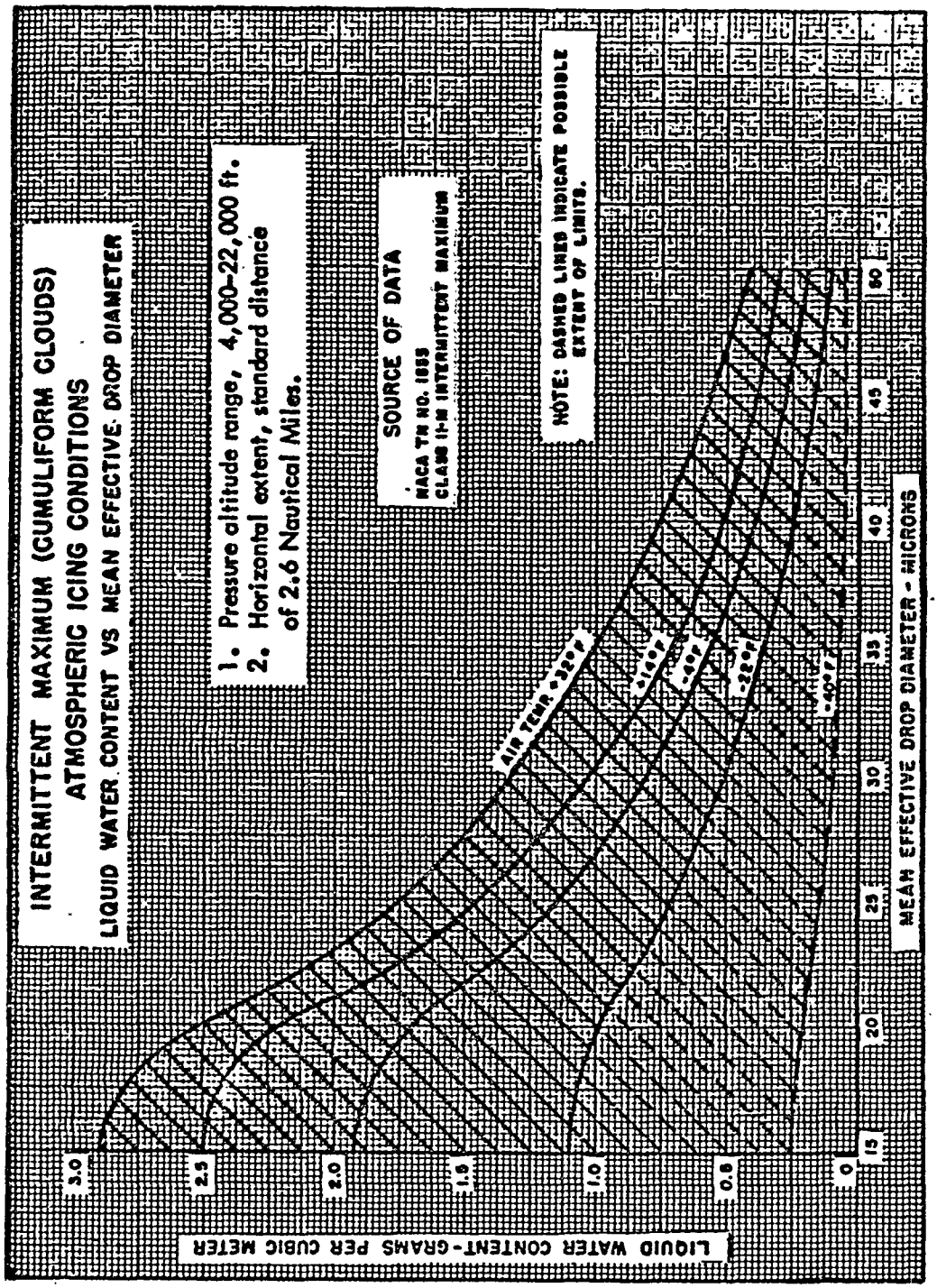
INTERMITTENT MAXIMUM (CUMULIFORM CLOUDS)
ATMOSPHERIC ICING CONDITIONS
LIQUID WATER CONTENT VS MEAN EFFECTIVE DROP DIAMETER
1. Pressure altitude range, 4,000–22,000 ft.
2. Horizontal extent, standard distance of 2.6 Nautical Miles.
SOURCE OF DATA
NACA TN NO. 1855
CLASS II-M INTERMITTENT MAXIMUM
NOTE: DASHED LINES INDICATE POSSIBLE EXTENT OF LIMITS.
AIR TEMP = 32°F
14°F
-4°F
-22°F
-40°F
LIQUID WATER CONTENT-GRAMS PER CUBIC METER
3.0
2.5
2.0
1.5
1.0
0.5
0
15
20
25
30
35
40
45
50
MEAN EFFECTIVE DROP DIAMETER - MICRONS

FIGURE 4.

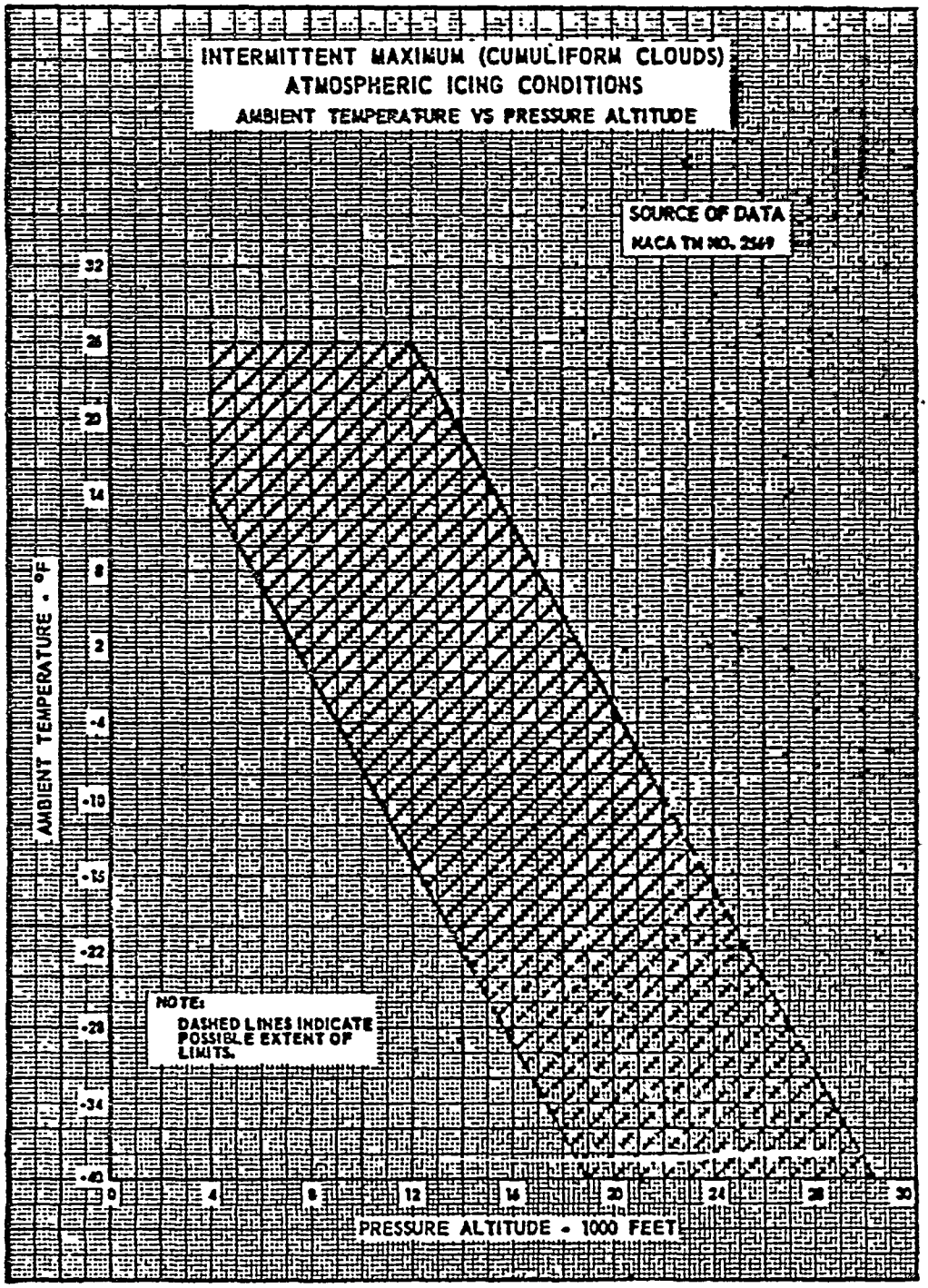
INTERMITTENT MAXIMUM (CUMULIFORM CLOUDS)
ATMOSPHERIC ICING CONDITIONS
AMBIENT TEMPERATURE VS PRESSURE ALTITUDE
SOURCE OF DATA
NACA TN NO. 2569
AMBIENT TEMPERATURE - °F
32
26
20
14
8
2
-4
-10
-16
-22
-28
-34
-40
NOTE:
DASHED LINES INDICATE POSSIBLE EXTENT OF LIMITS.
0
4
8
12
16
20
24
28
30
PRESSURE ALTITUDE - 1000 FEET

FIGURE 5.

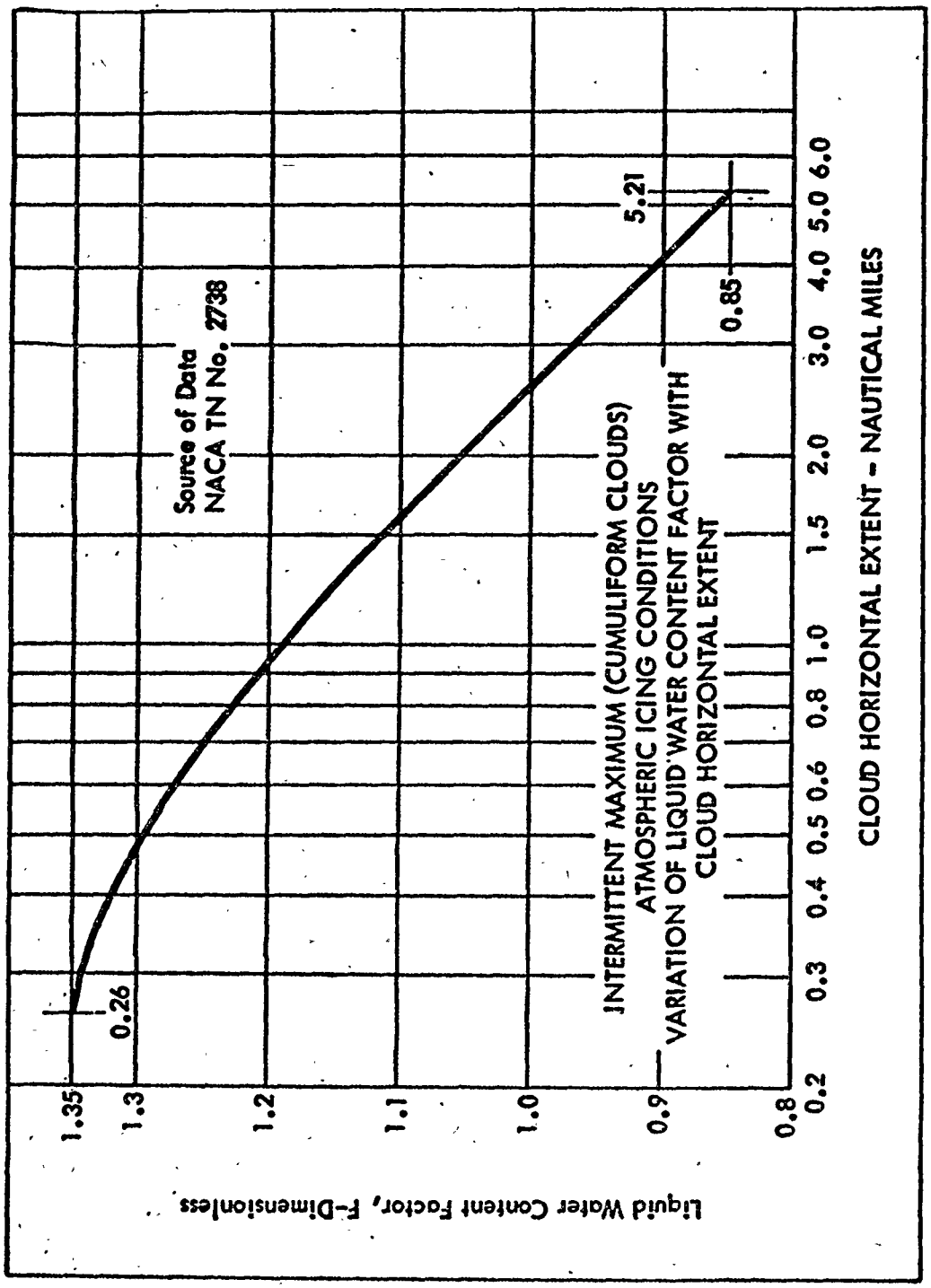

FIGURE 6.

EXPLANATION: See the explanation for proposed § 29.1419.

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(Secs. 313(a), 601, 603, 604, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423, 1424); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.45)

Note.—The FAA has determined that this document involves proposed regulations which are not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11304; February 26, 1979). A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the person identified earlier in this document as contact for further information.

Issued in Washington, D.C., on December 15, 1980.

M. C. Beard,

Director of Airworthiness.

[FR Doc. 80-39235 Filed 12-17-80; 8:45 am]

BILLING CODE 4910-13-M

federal register

Thursday
December 18, 1980

Part V

Environmental Protection Agency

Benzene Emissions From Ethylbenzene/Styrene Plants; National Emissions Standards for Hazardous Air Pollutants; Proposed Rule and Public Hearing Announcement

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL 1551-6]

National Emissions Standards For Hazardous Air Pollutants; Benzene Emissions From Ethylbenzene/ Styrene Plants; Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule and Notice of Public Hearing.

SUMMARY: The proposed standard would limit benzene emissions from process vents at existing and new ethylbenzene and styrene (EB/S) plants to five parts per million by volume (ppmv) on a dry basis corrected to three percent oxygen. Emissions in excess of this numerical emissions limit would be allowed only during malfunctions, startup, and shutdown. During these times, however, these emissions would have to be flared.

The proposed standard implements the Clean Air Act and is based on the Administrator's determination on June 8, 1977, that benzene presents a significant carcinogenic risk to human health as a result of emissions from one or more stationary source categories and is therefore a hazardous air pollutant (42 FR 29332). The intent of the standard is to protect the public health with an ample margin of safety.

A public hearing will be held to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standard for EB/S plants.

DATES: *Comments.* Comments must be received on or before March 7, 1981.

Public Hearing. A public hearing will be held on February 5, 1981 beginning at 9 a.m.

Request to Speak at Hearing: Persons wishing to present oral testimony must contact EPA by January 29, 1981.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Attention: Docket Number A-79-49, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Public Hearing. The public hearing will be held at the EPA Administration Bldg. Auditorium, Research Triangle Park, N.C. Persons wishing to present oral testimony should notify Ms. Naomi Durkee, Emissions Standards & Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5331.

Background Information Document. The Health Risk Assessment Documents for benzene and the Background Information Document (BID) for the proposed standard are contained in the docket and may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Benzene Emissions from the Ethylbenzene/Styrene Industry—Background Information for Proposed standards," EPA-450/3-79-035a; "Assessment of Health Effects of Benzene Germane to Low Level Exposures," EPA-600/1-78-061; "Assessment of Human Exposures to Atmospheric Benzene," EPA-450/3-78-031; and "Carcinogen Assessment Group's Report on Population Risk to Ambient Benzene Exposures," EPA-450/5-80-004.

Docket. Docket No. A-79-49, containing supporting information used in developing the proposed standard, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, Room 2902, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Susan R. Wyatt, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5477.

SUPPLEMENTARY INFORMATION: Notice is given that, under the authority of section 112(b)(1)(B) of the Clean Air Act (as amended), the Administrator is proposing a national emission standard for benzene emissions from ethylbenzene/styrene plants. Although the proposed EPA "Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer" (44 FR 58642) proposed on October 10, 1979, are not final, the proposed standards for EB/S plants have been developed consistent with the proposed EPA policy and procedures. As prescribed in section 112(b)(1)(A) of the Act, the proposal of this standard was preceded by the Administrator's determination that benzene is a hazardous air pollutant as defined in section 112(a)(1) of the Act. Accordingly, the Administrator revised the list of hazardous air pollutants on June 8, 1977, by adding benzene (42 FR 29332).

A Background Information Document has been prepared that contains information on manufacturing and processing ethylbenzene and styrene; the available control technologies for benzene emissions; and analysis of the environmental, energy, economic, and inflationary impacts of regulatory options. Information on the health effects of benzene is contained in documents prepared by or for EPA, entitled the "Assessment of Health Effects of Benzene Germane to Low Level Exposure;" the "Assessment of Human Exposures to Atmospheric Benzene;" and the "Carcinogen Assessment Group's Report on Population Risk to Ambient Benzene Exposures." Supplementary information on the regulation of benzene emissions can be obtained from the Maleic Anhydride Docket No. OAQPS-79-3 which is available for public review at EPA's Central Docket Section. The information contained in these documents is summarized in this preamble. All references used for the information contained in the preamble can be found in these five documents.

Proposed Standard

The proposed standard would limit the amount of benzene discharged to the atmosphere from each process vent stream or combination of process vent streams to five ppmv on a dry basis corrected to three percent oxygen. A process vent stream is defined as any continuous benzene-containing gas stream being released or having the potential of being released to the atmosphere from the alkylation reactor section, atmospheric and pressure columns, hydrogen separation system, or vacuum-producing devices.

The owner or operator of a source which uses a boiler[1] to control benzene emissions would have to monitory oxygen flow, firebox temperature, and compressor flow, and visually inspect process vents to determine if they are being routed to the control device. The owner or operator would have to report to the Administrator within ten days of each occurrence of emissions in excess of the numerical emissions limit (five ppmv) as determined by: (1) A three-hour average oxygen flow level below 1.5 percent by volume, (2) a three-hour average temperature more than 100°F below that measured during the emission test, (3) a three-hour period of no flow from the compressor, or (4) observation of process vent streams not being routed to the control device. The owner or operator of a source which uses a device other than a boiler to control benzene emissions would have to continuously monitor benzene concentrations and compressor flow, and report to the Administrator within

[1] The term "boiler" in this document includes process heaters and super-heaters.

ten days of each occurrence of emissions with concentrations greater than five ppmv or occurrences of no compressor flow.

Emissions in excess of the numerical emission limit (five ppmv) would be allowed during startup and shutdown of the entire source, alkylation reactor section, or dehydrogenation section. Emissions in excess of the numerical emission limit due to process or control equipment failure would be permitted only if the owner or operator of the source demonstrated to the Administrator's satisfaction that these emissions were unavoidable. Emissions in excess of five ppmv that could have been prevented by proper operation and maintenance would be considered avoidable, and therefore would be in violation of the proposed standard which requires that good air pollution control practice be followed. The proposed standard would require that emissions during periods of malfunction, startup, and shutdown be combusted with one or more smokeless flares, or be controlled by an equivalent means approved by the Administrator.

The format of the standard is comprised of two parts. Although continuous process emissions and emissions due to malfunction, startup, and shutdown originate from the same process unit, the control technologies for these emissions as outlined in the regulatory options differ. This is due primarily to flow characteristics and safety considerations inherent in each case.

Unless a waiver of compliance is obtained, each owner or operator would have to be in compliance within 90 days of the promulgation of the standard. A waiver of compliance can be granted by the Administrator for no more than two years from the promulgation date.

Summary of Health, Environmental, Energy, and Economic Impacts

The standard would apply to as many as 13 existing plants that produce ethylbenzene, styrene, or both. A recent analysis of the EB/S industry reveals that no new plants are expected to be constructed within the next five years primarily because the industry is not operating at full capacity.

The proposed standard would reduce total nationwide benzene emissions from all process vents within EB/S plants, based on current control and production at 100 percent capacity, from 2,100 megagrams per year (Mg/yr) to 91 Mg/yr. As a result of this reduction in continous process and excess process emissions, it is estimated that the nationwide incidence of leukemia deaths resulting from exposure to benzene emissions from EB/S process vents within 20 kilometers (km) of EB/S plants would be reduced from a range of 0.03 to 0.2 to a range of 1.3×10^{-4} to 9.2×10^{-4} deaths per year. In addition, a reduction in other health effects associated with benzene exposure (such as cytopenia, aplastic anemia, and chromosomal aberrations) may be expected.

The proposed standard would reduce the estimated maximum lifetime risk due to benzene emissions from EB/S process vents from a range of 6.2×10^{-4} to 4.4×10^{-3} to a range of 1.7×10^{-6} to 1.2×10^{-5}. The maximum lifetime risk represents the probability of someone dying of leukemia who has been exposed for a 70-year period to the highest maximum annual average benzene concentration due to benzene emissions from EB/S process vents.

The proposed standard would achieve the reduction in nationwide benzene emissions with minimal adverse impacts on other aspects of the environment. The other impacts that may occur primarily involve noise and thermal radiation associated with the use of flares for controlling excess emissions during startup, shutdown, or malfunction. Due to recovered energy, compliance with the proposed standard would result in a small energy savings, equivalent to approximately 0.1 percent of the current nationwide EB/S fuel requirements.

The capital investment required per plant to comply with the proposed standard would range from zero to $686,000, based on full capacity. The annualized costs per plant, assuming full capacity, would range from $68,750 to a savings of $140,000. The total nationwide capital cost of the proposed standard would be approximately $3.9 million based on production at 100 percent capacity. The total nationwide annualized cost, assuming full utilization of capacity, would be a net credit of $289,000 per year. The total annualized cost per Mg capacity of styrene would be a net credit of $0.07/Mg. These savings are due to a reduction in process energy requirements as a result of heat recovery from the combusted waste stream in the form of steam. The capital investment required per plant to comply with the proposed monitoring requirements, assuming no existing monitoring equipment, would be a maximum of $16,000 for installing two oxygen and temperature monitors and three flow meters, or $58,000 for installing a gas chromatograph and three flow meters. Finally, no plants are projected to close as a result of implementing the proposed standard.

Background Information on Health Effects of Benzene

The Administrator announced in the June 8, 1977, Federal Register (42 FR 29332) his decision to list benzene as a hazardous air pollutant under section 112 of the Clean Air Act. A hazardous pollutant is defined as an "* * * air pollutant to which no ambient air quality standard is applicable and which * * * may reasonably be anticipated to result in an increase in mortality or an increase in serious, irreversible, or incapacitating, reversible illness."

Numerous occupational studies conducted over the past 50 years have shown that health hazards result from prolonged inhalation exposure to benzene. Since 1900 the scientific and medical communities have recognized benzene as a toxic substance capable of causing acute and chronic effects. Benzene attacks the hematopoietic system, especially the bone marrow, and its toxicity is manifested primarily by alterations in the levels of the formed elements in the circulating blood (red cells, white cells, and platelets). The degree of severity ranges from mild and transient episodes to severe and fatal disorders. The mechanism by which benzene causes toxic effects is still unknown.

These adverse effects on the blood-forming tissues, including leukemia, have been documented in studies of workers in a variety of industries and occupations, including the manufacturing or processing of rubber, shoes, rotogravure, paints, chemicals, and, more recently, natural rubber cast film. These studies include single case reports, cross-sectional studies, and retrospective studies of morbidity and mortality among a defined group of workers industrially exposed to benzene.

Based on the entire set of these studies, the Administrator concluded that benzene exposure is causally related to a number of blood disorders, including leukemia (a cancer of the blood-forming system).[2] Although the studies which form the basis of this conclusion involve occupational exposure to benzene at higher levels than those found in the ambient air, the Administrator has "* * * made a generic determination that, in view of the existing state of scientific

[2] Benzene also has been shown to be causally related to various cytopenias (decreaded levels of formed elements in the circulating blood), aplastic anemia (a non-functioning bone marrow), and potentially inheritable chromosomal aberrations.

knowledge, prudent public health policy requires that carcinogens be considered for regulatoy purposes to pose some finite risk of cancer at any exposure level above zero" (44 FR 58646). Because of the widespread use of benzene, benzene emissions in the ambient air have been determined to result in significant human exposure. For these reasons, exposure to benzene emissions may reasonably be anticipated to result in one or more serious effects that can be expected to lead to an increase in mortality or an increase in serious, irreversible, or incapacitating, reversible illness. Therefore, the Administrator concluded that benzene satisfies the definition of a hazardous air pollutant under section 112 of the Clean Air Act.

Rationale for Regulating Ethylbenzene/Styrene Plants

Stationary source categories of benzene emissions include fugitive emissions form petroleum refineries and chemical manufacturing plants, the gasoline marketing system, process vents at several types of chemical manufacturing plants, coke by-product plants, and benzene storage and handling facilities. Ethylbenzene and styrene production are among the several types of chemical manufacturing plants which emit benzene. Ethylbenzene and styrene are considered jointly for regulation because the plants are located together and frequently physically integrated.

The first step in establishing a standard for benzene was to determine which of the source categories emitting benzene would be regulated. Although a pollutant such as benzene may be considered for regulation under section 112 of the Clean Air Act because emissions from a particular source category post a significant risk, other source categories may also emit the pollutant in lesser amounts. This may occur, for example, because the source categories process very little of the substance, because the substance is present in only trace amounts in the sources' raw materials, or because sources have installed adequate controls on their own initiative or in response to other regulatory requirements.

Approximately 17 percent of the benzene emissions from chemical manufacturing is from EB/S plants; they are the second largest source of benzene emissions in the chemical manufacturing industry. The largest source of benzene emissions in the chemical manufacturing industry is the production of maleic anhydride, which will be regulated under a separate standard.[3] Seventeen plants produce ethylbenzene, styrene, or both. Fifty percent of the benzene produced in the United States for chemical use goes to the production of ethylbenzene, styrene, or both. The current U.S. styrene capacity is 4.0 million Mg/yr (4.4 million tons/yr). The current U.S. ethylbenzene capacity is 4.7 million Mg/yr (5.2 million tons/yr). Benzene emissions from EB/S process vents currently are only controlled an average of 70 percent nationwide. Total benzene emissions from these sources currently are estimated to be about 2,100 Mg/yr.

Approximately 2.5 million people live within 20 km of the 13 EB/S plants that produce ethylbenzene by benzene alkylation and/or styrene by ethylbenzene dehydrogenation or ethylbenzene hydroperoxidation. This is considered the population at risk which is exposed to ambient concentrations of benzene due to benzene emissions from the process vents within these plants. As a result of exposure to these benzene concentrations, it was estimated that the maximum lifetime risk would be within a range of 6.2×10^{-4} to 4.4×10^{-3}. The maximum life time risk is defined here as the probability of an individual (within the assumed exposed population) dying of leukemia who is exposed continuously for 70 years to the highest maximum annual average ambient benzene concentration due to benzene emissions from EB/S process vents. In addition, it was estimated that there would be a range of 0.027 to 0.20 deaths per year within this population due to benzene exposure from EB/S process vents.

While the operating life of the plants (and, in fact, the long-range number of plants) which may be subject to this standard cannot be predicted with certainty, it has been estimated that the typical operating life of an ethylbenzene/styrene plant is 20 years. Individual plants may actually operate much longer than that. Existing plants which have been in operation for some time may have less than 20 years of remaining operating life. However, production of ethylbenzene and styrene began during World War II and there is no indication that production will cease in the foreseeable future. Therefore, it can be expected that if any existing capacity is shut down, it will be replaced by new capacity either at the same or a new plant site. For these reasons, a 20-year operating life expectancy for ethylbenzene/styrene plants would be a reasonable assumption. On this basis, the number of deaths estimated to occur over the life of the 13 existing plants would range from 0.55 to 3.9.

The ranges presented here represent the uncertainty of estimates made concerning the benzene concentrations to which workers were exposed in the occupational studies of Infante, Aksoy, and Ott, which were the basis for developing the benzene unit risk factor (discussed in Appendix E of "Benzene Emissions from the Ethylbenzene/Styrene Industry," EPA-450/3-79-035a). These ranges are based on a 95 percent confidence interval that assumes the estimated concentrations are within a factor of two.

There are several other uncertainties associated with the estimated number of Leukemia deaths that are not quantified here. The number of deaths were calculated based on an extrapolation of leukemia risk associated with a presumably healthy white male cohort of workers to the general population, which includes men, women, children, non-whites, the aged, and the unhealthy. Uncertainty also occurs in estimating the benzene levels to which people in the vicinity of EB/S plants are exposed. Furthermore, leukemia is the only health effect of benzene considered. Additionally, the benefits to the general population of controlling other hydrocarbon emissions from EB/S production are not quantified. Finally, these estimates do not include the cumulative or synergistic effects of concurrent exposure to benzene and other substances. As a result of these uncertainties, the number of deaths and the maximum lifetime risk calculated around EB/S plants could be overestimated. However, and more importantly, they could just as well be underestimated for the same reasons.

Based on the magnitude of benzene exposures from emissions from this source category, on the resulting estimated maximum individual risks and estimated incidence of fatal cancers in the exposed population for the life of existing sources in the category, and on consideration of the uncertainties associated with these quantitative risk estimates (including the effects of concurrent exposures to other substances and to other benzene emissions), the Administrator finds that benzene emissions from process vents at EB/S plants create a significant risk of cancer and require the establishment of a national emission standard under section 112 of the Clean Air Act.

The Administrator considered a number of alternatives to section 112 of

[3] Proposed rule and notice of public hearing for regulating benzene emissions from maleic anhydride plants was published in the Federal Register on April 18, 1980 (45 FR 26660).

the Clean Air Act for regulating benzene emissions from EB/S plants, including relying instead on the OHSA standard for benzene emissions and hydrocarbon control under State Implementation Plans (SIP's). The current OSHA benzene standard is ten ppm for an eight-hour workday. In 1978, the Secretary of Labor promulgated a more stringent standard that reduced the permissible exposure limit for benzene to one ppm. However, the one ppm standard was held to be invalid by the U.S. Court of Appeals because it was not supported by the administrative record and on July 2, 1980, the U.S. Supreme Court affirmed with the lower Court's ruling. The current OHSA standard stipulates a level of benzene which cannot be exceeded in the workplace. The Administrator does not expect this workplace standard to result in as great a control of benzene emissions from process vents.

Volatile organic compound (VOC) emissions from EB/S plants can be regulated under SIP's designed to meet National Ambient Air Quality Standards (NAAQS) for ozone. However, because SIP's are designed to provide statewide compliance with NAAQS for criteria pollutants, a particular State's strategy for reducing VOC emissions may not require as stringent benzene emission control for EB/S plants as that of another State or as may be appropriate in light of benzene's hazardous nature.

Finally, the Administrator considered using the Toxic Substances Control Act (TSCA) as an alternative, but concluded that the Clean Air Act provides a more direct, expeditious route for regulating benzene emissions from EB/S plants.

Selection of Sources Within Ethylbenzene/Styrene Plants To Be Regulated

The two processes used domestically to produce ethylbenzene are benzene alkylation with ethylene and mixed xylene extraction. The alkylation process represents 95 percent of ethylbenzene production. The two processes for producing styrene are ethylbenzene dehydrogenation and ethylbenzene hydroperoxidation. The hydroperoxidation process is currently used by only one plant and represents ten percent of styrene production.

The proposed standard would apply to the production of ethylbenzene from benzene alkylation and the production of styrene from ethylbenzene dehydrogenation and from ethylbenzene hydroperoxidation. The extraction of ethylbenzene from mixed xylenes is a refinery operation and is not covered because the actual ethylbenzene extraction step has no benzene emissions. Benzene emissions from associated refinery operations are to be regulated under a separate standard controlling benzene emissions from petroleum refinery processes.

The major benzene emission points from EB/S plants and the quantity of benzene each of them emits are summarized below. These emissions are based on a 300,000 Mg/yr model plant and include representative emission points throughout the EB/S industry, although not all plants contain each of these emission points.

Emission points	Benzene emissions kg/hr
Alkylation Reactor Section Vents	11.2
Atmospheric and Pressure Column Vents	45.0
Alkylation and Dehydrogenation Vacuum Column Vents	13.0
Hydrogen Separation Vents	1.0
Hydroperoxidation Vacuum Column Vents	18.7
Ethylbenzene Oxidation Reactor Vents	7.2
Storage	5.3
Fugitive	1.6
Secondary	2.5

The proposed standard would cover process emissions from all the emission points listed above except for the oxidation reactor vent, and fugitive, storage, and secondary emission sources. The sources covered by the standard include essentially all benzene-emitting process vents, except those emitting only traces of benzene (e.g., catalyst preparation area vent). The hydrogen separation vents emission rate reflects the emissions at a controlled rate rather than uncontrolled because, under most conditions, these emissions are controlled. Under uncontrolled conditions the emission rate would be substantially higher. The hydrogen separation vents are covered by the standard because there is one plant which does not control the source and there is a potential for plants to not control the source during routine production.

The oxidation reactor vent contains a relatively small concentration (35 ppmv) of benzene. However, its flow is much larger and much more dilute than the other process vents and consequently would require separate incinerator and a large amount of energy (approximately 3.2×10^8 Megajoules per year (MJ/yr)) to handle the large flow and control the benzene emissions. Because the large amount of energy that would be required to control this vent is grossly disproportionate to the benzene emission reduction (approximately 1.0×10^7 MJ/Mg), the Administrator has concluded that this impact outweighs the benefit from controlling this vent. Therefore, the oxidation reactor vent is not covered by the proposed standard.

Emissions from fugitive, storage, and secondary sources represent approximately ten percent of overall benzene emissions in the EB/S production processes. Separate standards are being developed which will cover fugitive and storage sources of benzene emissions, including EB/S sources. These standards will apply to a large number of similar benzene sources in chemical and other industries and will reduce the number of standards which would cover essentially the same sources.

Selection of Regulatory Options

The Administrator considered four regulatory options to reduce benzene emissions from the continuous process vent streams listed. These regulatory options are based on the control devices currently used in the EB/S industry, namely condensers, absorbers, flares, and boilers; the use of substitutes for styrene also was considered.

Condensation can achieve a varying degree of control for benzene emissions, ranging from 80 to 90 percent control of individual process streams, depending upon the prevailing temperature and pressure of the vent streams and the amount of benzene they contain relative to the other stream components. Two mechanisms exist for condensation: (1) Cooling alone using a condenser, or (2) increasing the system pressure in conjunction with cooling the stream in a condenser. Although a vent stream does not need to be saturated with benzene when using condensation, it should be near saturation before entering the condenser if a high degree of control is desired. Therefore, condensers are applied to gas streams which are continuous and highly concentrated. The gas streams fitting this description vary from plant to plant. Depending on the characteristics of the individual EB/S plant, condensers can be used to control as much as 75 percent of the continuous process emission vents. Five existing EB/S plants use condensers to control benzene emissions. Atmospheric and pressure distillation column vents and the benzene/toluene vacuum column are examples of those vents which are amenable to the use of condensers in some EB/S plants. Condensers, however, cannot handle short-duration, high-volume streams resulting from the intermittent release of the hydrogen separation vent.

Absorption can be used to handle streams dilute with benzene. The degree of control for benzene emissions, ranging from 80 to 99 percent, depends

in part upon the equilibrium between benzene and the absorbing medium at the scrubbing temperature. Packed towers, using chilled polyethylbenzene oils as a benzene absorbent, can be used to control streams of low concentration. The gas streams fitting this description vary from plant to plant. Depending on the characteristics of the individual plant, absorbers can be used to control as much as 75 percent of the continuous process emission vents, such as the reactor vents and the vacuum column vents. One existing EB/S plant uses an absorption system to control benzene emissions.

Boilers can be used to control benzene-containing streams in all EB/S processes. A high control efficiency is achieved by boilers since injecting a vent stream at the burner head results in good fuel/air mixing, and combustion occurs at high temperatures. Based on expected boiler operating conditions and available test data, a 99 percent destruction efficiency is considered achievable for relatively constant gas flows.

Flares also can be used to control benzene emissions by combustion. Approximately 50 percent of all EB/S plants use flares for controlling continuous process emissions. To date, very little documented information exists on the representative destruction efficiency of flares for benzene or any other volatile organic compounds (VOC's). Based on engineering calculations and limited testing on natural gas by a flare vendor, a flare system can be expected to achieve a range of 60 to 99 percent destruction efficiency for VOC's. However, in the past, the Administrator has been reluctant to allow the use of flares as a continuous process emission control device because no practical measuring method exists to detemine if the flares are in compliance. Due to their potentially low or variable efficiency, the Administrator does not consider flares as a single effective control technique for continuous emissions.

Use of a styrene substitute that does not emit benzene during its production is another means of controlling benzene emissions. Although substitutes exist for certain end-uses, no substitute compound has been developed to date with the characteristics appropriate for all styrene.

Although EB/S plants could produce ethylbenzene from mixed xylenes instead of benzene, the Administrator does not consider this substitution as a viable regulatory option. The actual separation of ethylbenzene from mixed xylenes has no benzene emissions. However, as a result of switching ethylbenzene production to extraction from mixed xylenes, benzene emissions from other sources such as associated refinery operations and gasoline distribution may increase with ultimately no reduction in nationwide benzene emissions from all sources.

Combinations of the control devices studied were used in developing the regulatory options for continuous process emissions which the Administrator considered in selecting the basis of the standard. Because there are no technological reasons to consider different or alternative controls for new and existing sources, these regulatory options were considered applicable to both.

Regulatory Option A would involve routing the benzene/toluene column vent and the atmospheric and pressure column vents to condensers to achieve approximately 80 to 90 percent emission reduction and routing the alkylation reactor section vents and other vacuum vents to an absorber to achieve 80 to 99 percent emissions reduction. Based on these controls, this option would give an overall benzene reduction of 85 percent. Regulatory Option B would reduce benzene emissions by 94 percent based on the use of condensers and an absorption tower, which would achieve 85 percent control, combined with a flare with an assumed efficiency of 60 percent. Because of the variability in the destruction efficiency of flares, a 60 percent emissions destruction efficiency is assumed for this analysis as a conservative estimate. Regulatory Option C would reduce benzene emissions by 99 percent based on the use of boilers. This option would involve routing the vacuum column vents, the atmospheric and pressure column vents, the alkylation reactor vents, and the hydrogen separation vent to an existing boiler. Regulatory Option D would involve 100 percent control of benzene emissions based on closure of all ethylbenzene and styrene plants and on the use of substitutes for styrene products.

Existing data indicate that at certain times and under certain conditions process emissions can occur from the process vents previously discussed that could not be controlled practically by any of the regulatory options thus far identified. This is because the flow rate, composition, and pressure characteristics of these process vent streams, which occur under other than normal operation (startup, shutdown, or malfunction of process or control equipment), differ from the continuous process vent streams previously discussed. These emissions, under Regulatory Options A, B, or C, could also exceed the amount of emissions that would be permitted under these options. These "excess" emissions, therefore, would occur whenever the emissions reduction associated with Regulatory Options A, B, or C was not being achieved.

Some of these excess process emissions would be due to sudden and unavoidable process and control equipment failures and are, by definition, malfunctions. Though benzene emissions due to malfunctions can arise anywhere on the production train, certain pieces of equipment have been cited as likely sources of emissions. A hydrogen separation compressor outage is a common type of process or control equipment failure and can, on the average, emit for about ten hours per year approximatly 4,000 kg of benzene (based on a 300,000 Mg/yr model plant).

During normal operation, the compressor directs the stream from the dehydrogenation section to the aromatics recovery unit where the condensables are removed; then the remaining hydrogen-rich stream is routed to the boiler, mixed with natural gas, and is used as supplemental fuel. A primary compressor outage, however, would prevent aromatics recovery and utilization of the stream as fuel and could necessitate venting of the benzene-laden stream to the atmosphere. The primary compressor outage would produce a high-volume, short-duration stream flow.

The condensers and/or absorption towers assumed under Regulatory Options A and B could not be practically applied to controlling this stream since condensation and/or absorption efficiency rates cannot be maintained under these high stream flow conditions.

The boiler, assumed under Regulatory Option C, can attain a high benzene destruction efficiency (99 percent) when process vent stream flow rate and composition are fairly constant. When a primary compressor outage occurs, however, flow rate, pressure, and thermal value of the process vent stream varies significantly. These stream characteristics could risk operational upsets and possible damage to the boiler if the boiler does not have sufficient controls to regulate the fluctuations in stream flow, pressure, and composition. Operational upsets such as firebox temperature excursions would affect the rate of steam generation and thus, the rate of reaction. Temperature fluctuations also damage boiler tubes, thereby causing downtime and safety risks to personnel.

Excess process emissions can also occur during startup and shutdown. A startup involves bringing into full operation equipment in an entire plant, the dehydrogenation section, or alkylation reactor section, which are originally at ambient temperature and empty of process liquids. The procedure requires an average of approximately 12 to 24 hours to fully establish reactions and ensure that the quality of the product meets specifications. In this interim period, however, benzene emissions in excess of the emissions reductions specified under Regulatory Options A, B, or C can be released from certain points in the production train. Based on a 300,000 mg/yr model plant, approximately 4,200 kg or benzene can be emitted for an average of ten hours per year from the entire plant, most of which is from the hydrogen separation vent. Due to a lack of sufficient flow during startup, this stream is not compressed nor is it then sent to the aromatic recovery stream as is the case during normal production. Rather, typical practice involves either venting the stream directly to the atmosphere or flaring it until the dehydrogenation reaction is established fully.

The process vent stream composition during startup varies widely due to entrained nitrogen, reactants, and other process liquids. The condensers and/or absorption towers assumed under Regulatory Options A and B could not be practically applied to controlling this stream because these stream characterisics inhibit efficient absorption and condensation.

During the startup procedure, it is necessary to maintain stable boiler operation while adjusting relative feed rates of reactants and catalyst. Combusting this variable dehydrogenation stream in a boiler, which is the control device assumed under Regulatory Option C, would cause fluctuations in firebox flame temperature and stream saturation rate and would inhibit control of the reactions.

Shutdown involves terminating operation of all equipment in the entire plant, the dehydrogenation section, or alkylation reactor section, and allowing the equipment to cool to ambient temperature. The procedure involves cutting off feedstock to the reactors while concurrently decreasing the introduction of steam, so that the temperature of all equipment reaches ambient levels. During this procedure, benzene emissions in excess of the emissions reductions specified under Regulatory Options A, B, or C can occur. Residual benzene in equipment must be purged before maintenance can begin. During plant shutdown, as in plant startup, the bulk of benzene emissions occur at the hydrogen separation vent. Based on a 300,000 Mg/yr model plant, benzene emissions due to plant shutdown are approximately 4,200 kg/yr from the entire plant.

Variations in stream temperature, composition, flow, and pressure rate occur during the shutdown procedure. This stream cannot be controlled by condensation or absorption equipment due to the wide fluctuations in temperature, composition, flow, and pressure rate. Entrained liquids and nitrogen in the stream would inhibit this control equipment efficiency. During plant shutdown, the boiler firebox temperature and, consequently, steam output is being carefully reduced. This procedure therefore precludes manifolding the waste stream to the boiler.

After this consideration of the application of Regulatory Options A, B, and C to the control of excess emissions during startup, shutdown, and malfunction, the Administrator determined that a separate set of regulatory options should be considered for the excess emissions.

Excess benzene emission from EB/S plants can basically be controlled by combustion and/or backup compressors. Combustion can be accomplished in a boiler or by a flare. An existing boiler can theoretically attain a high benzene destruction efficiency of 99 percent. However, the variable flow, pressure, and composition of excess emissions encountered during periods of startup, shutdown, or malfunction would require major retrofit. Extremely complex controls and monitoring equipment would also be necessary to ensure operational stability and safety.

Smokeless flares are used by approximately 75 percent of existing EB/S plants for controlling excess emissions. Various vent streams can be manifolded to a properly-sized flare for thermal destruction. The main advantage of the flare is its ability to control high-volume, short-duration releases as normally are encountered during equipment malfunction. For example, flares can control emissions due to a hydrogen separation compressor outage, vent gas compressor outage, and streams of highly variable Btu value such as those encountered during startup and shutdown. Smokeless flares can reduce visible emissions to no more than five minutes or less within a two-hour period. A smokeless flare, however, achieves variable levels of control.

Backup compressors can be used to limit emissions resulting from primary compressor failure. A backup compressor can typically come on-line within an hour. This can effectively control 90 to 100 percent of benzene emissions resulting from a primary compressor outage. At present, approximately 50 percent of EB/S plants employ backup compressors. At these plants, however, the backup compressor was installed for conditions specific to those plants.

Based on the above control methods, the Administrator considered four regulatory options for controlling excess emissions during startup, shutdown, and malfunction. Because there are no technological reasons to consider different controls for new and existing sources, these regulatory options apply to both. Regardless of the option selected, avoidable excess emissions due to failures of process or air pollution control equipment caused entirely or in part by deficiencies in design, poor maintenance, careless operation, or other preventable equipment breakdown would be in violation of the proposed standard which requires that good air pollution control practice be followed. Furthermore, failure of process or control equipment, regardless of the cause, would be required to be repaired quickly; failure to do so would constitute avoidable excess emissions and a violation of the proposed standard. Under each of the regulatory options, each occurrence of excess emissions, regardless of the cause, would have to be reported to the Administrator. The Administrator then would judge if the excess emissions were avoidable.

Under Regulatory Option 1, excess emissions would be allowed only during malfunctions, startup, and shutdown. During these times these emissions would have to be combusted by one or more smokeless flares. Under Regulatory Option 2, EB/S owners or operators would have to meet the same requirements as Regulatory Option 1. In addition, they would be required to install backup compressors to control excess emissions during compressor malfunctions and to burn the emissions by one or more smokeless flares until the backup compressor was fully operational. Under Regulatory Option 3, EB/S owners or operators would be required to retrofit existing boilers to accept all excess emissions at all times, allowing these excess emissions to be flared only for short periods required to adjust boiler operation for acceptance of the waste stream at the beginning of an outage. Regulatory Option 4 is the only means of completely eliminating excess

emissions from EB/S plants and would require 100 percent excess benzene emissions reduction based on EB/S plant closure.

Selection of Basis of Standard

The selection of the basis of the proposed standard for benzene emissions from EB/S process vents was a two-step process. The first step consisted of examining the environmental, energy, and economic impacts of various regulatory options and selecting one of them as the best available technology (considering environmental, energy, and economic impacts) (BAT). The second step in the process was to examine the residual health risks remaining after application of BAT to determine whether they were unreasonable in view of the health benefits and costs that would result if a more stringent option were applied. In determining whether the residual risks are unreasonable, and thus whether a level of control more stringent than BAT is to be required, the following factors are compared for the option selected as BAT and the option more stringent than BAT: (1) The range of estimated maximum risk to the most exposed individuals; (2) the range of total estimated cancer incidence and other health effects in the existing and future exposed populations through the anticipated operating life of existing sources; (3) readily identifiable benefits of the substance or activity; (4) the economic impacts of requiring additional control measures; (5) the distribution of the benefits of the activity versus the risks it causes; and (6) other possible health and environmental effects resulting from the increased use of substitutes. The selection of the basis of this standard as described in this section is consistent with these procedures.

In this case, BAT would be selected for EB/S process vents and the health impacts and costs that would result from application of a more stringent option would be examined. As previously discussed, EB/S process vent emissions are comprised of continuous process and excess emissions whose control would require different control techniques. Consequently, this necessitated development of two sets of regulatory options. In order to determine BAT for process vent emissions, the Administrator selected the combination of options for continuous process and excess emissions which he determined represented BAT for process vents. In making his selection, the Administrator examined the impacts of these two sets of options separately and selected BAT for continuous process emissions and BAT for excess emissions. He concluded this combination to be BAT for process vent emissions and then examined the residual risks after application of BAT for process vents.

Although Regulatory Options A, B, and C do not require the use of the specific control device upon which they are based, the control devices were used as a basis for estimating the environmental, energy, and economic impacts of the regulatory options for continuous process emissions on the EB/S industry, using a 300,000 Mg/yr model plant as a representative plant. Regulatory Options 1, 2 and 3 would require specific control devices; these were used in estimating the environmental, energy, and economic impacts of the regulatory options for excess emissions, using the same model plant. Although differences exist between EB/S plants, only one emission point at one plant, the ethylbenzene hydroperoxidation reactor vent, was significant enough to affect the regulatory analysis. Therefore, this analysis was performed using one model plant, with a separate study of the hydroperoxidation reactor vent. To determine nationwide impacts for each regulatory option, the model plant impacts were scaled to each existing plant according to capacity and present level of control. Because new EB/S plants should not differ greatly from existing plants, the 300,000 Mg/yr model plant is considered representative of both. Because Regulatory Option D for continuous process emissions and Regulatory Option 4 for excess emissions assume 100 percent emissions control based on plant closure, only the economic impacts of plant closure were estimated.

Impacts for Continuous Process Emissions

Environmental Impacts. In terms of nationwide air quality impacts, estimated total benzene emissions from continuous process vent streams alone in the EB/S industry are 1,990 Mg/yr, at current control levels and at 100 percent production capacity. Regulatory Options A and B would reduce total continuous process benzene emissions from the industry to 625 Mg/yr and 200 Mg/yr, respectively. Regulatory Option C would reduce total continuous process benzene emissions from the industry to 70 Mg/yr.

Based on dispersion modeling, the highest estimated maximum annual average benzene concentrations which occur within the industry, including emissions from fugitive and storage sources, occur at 160 meters (m) for each option and are 95.6 ppb under existing conditions, 54.1 ppb under Regulatory Option A, 46.1 ppb under Regulatory Option B, and 46.0 ppb under Regulatory Option C. The highest estimated maximum annual average concentrations which occur within the industry due to process vents alone are estimated at 63.6 ppb under existing conditions and 18.2 ppb under Regulatory Option A at a distance of 160 m, 1.4 ppb under Regulatory Option B at a distance of 500 m, and 0.19 ppb under Regulatory Option C at 1,000 m.

None of the regulatory options considered result in any significant increase in wastewater or effluent discharge by EB/S plants nor do they generate any solid waste. Noise and thermal radiation associated with the use of flares, which would be required for reducing benzene emissions from process stream sources if Regulatory Option B were adopted, are negligible.

Energy Impacts. Energy impacts of each regulatory option were also considered. Under Regulatory Option A, energy is required to operate pumps and compressors for the condensers and absorbers. Energy also is required for the cooling system of the condensers. Total energy required for this option is approximately 0.1 percent of the fuel requirements for the model plant. Under Regulatory Option B, flare operation consumes both steam (for smoke control) and natural gas (as a supplemental fuel). In conjunction with the condensers and absorbers, the total energy demand for Regulatory Option B also would approximate 0.1 percent of the fuel requirements for the model plant. Due to heat recovery, Regulatory Option C would result in a small net energy savings, equivalent to approximately 0.1 percent of the fuel requirements for the model plant.

In terms of nationwide energy impacts, Regulatory Options A and B for all existing EB/S plants would require approximately 0.1 percent of the total nationwide EB/S fuel requirements. Due to recovered energy, Regulatory Option C would result in a small total nationwide energy savings, equivalent to approximately 0.1 percent of the current nationwide EB/S fuel requirements.

Economic Impacts. The Administrator considered both capital and annualized costs for Regulatory Options A, B, and C. Nationwide impacts were determined from these cost estimates. Capital and annualized costs for individual pieces of control equipment were based on the equipment requirements of a 300,000 Mg/yr EB/S model plant to achieve a given level of emission reduction. Current control levels and installed equipment at existing plants were accounted for in determining equipment

required at each existing facility to achieve given levels of control.

Regulatory Option A requires the smallest capital outlay of the regulatory options and would range from zero to $268,000 per plant, depending on the current level of control, plant size, and additional equipment needed to meet the control level specified. Regulatory Option B in most cases would require large amounts of piping in addition to pieces of equipment needed in the flare system. Capital costs for this regulatory option would range from zero to $530,000 per plant. Capital costs for Regulatory Option C range from zero to $555,000 per plant, accounting for additional piping and burner retrofit.

Total annualized costs, including operating and maintenance costs, annualized capital costs, and recovered material and fuel credits, would range from $13,500 to a savings of $172,000 per plant under Regulatory Option A; a cost of $45,000 to a savings of $172,000 per plant under Regulatory Option B; and a cost of $26,000 to a savings of $150,000 per plant under Regulatory Option C. The range would be due to differences in the treatment of the various vent streams in each of the plants. Some facilities already control those streams which are close to saturation with benzene and for which treatment results in a net savings. In these cases, the incremental recovery credits are small. Others have a lesser degree of control on these streams. In these cases, the fuel and recovery credits can far exceed the annualized costs of the control device by reducing the amount of supplemental energy and benzene typically required in the process.

In terms of nationwide impact, Regulatory Options A, B, and C each would require 12 plants to install controls. Total nationwide capital costs to the industry would be approximately $1.4 million, $3.1 million, and $3.4 million under Regulatory Options A, B, and C, respectively. No EB/S plants are expected to close as a result of capital costs attributed to controls under Regulatory Options A, B, and C. Based on a review of representative company capital expenditures and financial information, the capital cost of the controls considered are well within the scope of normal spending and the parent companies should have little difficulty with either debt or equity financing.

The industry's total annualized cost, assuming full utilization of capacity and including operating and maintenance costs, annualized capital costs, and fuel and recovered material credits, would be net credits of approximately $608,000 under Regulatory Option A; approximately $202,000 under Regulatory Option B; and approximately $460,000 under Regulatory Option C. Total annualized cost per Mg capacity of styrene would be a net credit of $0.15/Mg under Regulatory Option A; $0.05/Mg under Regulatory Option B; and $0.11/Mg under Regulatory Option C. These savings in Regulatory Options A and B are due to a reduction in benzene requirements as a result of material recovery, and the savings in Regulatory Option C are due to a reduction in process energy requirements as a result of energy recovery from the combusted waste stream in the form of steam. In terms of individual firms, only four companies would experience a total annualized savings under Regulatory Option B, while more than half would realize a savings under Regulatory Options A and C.

Assuming a 15 percent target rate of return, full utilization of capacity and a base price of $463/Mg, styrene unit prices would be expected to increase at a maximum by $0.70/Mg under Regulatory Option A (0.15 percent of product price); $2.14/Mg under Regulatory Option B (0.46 percent of product price); and $1.27/Mg under Regulatory Option C (0.27 percent of product price).[4]

Styrene is used in the manufacture of polystyrene for packaging, food containers, insulation, and furniture; acrylonitrile-butadiene-styrene resins (ABS) for piping and automotive parts; and styrene-butadiene elastomers (SBR) for synthetic rubber, tires, hoses, belting, and adhesives. Any price increase in styrene is expected to be reflected in the price of these goods.

Employment impacts were analyzed for a number of cases. Even under the worst case, the jobs created under Regulatory Options A, B, and C would exceed any employment loss due to any production decrease under those regulatory options. Net employment factors under each regulatory option, except for Regulatory Option D (100 percent control), would probably be positive but small.

Complete prohibition of benzene emissions at ethylbenzene and styrene plants under Regulatory Option D would require closure of ethylbenzene and styrene production because no technology exists which will achieve a zero emission limitation. Banning production of ethylbenzene and styrene would have a negative impact on the producing companies. In 1978, domestic styrene production was valued at $1,135 million; investments in styrene are estimated to be worth approximately $925 million as a high-side estimate; and direct employment in the industry is estimated at 650 to 950 workers. Output, income, and employment impacts would be geographically concentrated to some degree in Texas and Louisiana. A multiplier impact affecting related industries, decreased output, lower overall income, and increased unemployment could be anticipated in these areas.

Regulatory Option D could have a greater negative impact depending upon whether the production of styrene derivatives also must be discontinued. If derivative chemicals are no longer available, specialized fabricators who process such chemicals may face closure. If styrene monomers could be imported in sufficient quantities, styrene derivative production could continue in the United States. The availability of large quantities of styrene monomer for import is questionable. The United States traditionally has been a net exporter of styrene. In 1976, U.S. styrene facilities represented 40 percent of total world capacity. In the near term, it would be unlikely that sufficient imports would be available. In the long term, foreign producers of styrene might choose to further process the monomer themselves and make styrene derivatives available for world consumption.

The magnitude of Regulatory Option D's impact on styrene derivative production could be large. Styrene plastics materials (the intermediate product derivatives) are produced by more than 40 companies throughout the United States. In 1978, production of styrene plastics materials was valued at $1,812 million, and asset values for this industry are estimated to total $1,236 million. Styrene monomer production directly involves less than 1,000 employees, while derivative chemical production may involve more than 10,000 employees.

Banning the production of ethylbenzene and styrene could sharply curtail the availability of many consumer products. Tires in particular would be affected by such a ban because there are no readily available substitutes for SBR from styrene. While natural rubber currently is used in tire manufacturing, there would be insufficient capacity to keep up with demand should styrene not be available.

[4] The maximum price increases are based on the highest price increases required by any one company to cover the cost of meeting the proposed standard. Because the industry is assumed to be operating at 100 percent capacity, the demand for styrene is greater than the supply. Therefore, as the one company raises its prices, other producers can be expected to increase prices similarly to take advantage of the price the market will bear.

As a result, tire prices most likely would rise.

Other natural products such as wood, glass, and paper are available substitutes for plastics, but this type of substitution is limited because of plastic material's technical superiority in some cases. Other man-made products could serve as substitutes for styrene. However, the cost could be too high to be considered justifiable, and if it were justifiable, the prices of the products would increase substantially.

Impacts for Excess Emissions

Environmental Impacts. The estimated total nationwide excess benzene emissions for the EB/S industry are 133 Mg/yr under current controls; 21 Mg/yr under Regulatory Option 1; 10 Mg/yr under Regulatory Option 2; and 1 Mg/yr under Regulatory Option 3. The highest projected maximum annual average benzene concentrations due to uncontrolled excess emissions from within the industry occur at 160 m and are 7.9 ppb. (Uncontrolled conditions means that the current level of controls for excess emissions at existing EB/S facilities, which vary from plant to plant, are not reflected in the calculations.) The highest projected maximum annual average benzene concentrations occur at 2,000 m for each regulatory option and are 4.3×10^{-3} ppb under Regulatory Option 1, 1.4×10^{-3} ppb under Regulatory Option 2, and 2.0×10^{-4} ppb under Regulatory Option 3.

None of the regulatory options considered result in any significant increase in wastewater or effluent discharge by EB/S plants nor do they generate any solid waste. Noise and thermal radiation associated with the use of flares are negligible.

Energy Impacts. Energy requirements for each regulatory option are minimal. Under Regulatory Option 1, a ten-inch smokeless flare is assumed for combusting vent streams generated during startup or shutdown operations and malfunction. Based on average of 12 hours of operation per year for a 300,000 Mg/yr model plant, total steam and natural gas requirements are approximately 5.23×10^6 MJ/yr.

Under Regulatory Option 2, a ten-inch smokeless flare is assumed to be used for combusting vent streams generated during startup or shutdown operations and malfunction. Total energy requirements for steam and natural gas for the model plant is approximately 5.14×10^6 MJ/yr. The backup compressor has no incremental energy impact since only one compressor will be in use at a given time.

Under Regulatory Option 3, all safety valves used in relieving surges in process streams would be manifolded to a smokeless flare, assumed for this case to be ten inches. Total energy requirements for steam and natural gas are approximately 5.1×10^6 MJ/yr for the model plant. Regulatory Option 3 also requires that an existing EB/S boiler be retrofitted to accept vent streams generated as a result of plant startup, shutdown and malfunction. Energy requirements for the boiler are negligible as are credits in terms of steam generated as a result of combusting the waste stream.

In terms of nationwide energy impacts assuming no current excess emissions control, Regulatory Option 1 would require 71×10^6 MJ/yr, Regulatory Option 2 would require 70×10^6 MJ/yr, and Regulatory Option 3 would require 69×10^6 MJ/yr of energy, or approximately 11,200 bbl/yr (fuel oil equivalent) under each option for all existing EB/S plants.

Economic Impacts. Industry-wide capital costs for Regulatory Option 1 would be approximately $524,000 and would require four plants to install excess emission controls. Regulatory Option 2 would require capital outlays of approximately $5.5 million and would require six plants to install controls.[5] Regulatory Option 3 would require the greatest capital outlays, approximately $20 million, and would require 13 plants to install controls. Industry-wide annualized costs for Regulatory Options 1, 2, and 3 would be $171,000, $1.6 million, and $5.2 million, respectively.

Regulatory Option 4 would have the most severe economic impact on the EB/S industry. Because 100 percent excess emission control is technically infeasible, selection of this option would necessitate plant closure. Banning production of ethylbenzene and styrene would have a negative impact on the producing companies and consumers. This impact has been discussed in detail in assessing the economic impact of Regulatory Option D (100 percent process emission control).

Selection of Option for Standard

In selecting the combination of options for the proposed standard, the Administrator first selected BAT for process vents, represented by the combination of BAT for continuous process emissions and BAT for excess emissions. This combination was based on the evaluation of impacts of the two sets of regulatory options developed for controlling these emissions. The Administrator then examined the residual risk after application of BAT for process vents and the health impacts and costs that would result from the application of a more stringent option.

In selecting BAT for continuous process emissions, the Administrator first examined the most stringent option, Regulatory Option D, which would result in closure of EB/S plants. After considering that styrene is a major feedstock used in the production of a number of desirable products such as polystyrene, plastics and rubbers; that styrene substitutes are not readily available in sufficient quantities; that banning ethylbenzene and styrene production would result in a severe economic hardship to the producers of ethylbenzene and styrene and to producers of styrene derivatives, and probably result in price increases to consumers; and that a large number of people would be unemployed, at least temporarily, if these plants were closed; the Administrator concluded that the economic consequences of a standard requiring 100 percent control were too severe to select as BAT. He next examined Regulatory Option C, 99 percent control. After considering that Regulatory Option C would have a net energy savings, no significant adverse environmental impacts, reasonable costs, and no adverse economic impacts, the Administrator selected this regulatory option as BAT for continuous emissions for process vents. It should also be noted that the next less stringent option, Regulatory Option B, would result in higher costs and higher energy consumption than the regulatory option selected as BAT.

In selecting BAT for excess emissions from process vents, the most stringent option, Regulatory Option 4, was examined first. Its economic impacts on EB/S and related industries and its social impact on users of styrene products were determined to be too severe to justify its selection as BAT.

The next less stringent option, Regulatory Option 3, then was examined. The industry-wide capital costs for this option ($20 million) are greater than the costs ($3.4 million) for the regulatory option selected as BAT for continuous process emissions and no recovery credits are involved. Therefore, the industry-wide annualized costs of this regulatory option would be many times higher than the annualized costs for the regulatory option selected as BAT for continuous process emissions. In addition, the emission reduction which would be achieved by this regulatory option (132 Mg/yr) would be

[5] In calculating the capital costs for Regulatory Option 2, it is assumed that of the six plants which require backup compressors, four also require flares. For Regulatory Option 3, it is assumed that of the 13 plants which require boiler retrofits, four also require flares.

very small in comparison to the continuous process emissions reduction achieved by application of 99 percent control (2,030 Mg/yr). For these reasons, the Administrator concluded that the cost impacts of Regulatory Option 3 were too severe for it to be considered as BAT for excess emissions.

The next less stringent option, Regulatory Option 2, then was considered. The industry-wide capital costs for this option ($5.5 million) are also greater than the costs ($3.4 million) for the regulatory option selected as BAT for continuous process emissions. However, no recovery credits are involved. Therefore, the industry-wide annualized cost of this option would be many times higher than the option selected as BAT for continuous process emissions. Furthermore, the emissions reduction which would be achieved by this option (123 Mg/yr) would be very small in comparison to the continuous process emissions reduction achieved by application of 99 percent control (2,030 Mg/yr). Therefore, the Administrator concluded that the cost impacts of Regulatory Option 2 were too severe to be considered as BAT for excess emissions.

Regulatory Option 1 was then examined. This option would require the use of smokeless flares, which most plants already have, to control unavoidable excess emissions. Assuming that plants which currently have flares would use them to meet the proposed standard, only four plants would be required to install smokeless flares if this option were selected as the standard. The total capital costs for these four plants would be only $524,000. The Administrator concluded that these costs were reasonable, and selected Regulatory Option 1 as BAT for excess emissions.

Based on the selection of Regulatory Option C as BAT for continuous process emissions and Regulatory Option 1 as BAT for excess emissions, the Administrator designated this combination as BAT for process vents. He then examined the residual risks remaining after application of BAT for all emissions from process vents at existing EB/S plants to determine whether they are unreasonable in view of the risk reduction which would be gained by requiring a level of control beyond BAT and the cost increase if that level of control were required.

It was estimated that after application of BAT to EB/S process vents there would be a range of 1.3×10^{-4} to 9.2×10^{-4} residual deaths per year within 20 km of existing EB/S plants due to benzene emissions from process vents, and from 0.0026 to 0.018 deaths over the assumed 20-year operating lifetime of the existing plants. In calculating these deaths, it was estimated that 2.5 million people live within 10 km of existing EB/S plants (1970 census data) and it was estimated that EB/S plants are operating at 100 percent of capacity. The maximum lifetime risk to the most exposed population after application of BAT was estimated to range from 1.7×10^{-6} to 1.2×10^{-5} due to continuous process and excess emissions. The maximum lifetime risk represents the probability of a person dying of leukemia who has been exposed for a 70-year period to the highest maximum annual average benzene concentration due to benzene emissions from EB/S process vents.

The next more stringent regulatory option for EB/S process vents would be a combination of Regulatory Option C and Regulatory Option 2. (It is noted that any combination containing Regulatory Option D, industry closure, would not represent the next more stringent option beyond BAT since there are combinations that exist which would attain process vent emission reductions greater than BAT and would not result in closure.) The Administrator then examined the impacts of applying this option. This combination would reduce the number of deaths per year to a range of 9.5×10^{-5} to 6.6×10^{-4}, or 0.0019 to 0.013 deaths over the assumed 20-year operating lifetime of the existing plants. The maximum lifetime risk would be reduced to a range of 1.7×10^{-6} to 1.2×10^{-5}. However, the industry-wide incremental capital costs associated with going from BAT to beyond BAT would increase from $3.9 million to $9.9 million and the industry-wide annualized costs would increase from a net savings of $289,000 to a cost of $1.1 million. In view of the relatively small health benefits that would be gained and the costs of requiring a more stringent option than BAT for process vents, the Administrator concluded the remaining cancer risk from process vents after application of BAT to such vents at existing sources is not unreasonable.

It should be noted that the standard applies only to EB/S process vents and does not cover emissions from fugitive and storage sources. Assuming that the emissions from fugitive and storage sources remain uncontrolled, the reduction in continuous process emissions after the application of BAT would reduce the nationwide incidence due to process, fugitive, and storage emissions from all EB/S plants to a range of 0.017 to 0.11 residual deaths per year. The maximum lifetime risk to the most exposed population after the application of BAT to process emissions would be reduced to a range of 4.1×10^{-4} to 2.9×10^{-3} due to combined emissions from continuous process, fugitive, and storage sources. The selection of BAT for process vents does not preclude future regulation of fugitive and storage emission sources, which are the predominant contributors to the residual risk.

In order to select an option as BAT for new sources and then determine whether a level of control beyond BAT should be required for new sources, it would be necessary to examine the environmental, energy, and economic impacts of requiring the various levels of control represented as Regulatory Options A through D for continuous process emissions and Regulatory Options 1 through 4 for excess emissions for new sources. This would typically be done using the expected growth rate for the industry over the five-year period after the anticipated proposal date of the standard. However, a recent analysis of the EB/S industry revealed that no new facilities are projected to be built within the next five years.

Beyond the five-year period following promulgation of the standard, growth in EB/S production is likely to occur. (It is not projected over the next five years primarily because the industry is not operating at full capacity.) Five years after promulgation, the standard will be reviewed by EPA to examine, among other data, any new information on development in control technology which could be applied to new EB/S sources. In addition, EPA will implement the other new source features of its proposed airborne carcinogen rules after the five-year review if new source construction appears likely at that time.

Selection of Format of Standard

A number of formats for limiting benzene emissions from EB/S process vents were considered. Since the regulatory option selected for the proposed standard for process vents is actually the combination of two separate regulatory options, each controlling different process stream emission characteristics, it is necessary to specify two formats, one for continuous process emissions and one for excess emissions.

The regulatory option selected for controlling continuous process emissions represents a 99 percent emission reduction and is based on the use of a boiler. Because emissions from a boiler can be measured, the Administrator determined that an emission limitation standard for continuous process emissions would be

appropriate, and considered a mass emission standard, a percent reduction standard, and a concentration standard.

Two considerations were important in selecting the appropriate format: (1) Minimizing the number of measurements and calculations required to determine compliance with the standards, and (2) avoiding a standard which would discourage product or fuel recovery from effluent streams containing benzene.

A mass standard based on a mass unit of benzene emitted per mass unit of feed, intermediate product, or final product produced was considered. Although it would allow EB/S plants flexibility in choosing to recover benzene from offgases, it would require consideration of the separate processing stages, which can be run independently of each other at different rates and at different facilities, and would involve determining mass emissions from each source along the production train while tying these measurements with production rate. Consequently, a standard of this format would complicate determining compliance, and also monitoring, because of the large number of measurements required. Therefore, the Administrator considered it inappropriate for EB/S plants.

A percentage reduction standard based on the amount of benzene exiting the control device versus the amount entering the device was considered. This option provides no incentive to reduce the amount of benzene entering the control equipment, and may discourage process changes which recover benzene from effluent streams. Moreover, it may offer a reverse incentive to increase the amount of benzene entering the control device to achieve the desired efficiency level while allowing larger final emission rates, and would involve measuring both incoming and outgoing streams at each point of control. Consequently, this option also was considered inappropriate.

A benzene concentration standard, expressed as ppmv, entails a minimal number of measurements and calculations for both the emissions test and for continuous monitoring. Because it only measures the benzene concentration in the exit stream, it does not discourage benzene recovery. Furthermore, at the inlet concentrations which are found at EB/S plants, the Administrator believes that the control device most likely to be used to meet the standard (boilers) will reduce benzene emissions to a constant benzene concentration. In other words, the exit concentration is not a direct function of the inlet concentration. As the inlet concentration is increased, the reduction efficiency increases with little or no change in the outlet concentration or the mass emissions. Therefore, the Administrator considers a benzene concentration standard to be the most appropriate format based on the considerations discussed above, and selected this format to limit benzene emissions from EB/S plants.

Since the standard for continuous process emissions is based on the use of boilers as the best available control technology, it is necessary to ensure that dilution is not used to meet a benzene concentration level standard. Enforcement of a concentration standard must account for the potential for dilution and, therefore, correction factors are included in the proposed standard to ensure that the benzene concentration measurements from all control devices are similarly referenced and that the quantity of benzene emitted is the same regardless of the amount of excess air used in the boilers. This is done most effectively by referencing all calculations to a dry basis and specific oxygen concentration level in the exhaust gases.

The Administrator has determined that the application of measurement methodology to excess benzene process emissions is not practicable due to technological limitations in the measurement of benzene flare destruction efficiency. Therefore, the Administrator has prescribed the use of a smokeless flare for excess benzene emissions in conjunction with certain work practices and operational standards. Included as part of the proposed standard are requirements that would assure the proper operation and maintenance of any such element of design or equipment.

Selection of Emission Limits

The selection of the numerical emissions limit is based upon the results of two emission tests performed at two EB/S plants. The test at the first plant showed that process heaters receiving benzene-containing vent streams could reduce benzene emissions to between nine and ten ppm referenced to three percent oxygen. However, these results may not reflect the actual benzene levels in the process heater flue gas because various sampling and analytical problems occurred during the test. Therefore, the test results from the first plant are suspect.

The test results from the second plant showed that benzene emissions could be reduced to between zero and 0.5 ppm, with a mean average of 0.39 ppm corrected to three percent oxygen on a dry basis, in a superheater and between zero and 1.4 ppm, with a mean average of 0.5 ppm corrected to three percent oxygen on a dry basis, in a hot oil furnace. These results can be considered representative for the superheater design at the second plant tested because the problems which occurred at the first plant were corrected at the time of the second test and Method 110, the recommended test method, was properly followed. However, because of the design of the superheater at the second plant, the emissions may be lower than those from a more typically designed superheater. The superheater at that plant was receiving approximately 1,500 ppm benzene while other superheaters, on the average, receive up to twice that amount of benzene. Furthermore, due to the burner configuration, benzene passed sequentially through two combustion zones and might have under gone greater destruction than if it has passed through a single combustion zone. The hot oil furnace was receiving approximately 50 to 100 ppm benzene and was reducing these emissions to between zero and 1.4 ppm benzene in the flue gas at three percent oxygen.

Because of the problems experienced during the test at the first plant, the results were not used in calculating the numerical emissions limit. Although the test results from the second plant show that less than two ppm can be achieved, the Administrator is proposing the numerical emission limit at five ppm to provide allowances for varying burner designs and boiler capacities.

Selection of Emission Test Methods

The proposed emission test method for determining benzene emissions is Method 110. Method 110 requires a gas chromatograph with a flame ionization detector for benzene analysis. This test method was used in the emission test at the second plant discussed in the "Selection of the Emission Limits" and was found to be satisfactory in confirming benzene emission levels.

The owner or operator of a source would be required to test emissions within 90 days of the promulgation date for an existing source and within 90 days of startup for a new source, unless a waiver of emission testing is obtained under § 61.13, and to notify the Administrator 30 days in advance of the emission test to afford the Administrator the opportunity to have an observer present during the test.

Each emissions test would consist of three runs, with a time-weighted average of the runs used to determine the emissions. The sampling time for each run would be a minimum of one hour. All calculations of benzene concentration are referenced to a three percent oxygen concentration level in the exhaust gases. Method 3 of 40 CFR

Part 60 shall be used to determine this oxygen concentration. The same sample collected for benzene determination is analyzed for oxygen concentration using an Orsat analyzer. The owner or operator of a source would be required to analyze each sample within 24 hours, to determine the emissions from the test within 30 days of the test, and to notify the Administrator of the results by close of business the following day.

After receipt and consideration of written application, the Administrator may approve alternative emission test methods.

Selection of Monitoring Requirements

In general, monitoring provides an effective and rapid means for enforcement personnel to determine if (1) the control device is operating, (2) the process vent streams covered by the standard are being directed to the control device, and (3) the control device is achieving the emissions limit. If the emissions limit were exceeded, it could be due to control device failure or to intentional altering of the control device.

A gas chromatograph is used to monitor emissions for two other chemical industries regulated under section 112 because it can measure directly the concentration exiting the control device, and therefore can detect if the emissions limit of the standard is exceeded. The gas chromatograph also can detect, by a significant change in the concentration exiting the control device, if large streams are not being routed to the control device, and can determine if the control device is operating.

However, for the purpose of this standard, a gas chromatograph is not the best means of monitoring emissions because the standard is based on the use of a boiler as the control device. This equipment is an integral part of the EB/S process because it produces steam and process heat required for styrene production. Therefore, in this case, the nature of the control device makes monitoring unnecessary to determine if the control dervice is operating. In addition, the EB/S process involves a number of small, individual process vents which are required to be routed to the boiler. Because these vents are so small, a gas chromatograph would not be able to detect if one of these small streams were not being routed through the boiler.

A gas chromatograph could, however, meet the third monitoring objective, i.e., to determine if the control device was achieving the emissions limit, but it would not be necessary. Because the boiler is central to the EB/S process, an incentive exists to operate the device correctly and, in the event of a control device failure, to repair it quickly. Furthermore, even though a gas chromatograph could detect if the numerical emission limit is exceeded during a control device failure, it would provide no data on the cause of the failure. Other monitoring method currently used at EB/S plants could not only detect the failure, but also provide operational data on the boiler to determine the caue of the failure. In addition, these methods would be less expensive and easier to operate than a gas chromatograph.

Examples of these other monitoring methods are the use of indicators and recorders for firebox temperature and flue gas oxygen. During normal operation, these parameters undergo only minor variation. However, during control device failures in which the numerical emission limit would be exceeded, large fluctuations in firebox temperature, flue gas oxygen, or both occur. by detecting these fluctuations, a system monitoring these parameters would determine if the five ppm benzene limit is not being achieved.

Flow meters could be used to determine if the vent streams are being properly routed to the boiler. Such a monitoring sytem typically would require a large number of flow meters, as many as a dozen or more, to monitor all vent stream piping. However, flow meters only at two or three central points in the piping system, such as at compressor outlets, and visual checks of other items, such as valve positions, could be equally effective for monitoring stream flow. This system would be more practical and involve less recordkeeping than a monitoring system based on flow meters on every stream.

A combination of these monitoring methods would provide even greater information concerning the cause of a malfunction than each would individually. For example, if the flow meter detected a disturbance, the oxygen monitor and firebox temperature monitors would also corroborate that a problem existed and could provide data concerning the cause of the malfunction.

Because a combination of these alternate monitoring techniques (1) would effectively meet the monitoring objectives for EB/S plants using boilers as the control device, (2) currently are used within the EB/S industry, and (3) would provide better data on the causes of malfunctions than a gas chromatograph, the Administrator has selected a combination of the alternatives as the proposed monitoring method. The proposed standard would require that owners or operators of sources using boilers as the control device install and continuously operate: (1) A flue gas oxygen monitor with a strip chart recorder, (2) a continuous firebox temperature monitor with a strip chart recorder, and (3) a flow meter which prints a record at least every 30 minutes on each compressor or natural gas ejector. In addition, owners or operators would be required to visually check each process vent stream to determine if each stream covered by the proposed standard is being sent to the boiler. This information would be kept in a weekly log signed by the plant operator.

A 100°F firebox temperature margin below the temperature recorded during the emission test and a 1.5 percent flue gas oxygen level represent clear breakpoints between normal fluctuations in boiler operation and serious failures. Even with normal fluctuations, a correctly operating boiler would be well above these temperature and oxygen limits, while one experiencing a failure would drop significantly below these levels. Therefore, these limits for firebox temperature and oxygen level were selected as parameters which would indicate compliance with the numerical emission limits. However, such a clear breakpoint does not exist for flow meters. Wide fluctuations of flow could be expected under normal operation. Consequently, a flow limit of zero was set to ensure that the flow meter indicates only when a process stream is not being routed to the control device, and not when normal flow fluctuations occur. A three-hour averaging period for these parameters was chosen to be consistent with the averaging period for the numerical emission limit. Finally, the frequency of visual checks was limited to a weekly basis because this would provide sufficient indication that all process vent streams are being routed to the control device without being burdensome to plant personnel. Furthermore, more frequent monitoring, such as daily visual checks, would not necessarily provide any better information about stream flows.

For sources which use air pollution control equipment other than boilers, the Administrator has determined that a gas chromatograph would best meet the monitoring objectives. The proposed standard therefore would require that the owners or operators install and continuously operate a gas chromatograph with a flame ionization detector to monitor the concentration of benzene exiting the control device controlling the process vents. To determine if all the process vent streams are being routed to the control device,

the proposed standard would require owners or operators to install and continuously operate a flow meter that prints a record every 30 minutes on each process vent stream or combination of process vent streams before entry into the control device. They also would be required to make a weekly visual check of each process vent and to keep a weekly log of each. However, because the majority of EB/S plants are expected to use a boiler to combust benzene emissions, this monitoring method is not expected to be used frequently.

The owner or operator of each source would be required to calibrate the required monitoring equipment and certify that the equipment is installed, operated, and maintained according to certain specifications as indicated in the regulation.

The capital investment required per plant to comply with the proposed monitoring requirements would be a maximum of $16,000 for installing two oxygen and temperature monitors and three flow meters, or $58,000 for installing a gas chromatograph and three flow meters. This maximum per plant cost assumes that plants do not have any of the required monitoring equipment. Many EB/S plants, however, currently have some of the required equipment for use in standard process operation. Therefore, the actual per plant cost would vary from plant to plant.

After receipt and consideration of written application, the Administrator may approve alternatives to any monitoring procedures or requirements specified in the proposed standards.

Reporting and Recordkeeping

Owners or operators of sources using boilers as the air pollution control device would be required to submit monitoring and operational data within ten days of any of the following, except during plant startup and shutdown: (1) Oxygen levels below 1.5 percent for a three-hour average, as determined by any flue gas oxygen monitor.

(2) Temperatures 100°F below that registered in the emission test for a three-hour average, as indicated by any firebox temperature monitor.

(3) A flow of zero registered by any flow meter on a compressor or natural gas ejector for a three-hour period.

(4) Two or more weekly visual checks within a 90-day period that determine if any stream is not being routed to the boiler.

Owners or operators of sources using air pollution control equipment other than boilers would be required to report monitoring and operational data within ten days of any of the following, except during plant startup and shutdown: (1) Any release of benzene from process vent streams to the atmosphere in excess of five ppmv benzene for a three-hour average as indicated by a continuous monitoring system.

(2) A flow of zero registered by any flow meter on a process vent stream or combination of process vent streams for a three-hour period.

(3) Two or more weekly visual checks within a 90-day period that determine if any stream is not being routed to the air pollution control device.

The standard would require that each monitoring system be operational before conducting the emissions test required under the proposed standard. All monitoring data, emission test results, and other data needed to determine emissions would be kept and made available to the Administrator for two years following their recording. In addition, owners or operators would be required to notify the Administrator 30 days in advance of plant startup and shutdown. Because the above reporting does not apply during plant startup and shutdown, this notice would identify for the Administrator that period during which the owners or operators would not be subject to the emission monitoring reporting requirements.

The cost to the EB/S industry to keep records and to collect, prepare, and report the data specified by the proposed standard through the first five years would be approximately $122,000.

Public Hearing

A public hearing will be held to discuss the proposed standard for benzene emissions from EB/S plants in accordance with sections 112(b)(1)(B) and 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations on the proposed standard should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the ADDRESSES section of this preamble, and should refer to Docket No. A-79-49.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see ADDRESSES section of this preamble).

Docket

This docket is an organized and complete file of all the information submitted or otherwise considered in the development of this proposed rulemaking. This principal purposes of the docket are (1) to allow interested parties to readily identify and locate documents so they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review.

Miscellaneous

In accordance with section 117 of the Act, appropriate advisory committees, independent experts, and Federal departments and agencies were consulted before this proposal was published. In addition, members of the benzene task group of the Interagency Regulatory Liaison Group, representing EPA, OSHA, the Food and Drug Administration, and the Consumer Product Safety Commission, have met and reviewed the proposed regulation to ensure that the statement of the rule is jointly understood and is consistent with their programs. The Administrator welcomes comments on all aspects of the proposed regulation, including economic and technological issues.

This regulation will be reviewed five years from the date of promulgation. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, and improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under the EPA sunset policy for reporting requirements in regulations.

Dated: December 12, 1980.

Douglas M. Costle,

Administrator.

It is proposed that Part 61 of Chapter I, Title 40 of the *Code of Federal Regulations* be amended by adding a new Subpart as follows:

Subpart I—National Emission Standard for Benzene Emissions From Ethylbenzene/Styrene Plants

Sec.

61.100 Applicability and designation of source.
61.101 Definitions.
61.102 Emission standard and compliance provisions.
61.103 Excess emissions reports.
61.104 Emission test and procedures.
61.105 Emission monitoring.
61.106 Recordkeeping.

Authority: Sec. 112, 114, 301(a) of the Clean Air Act as amended (42 U.S.C. 7413, 7414, 7601(a)), and additional authority as noted below.

Subpart I—National Emission Standard for Benezene Emissions From Ethylbenzene/Styrene Plants

§ 61.100 Applicability and designation of source.

This subpart applies to each integrated chemical process producing either ethylbenzene from benzene or styrene from ethylbenzene, and containing one or more of the following equipment: (a) Alkylation reactor section, (b) ethylbenzene hydroperoxidation reactor, or (c) hydrogen separation system.

§ 61.101 Definitions.

The terms used in this subpart are defined in the Clean Air Act, in § 61.02, or in this section as follows:

"Alkylation reactor section" means any equipment or combination of equipment in which benzene is reacted with ethylene to produce ethylbenzene, in which the reactor catalyst is neutralized or separated from reaction products and impurities, or in which diethylbenzene and polyethylbenzene are catalytically transformed to ethylbenzene and by-products.

"Atmospheric column" means each distillation column which operates at atmospheric pressure.

"Continuous monitoring system" means the total equipment used to sample, to analyze, and to provide a permanent record of emissions or process parameters.

"Dehydrogenation reactor" means a reactor in which ethylbenzene is catalytically dehydrogenated in the presence of steam to produce styrene and by-products.

"Distillation column" means a vessel in which a vapor is produced by heating a liquid, with subsequent collection and condensation of the vapors into liquids for the purpose of concentration or purification.

"Ethylbenzene hydroperoxidation reactor" means any equipment or combination of equipment in which ethylbenzene is oxidized with air or oxygen to produce ethylbenzene hydroperoxide.

"Hydrogen separation system" means the combination of equipment in which the crude styrene, unreacted ethylbenzene, and condensed steam is separated from the hydrogen-rich gas stream exiting the ethylbenzene dehydrogenation reactor.

"Malfunction" means any sudden and unavoidable failure of process or air pollution control equipment. A failure of process or air pollution control equipment caused entirely or in part by design deficiencies, poor maintenance, careless operation, or other preventable equipment breakdown shall not be considered a malfunction.

"Natural gas ejector" means a device using a nozzel and a natural gas or nitrogen-driving fluid to increase process vent stream pressure.

"Pressure column" means each distillation column which operates at greater than atmospheric pressure.

"Process vent stream" means any benzene containing continuous gas stream being released or having the potential of being released to the atmophere from each of the following equipment: (1) Alkylation reactor section; (2) atmospheric or pressure column; (3) hydrogen separation system; (4) vacuum-producing device.

"Shutdown" means the cessation of operation to ambient temperature of the (1) entire source as designated in §61.100; (2) alkylation reactor section; or (3) dehydrogenation reactor.

"Smokeless flare" means a flare which produces visible emissions for no more than five minutes within any two-hours period.

"Startup" means the commencing in operation from ambient temperature of the (1) entire source as designated in § 61.100; (2) alkylation reactor section; or (3) dehydrogenation reactor.

"Vacuum-producing device" means each devise which produces an absolute pressure less than atmospheric on any distillation column.

§ 61.102 Emissions standard and compliance provisions.

(a) No owner or operator subject to the provisions of this subpart shall discharge into the atmosphere from a source a process vent stream or combination of process vent streams containing in excess of five parts per million by volume (ppmv) of benzene on a dry basis corrected to three percent oxygen over a time-weight average of three hours.

(b) The emission limit specified in paragraph (a) of this section shall not apply during—(1) malfunctions; (2) startup; or (3) shutdown. During startup, shutdown, and malfunctions, the owner or operator of each source shall combust all emissions by one or more smokeless flares.

(c) The owner or operator of each source shall maintain and operate the source, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing benzene emissions. A determination whether acceptable operating and maintenance procedures are being use will be based on information supplied to the Administrator, which may include but is not limited to monitoring results, review of operating and maintenance procedures, inspection of the source, and review of records.

(d) Upon written application from an owner or operator, the Administrator may approve use of equipment or procedures which have been demonstrated to his satisfaction to be equivalent in terms of reducing benzene emissions during startup, shutdown, or malfunction. Owners or operators requesting approval by the Administrator for use of equivalent means for reducing excess emissions shall submit, along with their request, data or calculations supporting their contention that the alternate means would reduce the emissions by an equivalent amount.

§ 61.103 Excess emissions reports.

(a) The owners or operators of each source must comply with the reporting requirements specified in paragraphs (b) and (c) of this section after the emission test required under § 61.104(a).

(b) The owner or operator shall notify the Administrator in writing 30 days in advance of each anticipated startup and shutdown and shall provide an estimate of the anticipated duration of each startup and shutdown.

(c) The owner or operator shall report to the Administrator each occurrence of excess emissions as defined in paragraphs (c) (1) and (2) of this section except for those during startup or shutdown, within ten days of each occurrence.

(1) For sources using a boiler or process heater as the air pollution control device, excess emissions means any occurrence of emissions exceeding the emissions limit specified in § 61.102(a), as indicated by any of the following: (i) Oxygen flow levels, as determined by any flue gas oxygen monitor, below 1.5 percent for a three-hour average.

(ii) Temperatures, as indicated by any firebox temperature monitor, more than 100°F below that registered in the emission test for a three-hour average.

(iii) A flow of zero registered by any flow meter on a compressor or natural gas ejector for a three-hour period.

(iv) Two or more weekly visual checks within a 90-day period that determine if any process vent stream is not being routed to the boiler.

(2) For sources using air pollution control devices other than a boiler or process heater, excess emissions means any occurrence of emissions exceeding the emissions limit specified in § 61.102(a), as indicated by the following: (i) A continuous monitoring system using a gas chromatograph with

a flame ionization detector for a three-hour average.

(ii) A flow of zero registered by any flow meter on a process vent stream or combination of process vent streams for a three-hour period.

(iii) Two or more weekly visual checks within a 90-day period that determine if any process vent stream is not being routed to the control device.

(d) The owner or operator shall submit the following information as a minimum in the report required under paragraph (c) of this section: (1) The identity of the process vent streams where the excess emissions occurred.

(2) Continuous monitoring and operational data which indicated the excess emissions.

(3) The cause, description, and duration of the excess emissions.

(4) A statement whether or not the owner or operator of the source believes that a malfunction has occurred.

(e) If the owner or operator of a source states that a malfunction has occurred, he or she also shall submit the following information as a minimum in the report required under paragraph (c) of ths section: (1) The steps taken to remedy the malfunction and the steps taken or planned to prevent a recurrence of the malfunction.

(2) Documentation that the air pollution control equipment, process equipment, or processes were at all times maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions and were designed in accordance with good engineering practices.

(f) The owner or operator of each source shall submit reports by certified mail to the Administrator and shall indicate that the reports are being submitted in accordance with § 61.103.

§ 61.104 Emission test and procedures.

(a) Unless a waiver of emission testing is obtained under § 61.13, the owner or operator shall test emissions from each process vent stream discharged to the atmosphere from the source—

(1) Within 90 days of the effective date in the case of an existing source or a new source which has an initial startup date preceding the effective date; or

(2) Within 90 days of startup in the case of a new source, initial startup of which occurs after the effective date.

(b) The owner or operator shall provide the Administrator 30 days prior notice of the emission test to afford the Administrator the opportunity to have an observer present.

(c) Each emission test must be conducted while the equipment being tested is operating at the maximum rate at which the equipment will be operated.

(d) Each sample must be analyzed within 24 hours of sample collection. Emissions must be determined within 30 days after the emission test. The owner or operator shall report the determinations to the Administrator by a registered letter dispatched before the close of the next business day following the determination.

(e) The owner or operator of each source shall use the following test methods to determine compliance with the numerical emission limit prescribed in § 61.102 unless the Administrator has approved an application requesting the use of an alternative or equivalent method. If the Administrator finds reasonable grounds to dispute the results obtained by an equivalent or alternative method, he may require the use of a reference method. If the results of the reference and equivalent or alternative methods do not agree, the results obtained by the reference method prevail, and the Administrator may notify the owner or operator that approval of the method previously considered to be equivalent or alternative is withdrawn.

(1) Method 3 of Appendix A, Title 40 CFR Part 60 for air dilution correction, based on three percent oxygen in the emission sample.

(2) Method 110 of Appendix B, Title 40 CFR Part 61 for benzene analysis.

(f) Each emission test must consist of three runs. One sample containing a minimum volume of 50 liters corrected to standard condition must be collected for each run. For the purpose of determining emissions, the average of the results from all three runs is to apply. The average must be computed on a time-weight basis.

(g) The sampling time for each run must be a minimum of one hour.

(h) The sampling site must be at least two stack or duct diameters downstream and one-half diameter upstream from any flow disturbance such as a bend, expansion, contraction, or visible flame. The sampling point in the duct must be at the centroid of the cross section. The sample must be extracted at a rate proportional to the gas velocity at the sampling point. For a rectangular cross section an equivalent diameter must be determined from the following equation:

equivalent diameter=2(length)(width)/length+width

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 61.105 Emissions monitoring.

(a) The owner or operator of each source using a boiler or process heater as the air pollution control device shall install and continuously operate the following equipment: (1) In the exhaust flue of each boiler or process heater receiving a process vent stream, a flue gas oxygen monitor with a strip chart recorder.

(2) Prior to any convective heat transfer surfaces in the firebox, a continuous firebox temperature monitor with a strip chart recorder.

(3) At each compressor and at each suction point of each natural gas ejector handling a process vent stream, a flow meter with a strip chart recorder.

(b) The owner or operator of each source, except those specified in paragraph (a) of this section shall install and continuously operate—

(1) A continuous monitor system with a flame ionization detector which monitors the concentration of benzene emissions discharged to the atmosphere from each process vent stream or combination of process vent streams; and

(2) At each compressor and at each suction point of each natural gas ejector handling a process vent stream, a flow meter with a strip chart recorder.

(c) For the monitoring equipment specified in paragraphs (a) and (b) of this section, the following specifications shall apply: (1) Each flue gas oxygen monitor shall—

(i) Be accurate to ±5 percent of the normal operating range;

(ii) Be calibrated weekly using either air, or a prepared cylinder oxygen standard that is analyzed and certified by the manufacturer to be accurate within ±2 percent, and that has a maximum shelf life recommended by the manufacturer for each cylinder so that the concentration does not change more than ±5 percent from the certified value; and

(iii) Have a sampling location at least two stack or duct diameters downstream and one-half stack or duct diameters upstream from any flow disturbance. For a rectangular cross section, the equivalent diameter shall be determined by:

equivalent diameter=2 (length)(width)/(length)+(width)

The sampling point in the stack or duct shall be at the centroid of the cross section.

(2) Each firebox temperature monitor shall be installed, operated, calibrated, and maintained according to the manufacturer's specifications and shall have an accuracy of ±2 percent over the normal operating range.

(3) Each flow meter shall be installed, operated, calibrated, and maintained according to the manufacturer's specifications and shall have an accuracy of ±5 percent over the normal operating range.

(4) Each continuous monitoring system shall—

(i) Be a device that obtains process vent stream samples from one or more emission points on a continuous, sequential basis and analyzes the samples for benzene with gas chromatography or, if the organics measured are benzene only, with infrared spectrophotometry, and a flame ionization detector;

(ii) Complete a minimum of one cycle of operation (sampling, analyzing, and data recording) at each source in each successive one-hour period;

(iii) Be verified for operational status by completing the manufacturer's written requirements or recommendations for checking the operation or calibration of the device; and

(iv) Be calibrated by using a standard benzene mixture equal to five ppmv, prepared using the procedures given in section 7 of Method 110, or by using cylinder standards conforming to the requirements of paragraph 5.2.3 of Method 110. A daily zero check shall be performed for each continuous monitoring system using a zero gas with benzene concentration less than 0.1 ppm by volume.

(d) The owner or operator of each source shall visually check each process vent stream weekly to determine if each stream is being sent to the air pollution control device and keep a log, signed by the owner or operator, of each observation.

(e) The owner or operator of each source shall install and operate all monitoring equipment before conducting the emission test under § 61.104.

(f) During any emission tests required under § 61.104 or at such other times required by the Administrator under section 114 of the Act, the owner or operator of each source shall furnish the Administrator a written report of the measurements made by the continuous monitoring system during the emission test within 60 days of the test.

(g) After receipt and consideration of written application, the Administrator may approve alternatives to any monitoring procedures or requirements of this part.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 61.106 Recordkeeping.

(a) The owner or operator of each source which uses a boiler or process heater as the air pollution control device shall keep records of the following information: (1) All oxygen level measurements from each flue gas oxygen monitor.

(2) All temperature measurements from each firebox temperature monitor.

(3) All flow rate measurements from each compressor or natural gas ejector flow meter.

(4) All visual checks for each process vent stream.

(5) All emission test results and other data needed to determine emissions as specified in § 61.104.

(b) The owner or operator of each source, except those specified in paragraph (a), shall keep records of the following information: (1) All benzene concentration measurements of the exhaust gas by the monitor specified in § 61.105(b)(1).

(2) The procedures used for converting the measured benzene concentrations to a dry basis, and data that demonstrates that such procedures produce accurate results.

(3) All flow rate measurements from each compressor or natural gas ejector flow meter.

(4) All visual checks for each process vent stream.

(5) All emission test results and other data needed to determine emissions as specified in § 61.104.

(c) Each owner or operator shall keep the records specified in paragraphs (a) and (b) of this section at the source and make them available for inspection by the Administrator for a minimum of two years.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

[FR Doc. 80-39350 Filed 12-17-80; 8:45 am]
BILLING CODE 6560-26-M

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. 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

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

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

Note: There were no items eligible for inclusion in the list of Rules Going Into Effect Today.

List of Public Laws

Last Listing December 17, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

H.J. Res. 205 / Pub. L. 96-529 Authorizing appropriation of funds for acquisition of a monument to Doctor Ralph J. Bunche and installation of such monument in Ralph J. Bunche Park in New York City (Dec. 15, 1980; 94 Stat. 3119) Price $1.

H.R. 8061 / Pub. L. 96-530 District of Columbia Appropriation Act (Dec. 15, 1980; 94 Stat. 3121) Price $1.

H.R. 6243 / Pub. L. 96-531 To provide that the park referred to as the East Lake Park located within the West Point Lake project on the Chattahoochee River, Georgia, shall hereafter be known and designated as the "R. Shaefer Heard Park" (Dec. 15, 1980; 94 Stat. 3129) Price $1.

S. 2134 / Pub. L. 96-532 To provide for the acquisition of certain property in square 758 in the District of Columbia as an addition to the grounds of the United States Supreme Court Building (Dec. 15, 1980; 94 Stat. 3130) Price $1.

H.R. 6942 / Pub. L. 96-533 International Security and Development Cooperation Act of 1980 (Dec. 16, 1980; 94 Stat. 3131) Price $2.

S. 1835 / Pub. L. 96-534 To extend the Joint Funding Simplification Act of 1974 (Dec. 16, 1980; 94 Stat. 3164) Price $1.

H.R. 5856 / Pub. L. 96-535 To amend title 32, United States Code, to allow Federal recognition as officers of the National Guard of members of the National Guard of the Virgin Islands in grades above the grade of colonel (Dec. 16, 1980; 94 Stat. 3165) Price $1.

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

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2½ hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WHEN: January 16 and 30; February 13 and 27; at 9 a.m. (identical sessions).

WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

RESERVATIONS: Call King Banks, Workshop Coordinator, 202-523-5235.