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federal register

Monday
December 23, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

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Environmental Protection Agency

Cargo Vessels
Maritime Administration

Claims
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Crop Insurance
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Income Taxes
Internal Revenue Service

Marine Mammals
Fish and Wildlife Service

Marine Safety
Coast Guard

Natural Gas
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Security Measures
Coast Guard

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

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 2 1/2 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 the Federal Register and 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. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 17; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Howard Landon 202-523-5227 (Voice)
Melanie Williams 202-523-5229 (TDD)

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. Dates and locations will be announced later.

NOTE: There will be a sign language interpreter for hearing impaired persons at this briefing.

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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 402

[Docket No. 2899S]

Raisin Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby confirms as final the interim rule which revises and reissues the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1985 and succeeding crop years. The intended effect of this action is to confirm the interim rule published on Friday, July 12, 1985, at 50 FR 28367, to: (1) Remove the Premium Adjustment Table: (2) insure raisins from vineyards operated to produce table grapes by separate agreement; (3) clarify the procedures used to arrive at the insured tonnage; (4) eliminate the experience table; (5) limit the reconditioning allowance to wash and dry reconditioning; (6) shorten the length of time an insured has to give notice of loss from 7 days to 72 hours; (7) change the end of the insurance period from October 25 to October 20; (8) add definitions for the terms "loss ratio", "raisins", "net ton", "USDA inspection", and "table grapes"; and (9) redefine "unit" to restrict division. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 23, 1985.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1970.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

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

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

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

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

On Friday, July 12, FCIC published an interim rule revising and reissuing the Raisin Crop Insurance Regulations. Written comments on this interim rule were solicited by FCIC for 60 days after publication in the **Federal Register** but none were received.

On April 24, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register**, at 50 FR 16090 to revise and reissue the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1985 and succeeding crop years. After publication of the proposed rule it was determined that the date by which changes in the raisin insurance policy were to be filed in the service offices could not be changed from May 15, the date required by the policy for the 1985 crop year, to June 30 as had been intended in order to give sufficient time to consider comments on the proposed rule, publish the final rule, and file changes in the service offices by the required date.

Therefore, the proposed rule as published on April 24, 1985, was withdrawn and the proposed changes, many of which are necessary to ensure actuarial soundness of the raisin insurance program, were adopted in the interim rule.

All existing policies for insurance for the 1985 crop year, were cancelled. Insurance was made available under the new policy contained herein to persons who had such insurance.

The insureds received a letter explaining this and advising them that they must sign a new application for insurance before the sales closing date, July 31, 1985. As with any new policy issued, the provision for non-cancellation was in effect for the first year.

Any good insurance experience discount was carried over into the new policy without penalty. In addition, the letter advised that if the policyholder's 1984 premium reduction exceeded 5 percent, that reduction will be retained through the 1989 crop year or until the policyholder's loss ratio reaches .81 whichever occurs first.

Merritt W. Sprague, Manager, FCIC, had determined that an emergency situation exists which precluded notice and other public procedure because the then current policy for insuring raisins did not provide coverage on an actuarially sound basis. The intention of FCIC in publishing the notice of proposed rulemaking on April 24, 1985, was to correct this situation and protect the integrity of the raisin insurance program.

The principal changes in this raisin policy from the previous policy are:

1. *Section 2.*—Not insure table grapes placed on trays in some cases.

2. *Section 4.*—Determine the insured tonnage by delivered tonnage, plus verifiable loss of production. Tray

weights will be used to establish raisin tonnage not removed from the vineyard.

3. *Section 5.*—Remove the Premium Adjustment Table. Insureds with good loss experience who were receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier. Since those insureds with good loss ratios and premium reductions stayed in the program while those premium increases because of poor loss ratio tended to drop out, the premium structure under the premium adjustment table made actuarial projection difficult.

Remove the provisions for transfer of insurance experience and for premium computation when insurance has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

4. *Section 7.*—Change the insurance ending date from October 25 to October 20.

5. *Section 8.*—Shorten from 7 days to 72 hours the length of time the insured has to give notice of loss to better enable FCIC to adjust the loss.

6. *Section 9.*—Provide a reconditioning allowance when raisins are high moisture due to rain.

7. *Section 18.*—Define "loss ratio", "raisins", "net ton", "USDA inspection", and "table grapes", and modify the definition of unit to remove the unit division guidelines.

On September 4–5, 1985, the Board of Directors, FCIC held informal meetings in Hearing Room B, Interstate Commerce Commission Building, Washington, DC, for the purpose of receiving comments from interested parties the determination to restrict unit division by removing unit division guidelines from policies. That concept was included in the interim rule.

The determination to eliminate applicable unit division guidelines restricts unit division to include all the insurable crop grown within a county with no allowance for further division beyond those contained in the crop insurance policies.

FCIC has determined that further studies shall be conducted which are to be presented to the Board of Directors for consideration at the first meeting of the Board after February 1, 1986.

However, the unit division guidelines provision will not be restored to the Raisin Crop Insurance Regulations at this time. The 1985 crop year has progressed to the point that no change in the unit definition is possible and any change which FCIC may make in February will be in time for the 1986 crop year.

Public comment on this rule was solicited for 60 days after the publication of this rule in the **Federal Register**. The rule was scheduled for review following the 60-day comment period so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible, however, no comments were received. Therefore, the interim rule as published is hereby adopted.

List of Subjects in 7 CFR Part 402

Crop insurance, Raisins.

Final Rule

PART 402—[AMENDED]

Accordingly, the interim rule published at 50 FR 28367, Friday, July 12, 1985, is adopted as a final rule without change.

1. The Authority Citation for 7 CFR Part 402 continues to read:

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

Done in Washington, DC, on October 24, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85–30298 Filed 12–20–85; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 431

[Docket No. 2952S]

Soybean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Soybean Crop Insurance Regulations (7 CFR Part 431), effective for the 1986 and succeeding crop years. The intended effect of this rule is to: (1) Prescribe procedures for insuring soybeans on an "Actual Production History" (APH) basis and provide for cancellation for not furnishing records; (2) change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (3) eliminate row width provisions; (4) change the calculation in computing replanting payments; (5) shorten the length of time an insured has to give notice when claiming an indemnity; (6) clarify the method of computing indemnities when acreage, share or practice is underreported; (7) add definitions of "Loss ratio", and "ASCS"; (8) redefine "County" to clarify when land located outside the county is included in the county; and (9) increase the minimum amount necessary to replant before a replanting payment will be made. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 31, 1985.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1990.

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

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

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

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

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

Other than minor changes in language and format, the principal changes in the soybean policy are:

1. *Section 2.c.*—Add a clause to change the method of calculating the share of an indemnity on crops transferred before harvest. This will limit indemnities to the insured's insurable interest at the time of loss when the crop is transferred after planting but before harvest.

2. *Section 2.f.*—Remove the row width requirements at planting unless specified in the actuarial table. This change conforms to present farming practices.

3. *Section 9.f.*—Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage required to be replanted to qualify for a replant payment and clarify that the percentage to be replanted is computed on the acreage initially planted on the unit as of the final planting date. This reduces the number of inspections by eliminating small replant payments and paperwork.

4. *Section 8.a.(4)*—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities more timely and efficiently.

5. *Section 9.d.*—When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the complexity of calculations.

6. *Section 15.c.*—Add a clause to cancel the contract if the prior year's production records are not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

7. *Section 17.*—Add definitions of "ASCS" and "Loss ratio". Amend the "County" definition to clarify when land located outside the county is deemed to be in the county.

On Thursday, October 31, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 45410, revising and reissuing the Soybean Crop Insurance Regulations (7 CFR Part 431), effective for the 1986 and succeeding crop years. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received.

Therefore, with the exception of minor changes in language and format, the proposed rule as published at 50 FR 45410 is adopted as a final rule.

Since these regulations must, according to the provisions of the policy, be placed in file in the Service Office by December 31, 1985, good cause is shown for making these regulations effective in less than 30 days.

List of Subjects in 7 CFR Part 431

Crop insurance, Soybeans.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Soybean Crop Insurance Regulations (7 CFR Part 431), effective for the 1986 and succeeding crop years, to read as follows:

PART 431—SOYBEAN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

431.1 Availability of soybean crop insurance.
431.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
431.3 OMB control numbers.
431.4 Creditors.
431.5 Good faith reliance on misrepresentation.
431.6 The contract.
431.7 The application and policy.

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

Subpart—Regulations for the 1986 and succeeding crop years.

§ 431.1 Availability of soybean crop insurance.

Insurance shall be offered under the provisions of this subpart on soybeans in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 431.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which the indemnities shall be computed for soybeans which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 431.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 431.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 431.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the Soybean insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresenatation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Request for relief under this section must be submitted to the Corporation in writing.

§ 431.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance of a form prescribed by the Corporation. The contract shall cover the soybean crop as provided in the policy. The contract shall consist of the application, the policy and the county actruarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 431.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may

be made by any person to cover such person's share in the soybean crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submittitng applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a soybean contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrations Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Soybean Crop Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Soybean—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

Agreement to insure: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9e(6).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good soybean farming practices;

(3) The failure or breakdown of irrigation equipment or facilities;

(4) The failure to follow recognized good soybean irrigation practices;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be soybeans which are planted for harvest as beans, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be soybeans planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured soybeans at the time of planting. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been establised;

(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, it is practical to replant to soybeans, and such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you agree, in writing, on our form to coverage reduction;

(5) Of volunteer soybeans;

(6) Planted to a type or variety of soybeans not established as adapted to the area or excluded by the actuarial table;

(7) Planted with a crop other than soybeans; or

(8) Of a second soybean crop following a soybean crop harvested in the same crop year.

e. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good soybean irrigation practice.

f. Unless otherwise provided in the actuarial table, insurance will attach only on acreage initially planted in rows; but, if such insured acreage is destroyed and replanted by broadcasting or drilling, it will be regarded as insured acreage.

g. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured, unless we agree, in writing, to insure such acreage.

h. We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of soybeans in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any soybeans planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date as established by the actuarial table for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the soybean policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the soybeans are planted and ends at the earliest of:

a. Total destruction of the soybeans;

b. Combining, threshing, or removal from the field;

c. Final adjustment of a loss; or

d. The date immediately following planting as follows:

(1) Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, December 20;

(2) All other states, December 10.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant soybeans damaged due to any insured cause (see Subsection 9.f.);

(b) During the period before harvest, the soybeans on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the soybeans and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days of the beginning of harvest or during harvest, immediate notice must be given and a representative sample of the unharvested soybeans (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the soybeans on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the soybeans on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the soybeans which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the soybeans on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of soybeans on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of soybeans to be counted (see subsection 9.e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from the insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature soybean production which is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent.

(2) Mature soybean production which, due to insurable causes:

(a) Has a test weight of less than 49 pounds per bushel; or

(b) Is of distinctly low quality, as determined by a grain grader licensed by the Federal Grain Inspection Service or under the United States Warehouse Act will be adjusted by:

(i) Dividing the value per bushel of such soybeans by the price per bushel of U.S. No. 2 soybeans; and

(ii) Multiplying the result by the number of bushels of such soybeans.

The applicable price for No. 2 soybeans will be the local market price on the earlier of the day the loss is adjusted or the day such soybeans are sold.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good soybean farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of soybeans becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(5) The amount of production of any unharvested soybeans may be determined on the basis of field appraisals conducted after the end of the insurance period.

(6) If you elect to exclude hail and fire as insured causes of loss and the soybeans are damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire."

f. A replanting payment may be made on any insured soybeans replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit as determined on the final planting date.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the price election multiplied by 3 bushels multiplied by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the soybeans are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilites under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years afer the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all soybeans produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. Ninety days prior to the cancellation date for any crop year you must:

(1) Furnish to the Corporation, satisfactory production records for the previous crop year or the contract will be cancelled for the subsequent crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood, or other natural disaster. (If this subsection (2) applies, the Field Actuarial Office may assign a yield for the year for which the records are unavailable.)

You may furnish the records required by this section for any crop year at least 90 days prior to that crop year's cancellation date. Your election of this option will result in the inclusion of that crop year's production information in next year's yield guarantee.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity will be the date you sign the claim; or

(2) Payment under another program administered by United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas, and all Texas counties south thereof.	Feb. 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling; Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	March 31.
All other Texas counties and all other states.	April 15.

f. If you die or are judically declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judical declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise.

If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for countries with an April 15 cancellation date and by November 30 preceding the cancellation date for all other counties. Acceptance of any change will be conclusively persumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of soybean crop insurance:

a. "Actuarial table" means the forms and related material for the crop year appoved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding soybean insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land indentified by an ASCS farm serial number for the county but physically located in another county within the state.

d. "Crop year" means the period within which the soybeans are normally grown and will be designated by the calendar year in which the soybeans are normally harvested.

e. "Harvest" means the completion of combining or threshing of soybeans on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Replanting" means performing the cultural practices necessary to replant insured acreage to soybeans.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Tenant" means a person who rents land from another person for a share of the soybeans or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of soybeans in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the soybeans on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning to any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with or determinations, you may obtain reconsideration of our appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on December 2, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-30299 Filed 12-20-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 618, Amdt. 1]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 618 increases the quantity of California-Arizona navel oranges that may be shipped to market during the period December 20–26, 1985. Such action is needed to provide for the orderly marketing of fresh navel orange for the period specified due to the marketing situation confronting the oranges industry.

DATE: Amended Regulation 618 (§ 907.918) is effective for the period December 20–26, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202-447-5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This amendment is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. 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 recommendation 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 1985–86 adopted by the Navel Orange Administrative Committee. The committee met publicly on December 17, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges has become good. The amendment is needed to continue providing stability in the market and promote orderly marketing.

It is further found 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), 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. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Agricultural Marketing Service, Marketing Agreements and Orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

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

2. Section 907.918 Navel Orange Regulation 618 paragraphs (a) through (e) is hereby revised to read:

§ 907.918 Navel Orange Regulation 618.

The quantities of navel oranges grown in California and Arizona which may be handled during the period December 20, 1985, through December 26, 1985, are established as follows:

(a) District 19: 800,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: December 1, 1985.

Thomas R. Clark,

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

[FR Doc. 85–30331 Filed 12–19–85; 11:52 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1427

CCC Cotton Loan Program Regulations (Amendment 6)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the regulations governing the 1980 and subsequent crops cotton loan program to provide another option for making price support available to producers of upland and extra long staple (ELS) cotton. Under the provisions of the final rule, CCC may authorize a person or firm to act as an authorized loan servicing agent ("authorized LSA") for CCC for the purpose of making and servicing Form A cotton loans that are presently handled by a county Agricultural Stabilization and Conservation Service (ASCS) Office.

EFFECTIVE DATE: December 23, 1985.

FOR FURTHER INFORMATION CONTACT: Grady Bilberry, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447–7987.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs of prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

It has been determined by an environmental evaluation that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29915 (June 24, 1983).

A notice of proposed rulemaking was published in the **Federal Register** on September 19, 1985, at 50 FR 38008, requesting comments with respect to amendments of the Cotton Loan Program Regulation at 7 CFR Part 1427. The proposed rule provided for a 30-day comment period which ended October 21, 1985.

The Department received a total of 32 comments with respect to the proposed rule. The Department has considered all comments received in developing this final rule. All comments received are on file and available for public inspection in Room 3627—South Building, 14th and Independence Avenue, SW., Washington, DC 20013.

Amendments to the regulation were proposed which would provide another mechanism through which producers may obtain price support loans for upland and ELS cotton. Under the proposed rule, CCC may enter into a written agreement with a person or firm which meets the terms and conditions prescribed by CCC to be an authorized loan servicing agent ("authorized LSA") for CCC. The authorized LSA would act as an agent of CCC in performing most Form A loanmaking and loan servicing functions for producers which are now performed by a county ASCS office, except that the authorized LSA must contact the local county ASCS office to determine: (1) Whether the producer is an eligible producer and otherwise meets the requirements of the applicable commodity regulations, and (2) whether the producer's loan proceeds are subject to setoff and withholding under applicable CCC setoff and withholding regulations.

It was also proposed the § 1427.5 be amended to provide the eligible cotton must not have been sold, nor any sales option on eligible cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a price support loan. This amendment is necessary to ensure that only producers of cotton are the direct beneficiaries of a CCC cotton loan.

Discussion of Comments

A total of 32 comments were received with respect to the proposed rule. Twenty respondents supported the provisions of the proposed rule concerning the authorization by CCC of a loan servicing agent, and twelve respondents opposed these provisions of the proposed rule.

One respondent suggested that an authorized LSA acting as an attorney-in-fact for the producer be permitted to purchase the cotton for its own account. Historically, a person serving as an attorney-in-fact for a producer has not been permitted to purchase the cotton for its own account. This provision serves as a means of protection for the producer. Therefore, for the continued protection of the producer, the suggestion by the respondent was not adopted.

All twelve respondents opposing the proposed rule commented that the local county ASCS office could provide more efficient service to producers because the county ASCS office is familiar with the producer's operation and understands the operation of CCC. One of these 12 respondents suggested that the county office would provide faster service. After careful consideration of these comments, it has been determined that the proposal allowing an authorized LSA to act as agent for CCC in performing most loanmaking and loan servicing functions should be adopted as a final rule. The regulations, as

amended, would not preclude any producer from obtaining price support through the local county ASCS office. The rule simply offers producers an alternative method for obtaining CCC price support loans with respect to cotton.

One comment was received in connection with § 1427.5(n) of the proposed rule which provides that eligible cotton must not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a price support loan. The respondent was concerned that § 1427.5(n) would change the practice of a person buying a producer's equity in cotton pledged as loan collateral. However, the proposed rule will not change such practice.

It has been determined that a change should be made with respect to § 1427.22(b)(2) of the proposed rule. As set forth in the proposed rule, clause (ii) of § 1427.22(b)(2) provided that if the attorney-in-fact is an authorized LSA, such authorized LSA must file with the local county ASCS office the original or facsimile of the power of attorney, or a certified copy of the power of attorney. In addition, the authorized LSA was required to excute and file the Form 815 with the local county ASCS office. It has been determined that clause (ii) of § 1427.22(b)(2) should be revised to delete these requirements because records of price support loans which are disbursed through authorized LSA's will not be currently maintained or serviced through the county ASCS office. It is not believed that this revision to the proposed rule is of such significance as to warrant any further public comment.

Accordingly, it has been determined that, except for the revision to § 1427.22(b)(2)(ii), the provisions of the proposed rule should be adopted as a final rule without change.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Surety bonds, Warehouse.

PART 1427—[AMENDED]

Final Rule

Accordingly, the regulations at 7 CFR Part 1427, Subpart—Cotton Loan Program Regulations are amended as follows:

1. The authority citation for 7 CFR Part 1427 Subpart—Cotton Loan Program Regulations is revised to read as follows:

Authority: Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); secs. 101, 103, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444, 1421); sec. 602, 91 Stat. 934, as amended (7 U.S.C. 1444).

2. Section 1427.2 is amended by revising paragraphs (b) and (c) and by adding new paragraphs (k) and (l) to read as follows:

§ 1427.2 Definitions.

* * * * *

(b) "Kansas City Management Office" shall mean the Kansas City Management Office, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(c) "Kansas City Commodity Office" shall mean the Kansas City Commodity Office, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

* * * *

(k) "Authorized LSA" shall mean a person or firm that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing individual Form A cotton loans. The authorized LSA may perform, on behalf of CCC, certain CCC cotton loanmaking services specifically prescribed by CCC including: (1) Preparing and executing loan documents, (2) disbursing loan proceeds, (3) handling the extension of loans as authorized by CCC, (4) accepting cotton loan repayments, (5) handling documents involved with forfeiture of cotton loan collateral to CCC, and (6) providing loan data to CCC for statistical purposes.

(l) "Cotton" shall mean upland cotton and extra long staple cotton.

3. Section 1427.3 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1427.3 Administration.

(a) *Responsibility.* The Cotton, Grain, and Rice Price Support Division, ASCS, will administer the regulations in this subpart under the general supervision and direction of the Deputy Administrator, State and County Operations, ASCS, in accordance with program provisions and policy determined by the CCC Board of Directors and the Executive Vice President, CCC. In the field, the regulations in this subpart will be administered by the Agricultural Stabilization and Conservation State and county committees (hereinafter called "State and county committees") the Kansas City Commodity Office, and the Kansas City Management Office.

(b) *Documents.* (1) Any member of the county committee, the county executive director, or other employee of the county ASCS office (hereinafter called "county office") designated in writing by the county executive director to act in the county executive director's behalf (such delegation to be filed in the county office) is authorized to approved documents under this program except where otherwise specified in the regulations in this subpart. County committees or county executive directors also may approve loan clerks at convenient locations to assist producers in preparing loan documents.

(2) Authorized LSAs may execute and approve documents under this program as specifically authorized by CCC.

(c) *Limitation of authority.* County executive directors, State and county committees, the Kansas City Commodity Office, Kansas City Management Office and authorized LSAs do not have authority to modify or waive any of the provisions of the regulations in this subpart.

* * * * *

4. Section 1427.5 is amended by revising paragraphs (a) and (b), by redesignating paragraphs (n), (o), and (p) as (o), (p), and (q), respectively, and by adding a new paragraph (n) to read as follows:

§ 1427.5 Eligible Cotton.

Cotton produced by eligible producers is eligible cotton if it meets the following requirements:

(a) Such cotton must have been produced on a farm by a producer who has complied with the price support eligibility requirements, if any, specified in Parts 713, 718, 791, and 792 of this title. The cotton in any bale may have been produced by two or more producers on one or more farms if the bale is not a repacked bale.

(b) Such cotton must be tendered for a loan within the availability period provided for in § 1427.6(d).

* * * * *

(n) Such cotton must not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a price support loan.

* * * * *

5. Section 1427.6 is revised to read as follows:

§ 1427.6 Program Availability and Disbursement of Price Support Loans.

(a) *Where to request a loan.* (1) A producer may request price support: (i) At the local county ASCS office, or (ii) from an authorized LSA.

(2) An authorized agent which has an agreement with CCC and which is designated by producers to obtain loans on their behalf may obtain such loans

through a central county ASCS office designated by CCC.

(3) An approved cooperative marketing association must request loans: (i) At a servicing bank approved by CCC, or (ii) at the county ASCS office for the county in which the principal office of the cooperative is located unless the State ASC committee designates some other county ASCS office as the office where such association must request price support.

(b) *Disbursement of loans.* Disbursement of loans to individual producers may be made by: (1) Local county ASCS offices, (2) authorized LSAs, or by (3) central county ASCS offices (when designated by CCC to provide centralized service to a person or firm which has been designated as a producer's agent and which has entered into a written agreement with CCC). Loans may be disbursed by approved servicing banks to approved cooperative marketing associations. Service charges and cotton research and promotion fees, when required by the provisons of 7 CFR 1205.500 *et seq.*, will be deducted from the loan proceeds. If the producer so elects, loan clerk fees may be deducted from the loan proceeds instead of the loan clerk being paid in cash. The loan documents shall not be presented for disbusement unless the commodity covered by the mortgage or pledge of security is in existence and in good condition. If the commodity was not in existence and in good condition at the time of disbursement, the total amount disbursed under the loan shall be refunded promptly.

(c) *Program availability.* Loans will be available to eligible producers on cotton represented by warehouse receipts which is stored at CCC approved warehouses.

(d) *Period of availability of loans.* Producers may request loans on a corp of cotton from the beginning of harvest of the crop through May 31 following the calendar year in which such crop is grown. Form CCC Cotton A must be signed by the producer or the producer's agent and mailed or delivered to the county office or an authorized LSA within 15 days after the producer signs the Form CCC Cotton A and within the period of loan availability. Whenever the final date of availability falls on a nonworkday for county ASCS offices, the applicable final availability date shall be extended to include the next workday.

6. Section 1427.14 is revised to read as follows:

§ 1427.14 Service Charges.

(a) Except for loans disbursed by an authorized LSA, a producer shall pay a non-refundable service charge to CCC for each loan disbursed at the rate of $1.50 per loan plus 25 cents for each bale of cotton pledged as loan collateral. The service charge to be paid to CCC by the producer shall be in addition to any clerk fee paid to a loan clerk as authorized in § 1427.15.

(b) An authorized LSA may charge producers a service charge for each loan disbursed at a rate not to exceed $1.50 per loan plus 25 cents for each bale of cotton pledged as loan collateral.

§ 1427.19 [Amended]

7. Section 1427.19 is amended by adding in the third, fourth, and fifth sentences in § 1427.19(a) and in the fourth sentence of §1427.19(b) the words "or authorized LSA" immediately following the words "county office".

8. Section 1427.20 is revised to read as follows:

§1427.20 Custodial Offices.

Forms A and A-1, collateral warehouse receipts, cotton classification memoranda, and related documents will be maintained in custody of the local county ASCS office, authorized LSA, central county ASCS office, or any financial institution (defined in §1427.2 and approved by CCC), whichever disbursed the loan evidenced by such documents.

9. Section 1427.22 is revised to read as follows:

§ 1427.22 Repayment of Loans.

(a)(1) In order to redeem one or more bales of cotton pledged to CCC as collateral for a loan, the producer must pay to the local county ASCS office or an authorized LSA, whichever disbursed the loan, or to the bank as provided in paragraph (a)(3) of this section, the loan principal, together with any interest and other charges which may be applicable to the bales of cotton being redeemed. An authorized agent which has an agreement with CCC and which is designated by producers to repay such loans on their behalf may repay such loans through a central county ASCS office designated by CCC.

(2) Upon payment of the amounts specified in paragraph (a)(1) of this section, the local county ASCS office or the authorized LSA (whichever disbursed the loan) shall transmit the warehouse receipts applicable to the cotton pledged as loan collateral which has been redeemed (and, if requested, the classification memoranda applicable to such cotton) to the producer or authorized agent.

(3) The producer may request that the warehouse receipts (and classification memoranda) be forwarded to a bank for payment, in which case the principal amount of the loan, together with any applicable interest and other charges, must be paid after the documents are received by the bank. All charges assessed by the bank to which the receipts are sent must be paid by the producer.

(4) Repayment of loans will not be accepted after CCC acquires title to the cotton.

(b)(1) A producer who desires to appoint an attorney-in-fact to act for the producer for the purpose of: (i) Redeeming the producer's cotton which is pledged as collateral, (ii) selling the producer's equities in the cotton pledged as loan collateral, or (iii) executing Forms CCC-813, release of Warehouse Receipts (referred to in this subpart as "Form 813"), shall use Form 211, except that a power of attorney on another form will be accepted if it is determined by CCC to be sufficient.

(2) In order to redeem cotton or to execute Form 813, the attorney-in-fact must: (i) File with the local county ASCS office, authorized LSA, or central county ASCS office designated by CCC, whichever disbursed the loan, the original or facsimile of the power of attorney or a copy certified by a notary public as a true and correct copy; and (ii) execute and file with the local county ASCS office, authorized LSA or central county ASCS office designated by CCC, whichever disbursed the loan, an agreement of attorney-in-fact, Form CCC-815 (referred to in this subpart as "Form 815").

(3) The attorney-in-fact redeeming a producer's cotton under authority of a power of attorney or signing the Form 813 under authority of a power of attorney shall not: (i) Purchase any such cotton redeemed from a CCC cotton loan or purchase the producer's equity in such cotton for the attorney-in-fact's own account or as agent for others; or (ii) sell any such cotton or equities in such cotton to any person by whom the attorney-in-fact is employed or who has the right to control or direct the attorney-in-fact's sale of such redeemed cotton or the euqities in such cotton.

(4) The attorney-in-fact shall not adopt any scheme or device which tends to defeat the purpose of these regulations or the cotton program.

(5) If the attorney-in-fact holds power of attorney from more than one producer, the attorney-in-fact may not: (i) Pool the producer's cotton or the proceeds therefrom or (ii) make settlement with such producers on a pool basis upon sale of the cotton or the equities therein. The attorney-in-fact will, however, make an accounting to

each producer for the proceeds of each bale of the producer's cotton which the attorney-in-fact redeems and sells and each equity which the attorney-in-fact transfers, unless the attorney-in-fact has a valid annual marketing agreement with such producers authorizing the attorney-in-fact to pool the cotton or the proceeds therefrom.

(c)(1) A producer or the producer's authorized agent may enter into an agreement with a person or persons to redeem the producer's cotton and may authorize the release of the applicable warehouse receipts to such person(s) or transferee (hereinafter called the "buyer") on Form 813. If the buyer executes and files the Form 813 with the loan originating office the buyer shall be obligated to redeem the cotton specified on such form on or before the maturity date of the loan which is applicable to such cotton. CCC will use its best efforts to make certain that the cotton is not redeemed by anyone other than the buyer and to provide for the delivery to the buyer of the warehouse receipts (and, if requested, the classification memoranda) covering the cotton upon the repayment of the loan principal together with any applicable interest and other charges, to the loan originating office.

(2) If the loan documents are sent to a bank for collection, repayment of the loan, together with any applicable interest and other charges, must be made within 5 business days after the documents are received by the bank. All charges assessed by the bank to which the documents are sent must be paid by the buyer. Redemptions will not be permitted after the maturity date of the loan. Upon the failure of the buyer to redeem all such cotton pledged as loan collateral:

(i) Title to the cotton shall, at CCC's election and without a sale thereof, immediately vest in CCC, and there shall be no obligation on the part of CCC to pay for any market value which such cotton may have in excess of the principal amount of the loan thereon, together with any applicable interest and other charges. The buyer shall be personally liable for any amount by which the amount due on the loan on such cotton exceeds the market value of the cotton as of the date title to the cotton vests in CCC, as determined by CCC.

(ii) CCC may, at CCC's election and without notice to the buyer, sell, transfer and deliver the cotton or documents evidencing title thereto, at such time, and in such manner, and upon such terms and conditions as CCC may determine, at any cotton exchange or elsewhere, or through any agency, at public or private sale, for immediate or future delivery, and without demand advertisement, or notice of the time and place of sale or adjournment thereof or otherwise. Upon such sale, CCC may become the purchaser of the whole or any part of such cotton at its market value, as determined by CCC. Any overage remaining from the proceeds received therefrom shall, after deducting from such proceeds the principal amount of the loan on such cotton, together with any applicable interest and other charges, be paid to the buyer or the buyer's personal representative without right of assignment to, or substitution of, any other person. If the proceeds from the sale do not cover the principal amount of the loan on such cotton, together with any applicable interest and other charges, the buyer shall be liable to CCC for any difference.

(d) Warehouse receipts will not be released except as provided in paragraphs (a), (b), and (c) of this section.

10. Section 1427.25 is amended by revising paragraph (b) as follows:

§ 1427.25 Kansas City Commodity Office and Kansas City Management Office.

* * * * *

(b) Accounting, recording, and reporting for all States will be handled through Kansas City Management Office, P.O. Box 205, Kansas City, Missouri 64141.

Signed at Washington, DC, on December 17, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85-30229 Filed 12-20-85; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 157, 284, and 375

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Deregulation

Issued: December 12, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Order Granting in Part and Denying in Part Applications for Rehearing, Denying Petition for Stay, and Granting Clarification.

SUMMARY: On October 9, 1985, the Federal Energy Regulatory Commission (Commission) issued Order No. 436,[1] a final rule pursuant to the Natural Gas Act (NGA)[2] and the Natural Gas Policy Act of 1978 (NGPA),[3] which substantially changed the Commission's regulation of the natural gas industry. The Commission received many applications seeking rehearing of the order.[4] In addition to the applications to rehear the order, the Commission has received numerous general requests for clarifications.[5] The issues raised by the applications seeking rehearing and some of the applications for clarification are addressed in this order.

This order grants rehearing in part and denies rehearing in part. It also clarifies Order No. 436 and denies a petition for stay of Order No. 436.

EFFECTIVE DATE: Sections 284.10(a) and 284.223(g)(3)(i) are effective December 12, 1985. The remaining changes are effective January 22, 1986.

FOR FURTHER INFORMATION CONTACT:

For implementation matters: Kenneth A. Williams, Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulations, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8500

For legal matters: Christopher J. Warner, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8440

For policy matters: Charles E. Teclaw, Federal Energy Regulatory Commission, Office of Regulatory Analysis, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8100

SUPPLEMENTARY INFORMATION:

Order Granting in Part and Denying in Part Applications for Rehearing, Denying Petition for Stay, and Granting Clarification

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Docket Nos. RM85-1-000 through -003, -006 through -009, -011 through -038, -040 through -046, -048 through -071, -073 through -100, -102 through -125, -127 through -133, and -136 (Parts A-C); Order No. 436-A.

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[1] 50 FR 42408 (Oct. 18, 1985).

[2] 15 U.S.C. 717-717w (1982).

[3] 15 U.S.C. 3301-3432 (1982).

[4] A list of the applicants is included in Appendix A.

[5] A list of the petitioners is included in Appendix B.

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I. Introduction

On October 9, 1985, the Federal Energy Regulatory Commission (Commission) issued Order No. 436,[1] a

[1] 50 FR 42408 (Oct. 18, 1985).

final rule pursuant to the Natural Gas Act (NGA) [2] and the Natural Gas Policy Act of 1978 (NGPA),[3] which substantially changed the Commission's regulation of the natural gas industry. The Commission received many applications seeking rehearing of the order.[4] In addition to the applications to rehear the order, the Commission has received numerous general requests for clarifications.[5] The issues raised by the applications seeking rehearing and some of the applications for clarification are addressed in this order.

This order grants rehearing in part and denies rehearing in part. It also clarifies Order No. 436 and denies a petition for stay of Order No. 436.

II. Background

A. Procedural History

The Commission began this rulemaking proceeding with the first phase of a Notice of Inquiry (NOI) issued on December 24, 1984,[6] and a second and third phase issued on January 18, 1985.[7] After reviewing the comments received in response, it issued a Notice of Proposed Rulemaking (NOPR) on May 30, 1985, following decisions by a Federal court in the *Maryland People's Counsel* cases.[8] The NOPR proposed a package of four parts. Part A included a comprehensive, simplified transportation program, including blanket certificates under NGA section 7 and self-implementing transportation under NGPA section 311. Part B included a proposal to alleviate the gas marketing problems caused by take-or-pay provisions in gas purchase contracts. Part C included a procedure for optional expedited certificates under NGA section 7. Finally, Part D included a new requirement that gas supplies subject to the maximum lawful prices of NGPA categories 104, 106(a) and 109 be billed separately from all other gas supplies.

The Commission received over 200 comments in response to the three phases of the NOI. In addition, it held public hearings on February 20, 1985, and on March 28–29, 1985. In response to the NOPR, the Commission received approximately 300 comments. The Commission heard two days of oral presentations by over 100 commenters at a public hearing held on August 1–2, 1985. In formulating the final rule, the Commission relied on both the written and oral comments in response to the NOIs and the written and oral comments in response to the NOPR.

The final rule adopted Parts A and C of the NOPR, with modifications. It did not adopt Part B. Instead, the Commission reaffirmed its policy statement issued on April 10, 1985.[9] In addition, it issued a new statement of policy providing for expedited processing of producer abandonment applications under existing substantive criteria. In a separate document, the Commission requested supplemental comments on Part D of the proposal.[10] Specifically, the Commission expressed its interest in gathering additional information on the effects of its proposal on the national gas supply and on gas consumers. The Commission has received over 200 comments in response to this notice.

B. Summary of Provisions of Final Rule

Part A—Transportation

Consistent with its original proposal, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the NGA and self-implementing transportation under section 311 of the NGPA, conditioned to require non-discriminatory access to such transportation.

Rates for the service must be volumetric, downwardly-flexible, cost-of-service rates, differentiated by time-of-use and distance, and consistent with sections 4 and 5 of the NGA. A pipeline's participation under the new rules also offers its customers an opportunity to modify their existing service agreements in order to reduce their firm sales entitlements. This customer option is available if the pipeline holds itself out as a transporter of gas for others, *i.e.*, if the pipeline decides to participate in the new transportation program. Abandonment is available to the pipeline to the extent of any customer's reduction. This will enable such customers to choose more freely among a portfolio of service options offered by pipelines. In addition to the option to reduce sales entitlements or contract demand, the rule also affords firm sales customers of a transporting pipeline the opportunity to convert from firm sales to firm transportation, upon payment of a reservation fee.

The final rule contains some necessary refinements to the proposal. It recognizes a pipeline's need to impose reasonable operational conditions on requests for service and, therefore, includes a requirement that any such conditions be filed as part of the tariff. The final rule provides for a reservation charge for firm transportation service, requires the use of interim transportation rates effective November 1, 1985, and exempts intrastate pipelines from the rate conditions for self-implementing transportation, from the firm sales entitlements adjustment obligations, and from the requirement to offer firm service. Under the rule, projected levels of service that form a basis for interstate pipeline rates for transportation under Part 284 may be changed in rate cases. Finally, certain transportation transactions are allowed to continue after November 1, 1985, to permit a smoother transition to the new transportation programs.

Part B—Take-or-Pay Buy-Outs and Producer Abandonment

Although the Commission had proposed to establish, during a limited transition period, a rebuttable presumption of prudence for certain payments made by pipelines to extinguish problem contracts, the record persuaded it not to adopt the approach. Still, recognizing the extent of the problems caused by continued take-or-pay obligations and non-market responsive prices the Commission reaffirmed the approach contained in the April 10, 1985, policy statement in Docket No. PL85-1-000, which establishes a policy of expeditious rate review and certificate or abandonment proceedings necessary to effectuate service modifications that arise from pipeline buy-outs of their take-or-pay obligations. In the final rule, the Commission also stated its intent to expedite processing of producer abandonment applications if producers are subject to substantially reduced takes of gas without payment or if the underlying contract has expired.

Part C—Optional Expedited Certificates

The Commission proposed and established optional expedited certificate procedures under section 7 of the NGA for new services, facilities, and operations made available by pipelines willing to assume the financial risk of

[2] 15 U.S.C. 717–717w (1982).

[3] 15 U.S.C. 3301–3432 (1982).

[4] A list of the applicants is included in Appendix A.

[5] A list of the petitioners is included in Appendix B.

[6] Interstate Transportation of Gas for Others, 50 FR 114 (Jan. 2, 1985) (Phase I).

[7] Natural Gas Pipeline Ratemaking, Risk and Financial Implications After Partial Wellhead Decontrol, 50 FR 3801 (Jan. 28, 1985) (Phases II and III)

[8] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 24130 (June 7, 1985). *See* Maryland People's Counsel v. FERC, 761 F.2d 768 (D.C. Cir. 1985) and Maryland People's Counsel v. FERC, 761 F.2d 780 (D.C. Cir. 1985).

[9] 18 CFR 2.76, 50 FR 16076 (Apr. 24, 1985).

[10] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Proposed Rule, 50 FR 42372 (Oct. 18, 1985).

these ventures. That willingness is manifested by the pipeline's agreement to provide such service or facilities subject to specified conditions, including volumetric rates similar to those established for transactions under new Part 284.

Appropriate abandonment is conditionally pre-granted to the pipeline to be effective at the expiration of the underlying contracts. Since pipelines would knowingly assume the risk of these ventures, competing certificates may be granted.

The Commission added a requirement that an applicant seeking a certificate to provide transportation service must obtain a blanket transportation certificate under § 284.221. The final rule prohibits shifting costs from so-called "new service" to existing pipeline customers, if revenues are underrecovered. Abbreviated application procedures under § 157.7 are also available for optional expedited certificates.

C. Effect of Technical Corrections

On October 24, 1985, the technical corrections to Order No. 436 were issued. These corrections made several changes to Order No. 436 to rectify inadvertent errors that occurred in the process of the order's rapid preparation in anticipation of the November 1, 1985, termination date imposed by the Court of Appeals for certain ongoing transportation programs. To ensure timely compliance and to minimize misunderstanding during the initial implementation of the Commission's rule, the corrections were issued at the earliest possible date. The Commission now ratifies those corrections, effective October 9, 1985, as expositions of its original intent.[11]

Specifically, the notice made technical corrections to reflect the Commission's intent that:

1. No notice period associated with a reduction or conversion of firm sales entitlements may begin sooner than February 1, 1986, unless a pipeline agrees otherwise;

2. An NGPA section 311 self-implementing transportation arrangement authorized and for which service had commenced on or before October 9, 1985, may continue under the original terms and conditions (except for § 284.7 and the new reporting requirements of §§ 284.106 and 284.126) until the expiration of its authorized original or extended term that was in effect on October 9, 1985, or until October 9, 1987, whichever comes first;

3. An authorized transportation arrangement under Order Nos. 60 (interstate pipelines on behalf of other interstates) and 63 (LDCs or Hinshaw pipelines on behalf of interstates) may continue subject to the transition provisions of Subparts B and C of Part 284, as amended, respectively;

4. An NGPA section 311 transportation arrangement authorized and for which service had commenced on or prior to October 9, 1985, pursuant to a Commission order under § 284.107 or § 284.127 of the Commission's regulations as in effect prior to November 1, 1985, may continue under the original terms and conditions (except for § 284.7 and the new reporting requirements of §§ 284.106 and 284.126) until the expiration of its authorized original or extended term that was in effect on October 9, 1985, or until October 9, 1987, whichever comes first;

5. Any blanket certificate transportation arrangement authorized and for which service had commenced on or before October 9, 1985, under then existing § 157.209(a) of the Commission's regulations (Order No. 319), may continue for the time remaining in its authorized term after November 1, 1985;

6. Any transportation arrangement authorized on a self-implementing basis for 120 days pursuant to existing § 157.209(e)(1) of the Commission's regulations (Order No. 234–B), may continue only for the time remaining in its 120-day term past October 31, 1985;

7. *Only* optional *transportation* certificates, not optional sales certificates, will be subject to the prerequisite that the applicant file for, and state it will accept, a new blanket transportation certificate under new § 284.221 of Part 284 of the Commission's regulations.

D. Case-Specific Clarifications

Order No. 436 affects a great variety of gas transportation and sales transactions. In particular, the transitional provisions that allow certain arrangements previously authorized under section 311 or under NGA blanket certificates to continue after November 1, 1985, pertain to hundreds of contracts, construction and service schedules, and other fact-specific situations that may be immediately affected. To date, the Commission has received variously-styled pleadings from pipelines or their customers requesting clarification, interpretation, or waiver of the regulations. In recognition of the unique situation created by Order No. 436 and the need to avoid inequities to the extent feasible, the Commission has responded with orders on clarification of Order No. 436. The following list summarizes briefly the issues involved in each.

1. *Northwest Pipeline Corp.* (Oct. 29 1985) (Filing a statement of notification to continue transportation for a low priority end-user authorized under a blanket certificate does not commit an interstate pipeline to becoming an open transporter after the transition period).

2. *Intercon Gas, Inc.* (Oct. 30, 1985) (Section 311 transactions commenced after October 9, 1985, do not qualify under the transitional rules).

3. *El Paso Natural Gas Company* (Oct. 30, 1985) (Written contracts for transportation service on a month-to-month basis, which were executed before October 9, 1985, do qualify under § 284.105 until the end of the final month or October 9, 1987).

4. *Panhandle Eastern Pipe Line Company* (Oct. 30, 1985) (Transportation arranged under Order No. 60 may continue subject to the transition provisions. Only transportation service actually commenced on or before October 9, 1985, qualifies under § 284.105(a), and the underlying transportation arrangement may not be amended after October 9, 1985. Transportation under a new blanket certificate issued under new § 284.221 cannot be performed until the certificate is issued).

5. *Hadson Gas System, Inc.* (Oct. 30, 1985) (Any changes to the terms and conditions of a transitional section 311 transaction is an initiation of a new NGPA section 311 transportation transaction).

6. *Consolidated Fuel Supply, Inc.* (Oct. 31, 1985) (Any changes to the terms and conditions of the originally certificated blanket certificate transaction that

[11] The Commission does not believe that a correction made before a rule's effective date constitutes retroactive rulemaking. The assertions in the applications for rehearing that the technical corrections constitute retroactive rulemaking, if taken seriously, would preclude the Commission from making any significant modifications in a rule in response to rehearing applications. Thus, the Commission rejects any assertion that the technical corrections are procedurally defective. The only issue is whether the modifications are reasonable. The Commission finds the October 24, 1985, corrections are reasonable. Specifically, the potential that interstate and intrastate pipelines would begin new transportation transactions before November 1, 1985, only to avoid the conditions established in Order No. 436 for transportation transactions is greater than the ill effects from amending the transitional provisions to include, among other things, the October 9, 1985, cut-off date for eligible transactions. In addition, the Commission has sought to provide relief on a case-by-case *basis to any persons unnecessarily harmed by the change. See* discussion, *infra*., Section VII.C.

qualified under the transitional provisions would require an application for a new blanket certificate).

7. *Columbia Gas Transmission Corp.* (Oct. 31, 1985) (New or expanded NGPA section 311 transportation transactions may be commenced after October 9, 1985, and terminated on a non-discriminatory basis before December 15, 1985, without subjecting the pipeline to non-discriminatory access, CD adjustment obligations or the new rate conditions after December 15, 1985).

8. *Texas Eastern Pipeline Co.* (Oct. 31, 1985) (Initiation of new section 311 transactions under Order No. 436 subjects the pipeline to the non-discriminatory access condition applicable to such service, but does not obligate the pipeline to file for a new blanket certificate under Subpart G of Part 284).

9. *Midwest Solvents Company* (Oct. 31, 1985) (Transportation for high priority users that was authorized under former § 157.209(e) does not qualify under transitional provisions that apply to former § 157.209(a) concerning automatic authorization for transportation for high priority end-users).

10. *Amstar Corporation* (Oct. 31, 1985) (Transportation service must have actually commenced on or before October 9, 1985, to qualify under §§ 284.105, 284.125, and 284.223(g)(1)).

11. *Carnation Company.* (Oct. 31, 1985) (In order to qualify under transitional provisions applicable to Order No. 319 transportation arrangements, that service must have been both authorized and commenced on or before October 9, 1985, regardless of whether the gas was transported under an SMP).

12. *Pacific Gas and Electric Company* (Oct. 31, 1985) (A verbal agreement is sufficient to meet the "authorized" test for transitional NGPA section 311 transportation as long as the arrangement was commenced on or before October 9, 1985, and the parties to the transaction have complied with all applicable reporting requirements).

13. *El Paso Natural Gas Company* (Oct. 31, 1985) (Filing of an extension report prior to October 9, 1985, pursuant to executed letter agreements that permit continuance of NGPA section 311 transportation service beyond November 1, 1985, is sufficient to meet the "authorized and commenced" prior to October 9, 1985, tests of the transitional provisions, provided all the statutory and regulatory requirements are met).

14. *Transcontinental Gas Pipeline Corp.* (Nov. 1, 1985) (Certain section 311 transportation service qualifies under transitional provisions, provided the pipeline files an affidavit that the transportation services affected were small in number and were intended to continue past October 31, 1985).

15. *Orange and Rockland Utilities, Inc. and Transcontinental Gas Pipeline Corp.* (Nov. 1, 1985) (A section 311 transportation arrangement that commenced after October 9, 1985, qualifies under transitional provisions because of unique circumstances, including the extent of prior investment).

16. *Michigan Gas Utilities Company* (Nov. 7, 1985) (Transportation for a high priority end-user was authorized under former § 157.209(a), even though the initial report identified the transaction as an "industrial process use" within former § 157.209(e) and this report was not corrected until after October 9, 1985, *distinguishing Midwest Solvents Company* (Oct. 31, 1985). The *authority* to continue blanket certificate transportation between November 1, 1985, and December 15, 1985, is co-extensive with the *obligation* to serve in a non-discriminatory manner *all* customers, old and new, that request transportation service without need for further grant of authority from this Commission).

17. *ANR Pipeline Company* (Nov. 7, 1985) (Order accepts ANR's filing that states that ANR intends to comply with non-discriminatory access conditions for the period ending December 15, 1985. But, the order rejects that part of ANR's filing that states that it lacks authority to provide transportation for an end-user during the transition period without a new certificate under NGA section 7(c) since the existing blanket certificate provides authority for new transportation for the 45-day period ending December 15, 1985.[12] Refusal by a company that has voluntarily assumed the non-discriminatroy obligations of §§ 284.8(b) and 284.9(b) to provide service, if in fact it occurs, is inconsistent with the regulations).

18. *Algonquin Gas Transmission Company* (Nov. 8, 1985) (Algonquin was permitted to charge for its transitional NGPA Section 311 transportation arrangements a one part rate that is included in a rate schedule that was on file with the Commission and effective prior to November 1, 1985).

19. *El Paso Natural Gas Company* (Nov. 8, 1985) (Order treated request for clarification as a report required under former § 284.106(b) for NGPA section 311 transportation service).

20. *Transcontinental Gas Pipe Line Corp.* (Nov. 8, 1985) (Arrangement that was initated many months ago as an ordinary section 311 transaction and at a substantial expense to a distributor was found to qualify under transitional provisions, since the pipeline actually commenced service on October 9, 1985, when it delivered gas into the purchaser's pipeline for testing).

21. *Northwest Pipeline Corp.* (Nov. 8, 1985) (Restates and amplifies *ANR Pipeline* Company (Nov. 7, 1985)).

22. *Carnegie Natural Gas Company* (Nov. 13, 1985) (Consistent with § 157.18, a pipeline may terminate transactions initiated pursuant to a new blanket certificate without triggering the contract demand reduction and conversion rights in § 284.10, if it applies for and the Commission grants it appropriate abandonment authorization prior to December 15, 1985. Sections 284.7, 284.8 and 284.9 would also cease to apply after such termination).

23. *Dresser Industries, Inc.* (Nov. 13, 1985) (Granted a section 7(c) exemption consistent with *Caterpillar Tractor Company*, 11 FERC ¶61,076 (1980)).

24. *Tex-La Gas Company* (Nov. 13, 1985) (Although company failed to timely file a 30-day report for a NGPA section 311 transportation, transaction company qualified under the transitional provisions, since it filed the report before issuance of Order No. 436).

25. *Hadson Gas Systems, Inc.* (Nov. 15, 1985) ("New" section 311 transportation may be terminated prior to December 15, 1985, to avoid the requirements of § 284.10, without affecting a pipeline's authority to continue beyond December 15, 1985, transportation that qualifies for transition under § 284.105(a)).

26. *Hadson Gas Systems, Inc.* (Nov. 22, 1985) (If a blanket certificate did not, prior to November 1, 1985, authorize transportation of Federal offshore gas for end-users, the transitional provisions under § 284.223(g) do not confer authority to transport Federal offshore gas. But, after November 1, 1985, all interstate pipelines are authorized to transport gas from any source, including Federal offshore, under the self-implementing authority of § 284.102).

27. *Frito-Lay, Inc.* (Nov. 22, 1985) (Although end-user's proposed transportation arrangement was not eligible under one transitional provision (§ 284.223(g)(1)), the order determined that a company may obtain, until December 15, 1985, transportation service from a pipeline providing similar service under a related transitional rule (§ 284.223(g)(2) to other end-users).

28. *Battle Creek Gas Company* (Nov. 22, 1985) (Because the parties did not notify the Commission that they were

[12] *See, infra*, Section VIII, INGAA Classification

relying on § 157.209(a) for transportation authority until well after Order No. 436 was issued, a transportation transaction that qualifed as high-priority service under § 157.209(a), but was authorized under § 157.209(e), did not meet the requirements of the transitional provisions of new § 284.223(g)(1); order applies *Midwest Solvents Company* decision).

29. *Energy Marketing Exchange, Inc.* (Nov. 22, 1985) (Order applies *Midwest Solvents* (Oct. 31, 1985) and emphasizes that the eligibility for particular transitional provisions depends on the authority under which the transportation transaction was authorized on or before October 9, 1985).

30. *TeePak, Inc. and Consolidated Fuel Supply, Inc.* (Nov. 22, 1985) (Order applies *Midwest Solvent* (Oct. 31, 1985) and concludes transaction did not qualify under transitional provision of § 284.223(g)(1)), since company did not attempt to convert the transportation service from § 157.209(e) for all end-users to § 157.209(a) for high-priority end-users until after October 9, 1985).

31. *Valley Gas Company* (Nov. 27, 1985) (Order applies *Pacific Gas and Electric Company* (Oct 31, 1985) and concludes that transitional provisions apply to service which commenced prior to October 9, 1985, pursuant to a verbal agreement as long as the parties have complied with all applicable reporting requirements).

32. *Michigan Consolidated Gas Company.* (Nov. 27, 1985) (Order applied § 284.125 to clarify that the transportation service described in the request for clarification was authorized and commenced on or before October 9, 1985, may continue until October 9, 1987, under the terms and conditions that applied prior to November 1, 1985, with the exception of the reporting requirements of § 284.126.

III. Overview of Issues on Rehearing

The Commission received applications for rehearing or clarification from individual companies and their trade associations representing every segment of the natural gas industry. These included producers and marketers of natural gas, interstate and intrastate transporters, local distribution companies (LDCs), industrial and other end users, and state and Federal government agencies. This section generally reviews the broad issues raised by these applications.

A. Producers and Marketers

The major producers assert that the CD reduction option effectively authorizes unilateral breach of contract by a pipeline's customers. Some of the independent producers (including Mesa, Panhandle Producer and Royalty Owners Assoc.) take the opposite tack and urge the Commission to expressly find that Order No. 436 does not constitute "*force majeure.*" While raising a number of other points regarding transportation, the producers generally focus the rest of their arguments on the statement of policy on take-or-pay and producer abandonment, arguing, for example, for a rebuttable presumption in favor of abandonment of service by producers when an abandonment application under the expedited procedure is protested.

B. Pipelines

1. Interstate Pipelines

Almost all of the interstate pipelines argue that the Commission's transportation program is effectively involuntary. In fact, they maintain that the Commission is attempting to impose mandatory carriage. However, the majority of these applicants argue that the Commission should condition producer access on take-or-pay relief to the pipeline.

These applicants raise legal and economic arguments in opposition to contract adjustments by their customers. First, they argue that the Commission's actions constitute an unconstitutional taking and violate sections 4, 5, and 7 of the Natural Gas Act. Second, they argue that the Commission's actions will have adverse affects on the market and on natural gas supply.

Also, many of the pipelines raise issues relating to the rate conditions that range from general legal arguments that the rates are confiscatory to a proposal that reservation fees should also be allowed for optional sales certificates, not only for optional transportation certificates under Part C.

2. Intrastate Pipelines

Intrastate pipelines argue that the non-discriminatory access provision violates NGPA sections 601 and 602 because it imposes common carrier status and encroaches on state authority.

They also raise specific issues relating to delivery points and applicability of the rate conditions. For example, they argue that intrastate pipelines should be permitted to discount their transportation rates below their fair and equitable ceilings and that they should be permitted to impose a reservation charge.

C. Local Distribution Companies (LDCs)

LDCs are unanimous in arguing that the Commission's regulations improperly promote bypass of their systems by pipelines and end-users. First, while supporting non-discriminatory access generally, they argue that the non-discriminatory access condition inhibits LDCs from negotiating flexible transportation arrangements with pipelines which oppose the condition. However, many LDCs argue that if a pipeline agrees to provide non-discriminatory access, LDCs should be preferred for such access.

Secondly, while generally supporting the "CD" reduction/conversion condition, they argue that it may cause adverse supply impacts if it threatens the pipeline's role as a supplier. They view these regulations as leading to capacity-management problems, such as overbooking and misallocation of service between firm and interruptible service.

Third, they argue that the rate conditions allow for undue discrimination. Many of the applicants request specific clarifications and suggest alternatives.

With regard to the optional expedited certificates, the majority of the LDCs oppose the presumption of public convenience and necessity in favor of granting a certificate where by-pass is involved. They argue that the presumption violates section 7 of the Natural Gas Act and states' rights, that it will have adverse economic effects on LDCs or competing pipelines, and that it reverses long-standing Commission policy in favor of LDCs. Also, many LDCs argue that the notice and protest procedures are inadequate and request a longer review period.

D. End-Users

The majority of the end-users favor the non-discriminatory access condition as a means of making available to them new gas supplies. In fact, they propose that the Commission broaden the blanket certificate transportation programs by exempting end-users from prior notice procedures. Many of these applicants submit specific requests for clarification relating to the continuation of certain transportation arrangements begun before November 1, 1985. The Commission is deciding these on a case-by-case basis.

E. State and Federal Agencies

The majority of the state applicants argue that the Commission exceeded its jurisdiction in establishing a rebuttable presumption of public convenience and necessity for qualified applicants under

its optional expedited certificate regulations.

Also, the majority of the applicants argue that the Commission did not adequately resolve the take-or-pay problem. They argue that the Commission should condition producer access on providing take-or-pay relief.

Many of the state applicants suggest specific revisions to clarify that state laws control in the situation they outline. Both state applicants and the Department of Energy suggest that all pipeline customers be permitted to reduce or convert CDs whether or not their pipleline suppliers agree to transport on a non-discriminatory basis.[13]

F. Major Issues

Before discussing the specific issues raised by the applications for rehearing, the Commission will consider and respond to two general issues which appear common to most of the applications. The first issue relates to the scope of the Commission's conditioning authority under section 7(e) of the NGA and section 311(c) of the NGPA. The second issue relates to the Commission's treatment of "take-or-pay problems" in existing pipeline-producer contracts.

1. Scope of Conditioning Authority Under NGA Section 7 and NGPA Section 311

First, applicants allege that the conditions placed by the Commission on self-implementing transportation and blanket transportation certificates are unreasonable and, therefore, an unlawful exercise of the Commission's conditioning authority under section 7(e) of the Natural Gas Act and section 311(c) of the Natural Gas Policy Act of 1978.

In particular, applicants assert that the condition permitting firm sales customers to reduce or convert their contract demands ("CDs") constitutes an unlawful unilateral abrogation of pipeline contracts with those customers. Applicants also allege that the non-discriminatory access condition attached to self-implementing and blanket certificate transportation "economically coerces" pipelines to provide such transportation.[14] Therefore, applicants say, the non-discriminatory access condition constitutes a common carriage or mandatory carriage obligation unlawful under the NGA and NGPA.

a. *Reasonableness of CD Reduction/Conversion Condition.* To the extent applicants attack the "CD" reduction/conversion condition as sanctioning abrogation of their contracts with their firms sales customers, they misunderstand the operation of Order No. 436. The Commission made clear in Order No. 436 that the choice to provide transportation service on a self-implementing basis or under a blanket certificate is purely the pipeline's choice, and the Commission is not mandating what that choice is.

What Order No. 436 does provide, however, is that if a pipeline provides self-implementing or blanket transportation, it must *also* offer its firm sales customers an opportunity to adjust their sales service agreements over a phased period to take advantage of the resulting new opportunities for transportation services. The Commission notes that data on file at the Commission and reproduced at Exhibit D of Order No. 436 indicates that the overwhelming majority of transportation arrangements undertaken on behalf of local distribution companies in the first six months of 1985 have been for partial requirements customers with alternate pipeline suppliers and *not* for full requirements customers supplied solely by one pipeline. While the refusal to transport for full requirements customers may also be due to refusal by pipelines to transport gas that would displace their sales, it is nevertheless clear that firm sales service agreements inhibit the ability of full requirements customers to choose from among a portfolio of gas supplies.

Firm sales customers are bound by their firm sales entitlements to pay for the pipeline capacity set aside for those entitlements, regardless of whether it is used. Full requirements customers, of course, purchase all of their gas requirements from a single pipeline. Partial requirements customers and most direct users are not bound to purchase their full requirements from one pipeline, and therefore have more flexibility to purchase gas elsewhere, either from another pipeline or directly in the field under a transportation arrangement with their pipeline-supplier.

Order No. 436 found that sole-supplied firm sales customers would not realistically be as able as partical requirements customers to enjoy the benefits of non-discriminatory transportation services unless they were able to adjust their sales entitlements with their pipeline suppliers.

In fact, the Commission concludes that firm sales customers, especially small municipal systems, without the CD reduction/conversion condition, would be denied the most important tool available to them to compete with interstate pipelines seeking to by-pass them and transport gas directly to end-users: the ability to obtain firm "booked" transportation capacity on the pipeline in order to acquire suppliers that will enable them to compete.

Otherwise, the enormous flexibility of transportation under a NGA section 7 blanket certificate would permit pipelines to squeeze market share from LDCs, while denying those LDCs the same flexibility to keep their customers by providing firm self-implementing transportation service under section 311 of the NGPA. Thus, the CD reduction/conversion condition is an indispensable element of non-discriminatory access to transportation.

Furthermore, the CD reduction/conversion condition is just that, a *condition* on the flexibility provided to interstate pipelines under the new transportation services authorized by Order No. 436. In return for accepting this condition, pipelines obtain a "two-way street" of benefits under Order No. 436, such as the expanded eligibility of gas categories, shippers and terms of transactions for self-implementing or blanket certificate transportation.

On the other hand, in return for exercising their conditional right to reduce or convert CDs, firm sales customers must be willing to agree to a commensurate adjustment in the certificated obligation of their pipelines to provide them with sales service under the CDs. This necessarily means that they must assume some of the supply risks previously borne by the pipelines.

The Commission intends the CD reduction/conversion condition to provide full requirements customers the same opportunity to choose among natural gas suppliers that the Order No. 380 minimum bill rule provides partial requirements customers.[15] However, as under the minimum bill rule, the exercise of the conditional rights does not prejudge the determination in individual rate cases of the appropriate

[13] The Commission also received on December 5, 1985, a pleading filed by the Honorable Don Nickles, United States Senator, in this docket. The Commission is accepting this pleading as a request for reconsideraton and is responding to ORA the issues it raises herein.

[14] *See* Interstate Natural Gas Association of America (INGAA) at pp. 13–16 ("* * * if a competitor of Pipeline A participates in the transportation program, and thereby achieves a competitive edge, Pipeline A may find that it has no choice but to participate, notwithstanding the legal and operational disadvantages.").

[15] *See* Wisconsin Gas Co. v. FERC, No. 84–1358 (D.C. Cir. 1985), slip op. at 38–39, 43.

allocation of risks and revenue responsibilities attributable to the exercise of those rights. Under Order No. 436, each pipeline subject to a CD reduction or conversion will continue to be able to file with the Commission, as appropriate, new rates to reflect the resulting adjustments in revenue responsibility.

In the first year, no CD reduction rights become effective before a pipeline has filed new rates. In subsequent years, a pipeline may specify a single date by which customers must give notice of their CD reductions in order that the pipeline may plan its rate filings accordingly. The CD conversion option is available at any time during the year, upon 60 days' notice by the LDC.

Thus, Order No. 436 leaves entirely to determination in future rate cases the appropriate allocation of risks, including the rate of return and revenue responsibility, among a pipeline and its customers exercising CD reduction or conversion rights.

The Commission rejects those petitions which allege the CD reduction/conversion condition would abrogate contracts. Order No. 436 clearly permits CDs to be reduced or converted *only* if a pipeline chooses to provide Order No. 436 transportation services; every pipeline remains free to choose to provide such services or instead provide other services not subject to the CD reduction/conversion condition, such as transportation or sales service under an individual certificate pursuant to section 7(c) of the NGA.

The Commission rejects those applications for rehearing which assert that the Commission may not impose the CD reduction/conversion condition except after a finding that current CDs are unjust and unreasonable under section 5 of the NGA. The Commission does not doubt it has the authority under section 5 to do so. The Commission need not do so here, because Order No. 436 makes clear that CD reduction/conversion rights are imposed as a *condition* under sections 7(e) of the NGA and 311(c) of the NGPA, not as a *mandate* under section 5 of the NGA.

For the same reason, the Commission rejects the argument that the condition constitutes an unlawful delegation to private parties of its authority to set rates under section 4 or to condition certificates under section 7. Order No. 436 clearly limits CD reduction and conversion to a condition which a pipeline is free to accept or reject as an element of its mix of sales and transportation services. The Commission clearly has the authority to impose this condition generically.[16] Moreover, the conditions are a transitional tool only and will not apply to agreements entered into after the effective date of the rules. *See* § 248.10(b).

Finally, the condition is not legally infirm because it would affect sales service agreements filed with the Commission in connection with initial rates contained in certificates previously issued under section 7 of the NGA. The Commission is not amending previously-issued sales certificates or retroactively adjusting initially-certificated rates; it is merely imposing a condition on transportation service which a pipeline may or may not choose to offer.

That this condition may be exercised so as to affect initially certificated rates or previously certificated sales service is left to determination if and when the conditional rights are exercised and new rates are filed. However, the Commission's ability to may affect sales service agreements through its section 7 conditioning authority is without doubt.[17]

b. *Reasonableness of Non-discriminatory Access Condition.* The Commission also rejects the contention that the non-discriminatory access condition constitutes "economic coercion" and therefore is not a reasonable condition under section 7 of the NGA.

When stripped of its rhetorical weight, the "economic coercion" alleged by applicants is no more than the competitive pressures which already exist in natural gas markets. Interstate pipelines argue that they will be forced to provide Order No. 436 transportation merely because (1) other pipelines are providing the same services, or (2) pipeline customers are requesting the services.[18]

Thus, interstate pipelines appear to be arguing that the Commission has committed legal error by not including in Order No. 436 some sort of exemption or immunity from competition with other pipelines who choose to offer transportation services or pipeline customers who request such services on a non-discriminatory basis.

The Commission not only rejects this definition of "economic coercion," it finds that a change in the non-discriminatory access condition which would have the effect of granting any pipeline an exclusive franchise to provide self-implementing or blanket certificate transportation to any particular class of customers would violate the Natural Gas Act and the Natural Gas Policy Act of 1978.

Sections 4 and 5 of the NGA prohibit unduly discriminatory or perferential practices, and section 7(g) of the NGA makes clear that certificates issued by the Commission are not required to be exclusive. Section 311 of the NGPA was expressly intended by the Congress to encourage the free movement of gas on a self-implementing basis, and carving out exclusive service areas for pipelines providing section 311 services would directly contradict that Congressional purpose.[19]

The Commission believes that the allegation by some applicants that the non-discriminatory access condition is involuntary because the Commission's review of individual section 7(c) applications is not as timely as its review of blanket certificate applications reflects considerable misunderstanding. The Commission has made very clear its intention to carry out its mandates under the NGA and the NGPA to process the Commission's caseload in an efficient and timely manner *consistent with the procedural rights of all parties.* While blanket certificates offer the considerable advantage of authorizing individual transactions in expeditious fashion, the consideration afforded application for the certificate itself is equivalent to that given other section 7(c) applications. Nevertheless, in separate orders issued prior to the effective date of Order No. 436, the Commission made clear that it expects that applications for individual section 7(c) transportation certificates will be processed on a timely basis and may be determined on a delegated basis by the Director of the Office of Pipeline and Producer Regulation *where unopposed.*[20] These delegated orders may be issued in a timely manner following completion of the public notice period and staff review. In fiscal year 1985, the Director of OPPR issued 211 orders in an average of 125 days from receipt to completion, involving individual section 7 pipeline certificates for construction and operation, transportation, sales, and abandonment.

[16] Id. 54–56.

[17] Atlantic Refining Co. v. PSC of New York, 360 U.S. 378 (1959); FPC v. Transcontinental Gas Pipe Line Corp., 365 U.S. 1 (1960).

[18] *See* INGAA at 13, 16; Natural Gas Pipeline Co. of America at 23; Transcontinental Gas Pipeline Corp. (Transco) at 7–8; *but see* Department of Energy (DOE) at 4–5 (criticizing the Order No. 436 transitional "provisions [that] allow pipelines an opportunity to maintain many of their current transportation services for up to two years before meeting the requirements of the open access rule.").

[19] Committee on Interstate and Foreign Commerce, Report on H.R. 6831, "National Energy Act" (July 19, 1977) at 92–95.

[20] ANR Pipeline Company, Docket No. CP85–621, CP85–674, CP85–713, CP85–714, Order Setting Case for Hearing and Denying Temporary Authorization and Stay (October 31, 1985).

It must be recognized that this time period included the notice period, requests for, and receipt of, supplemental information, and in some instances the resolution of protests. These orders represented 35 percent of the total pipeline certificate orders issued during the same period covering similar proposals.

On the other hand, the Commission has also made clear that, under court precedents, where intervening parties raise material issues of fact, the Commission will set an individual section 7(c) application for hearing under the Natural Gas Act. For example, the Commission notes that this same standard applies to individual transactions authorized under blanket transportation certificates; the Commission's regulations require that such transactions be converted to individual section 7(c) applications *if* protested during the 120-day automatic authorization period and the protest cannot be resolved. The Commission also notes that the NGPA does not provide a *right* to pipelines to provide self-implementing transportation under section 311; it merely provides that the Commission may authorize such transportation under such terms and conditions as it may believe necessary.

Finally, the Commission notes that 132 individual section 7(c) certificate applications or authorization or amendments to prior authorizations were filed at the Commission between October 15, 1985, and November 15, 1985. The Commission considers that it has adequate resources to process these applications on a timely basis in fiscal year 1986, and also has adequate flexibility within its overall resources to respond to such future filings. For this reason, the Commission rejects the allegation that individual section 7(c) certificates are not a realistic alternative to transportation under a blanket certificate or transportation under self-implementing authority. This finding is based not only on the Commission's caseload data, but also on the fact that Order No. 436 does no more than codify the Natural Gas Act's requirement that rates and practices, such as access to transportation and levels of contract demand, must be just and reasonable and not unduly discriminatory or preferential. This requirement applies equally to both Order No. 436 transportation and to transportation under an individual section 7(c) certificate.

2. The Commission's Policies on Take-or-Pay

The majority of pipeline and local distribution company applicants allege error in the failure of the Commission to condition producer access to non-discriminatory transportation on take-or-pay relief.

In the alternative, these applicants assert that Order No. 436 is arbitrary and capricious to the extent it provides for non-discriminatory access and CD reduction/conversion conditions without at the same time "resolving" the liability of pipelines under take-or-pay clauses in their so-called "problem" contracts with producers.

This is error, applicants say, because non-discriminatory access and CD reduction/conversion would expose pipelines to displacement of their own gas sales by gas bought directly in the field. In turn, they say, displacement of their own gas sales by gas transportation would increase the pipelines' take-or-pay liability with their producers for gas not taken under long-term contracts. Thus, they conclude, Order No. 436 does not adequately address this take-or-pay exposure and, therefore, is arbitrary and capricious.

A fundamental criticism of Order No. 436 made by virtually all interstate pipelines and by many of their customers is that the Commission has not dealt in the desired way with non-market responsive contracts between producers and pipelines. The criticism was put succinctly by the American Gas Association (AGA) (at 4):

> The issue is really bargaining power. The Commission is decreasing pipeline bargaining power, but increasing producer bargaining leverage by requiring pipelines to transport unconditionally for producers and by allowing unilateral producer abandonments under new §2.77.

AGA further summarized the criticism of a number of companies [21] when it asserted (at 8) that:

> The non-discriminatory access provisions of new transportation §§ 284.6(b) and 284.9(b), plus new § 2.77 on expedited abandonment, take away a pipeline's only tools for renegotiating these contracts.

All this means is that the company management must evaluate its business options. A pipeline may determine that certain of its existing business arrangements make participation in the new rules unwise or undesirable. The pipeline might wish, prior to committing to the new rules, to alter any of a number of its existing business arrangements, including, to give but a few examples, the extent of its leveraged capital structure, the extent of its non-pipeline business interests or its existing contracts with producers. Nothing in Order No. 436 precludes a company's management from deferring participation until after these existing arrangements are modified.

In essence, these applicants are asserting that their "primary" or "only" tool for modifying contracts with producers is the ability to deny access to interstate transportation or to utilize the abandonment procedures under a Federal law to deny a producer the ability to move gas to market.

The Commission rejects these assertions concerning the effect of Order No. 436, and furthermore finds that conditioning producer access on take-or-pay relief would be inconsistent with the non-discrimination requirements of both Order No. 436 and the Natural Gas Act.

It is obvious that pipelines have been successfully using section 311 and end-user transportation to offset declines which have already occurred in their gas sales.[22] It is also clear that local distribution companies, the prime users of self-implementing transportation services, look on such services as an opportunity to supplement, not replace, the security of their agreements with pipelines for firm sales services at times of peak demand. In other words, LDCs look on gas transportation as one tool to supplement their on-peak firm sales revenues with revenues from interruptible sales to off-peak users.

The reason for this is made obvious by the comments filed in this docket by the AGA. AGA demonstrated that the decline in gas sales demand between 1980 and 1985 is not due to reductions in *peak* demand but to declines in *off-peak* demand by industrial users. This is confirmed by data filed with the Commission by pipelines in FERC Form No. 16. The Form No. 16 data indicates that the sales load factors of most interstate pipelines have declined since 1980 and are at historically low levels.[23]

[21] *See also, e.g.*, applications of Northwest Pipeline Company, at 20 (pipeline access to transportation systems is really a pipeline's only trading card in seeking to renegotiate producer contracts); Tennessee Gas Transmission, at 6 (offering of transportation services in exchange for contractual concessions are the pipeline's "primary bargaining leverage against the producer"); and Natural Gas Pipe Line Company of America, at 17 (it is imperative for FERC to assist pipelines by providing them "trading chips" in dealing with producers, including conditioning producers' access to the interstate system).

[22] *See* "Voluntary Carriage Through Midyear 1985," Interstate Natural Gas Association of America (November 1985) at 1–3 ("Strong transportation growth offset sales declines during the second quarter of 1985. * * * This increase has occurred despite sizable declines in the pipelines' traditional sales business.").

[23] *See* Comments of AGA at 23, Attachment A. *See also* Final Rule, 50 FR 42413 (Oct. 8, 1985).

If LDCs exercise their option to convert or reduce firm sales service at times of peak demand, the Commission considers it more likely that they will either convert to firm transportation on the same pipeline, or else free up underutilized capacity under uneconomic CDs for use by other customers on the same pipeline. In either case, the pipeline may actually increase throughput and, therefore, gain the net benefits of spreading its fixed costs over greater units of gas service.

In the situation where an LDC actually displaces the pipeline's own system supply gas, the Commission believes that the pipeline's revenues from sales may not necessarily decline and may in fact increase. This is because the LDC is unlikely to switch to transportation unless it can obtain gas supplies cheaper than the pipeline's own system supply. To that extent, the pipeline will be competing with itself as both merchant and transporter, and therefore will seek to adjust its gas purchasing practices so as to lower its weighted average cost of gas *to all customers.* If it does so, it stands to gain additional sales revenues overall, as it competes with other pipelines and other fuel sources for new customers.

However, in the unlikely case that a pipeline is unable or unwilling to seek to compete for its own sales customers who switch to transportation, the Commission rejects the assertion that the pipeline would necessarily bear the risk of increased take-or-pay liability under its contracts with producers.

As Order No. 436 demonstrated at Exhibit O, take-or-Pay prepayments included by pipelines in rate base have remained stable or declined slightly between 1982 and 1985, despite the nearly 200 percent increase in pipeline transportation for LDCs and end users, and the continuing decline in pipeline sales during the same period. Although take-or-pay prepayments are in most cases less than a pipeline's potential take-or-pay liability, such prepayments do indicate the actual experience of the industry over the last few years. This actual data should be considered in contrast with various theoretical projections of such potential liability.

In addition, the Commission makes clear here what it intended in Order No. 436: nothing in Order 436, including the non-discriminatory access and CD reduction/conversion conditions, is intended to affect the rights of parties to gas supply contracts between pipelines and their suppliers, nor to affect the existing jurisdiction of state and local agencies over the production and conservation of natural gas. Thus, to the extent an LDC or end-user contracts with pipelines for transportation services under Order No. 436, nothing in Order No. 436 is intended to abridge the rights and obligations regarding take-or-pay liabilities under contracts between those pipelines and their suppliers.

To the extent these rights and obligations are renegotiated or become the subject of litigation, the non-discriminatory access and CD reduction/conversion conditions are not intended to affect such renegotiations or litigation. To the extent a pipeline in fact incurs additional take-or-pay liability due to transportation services under Order No. 436, nothing in Order No. 436 is intended to preclude the Commission from determining the appropriate allocation of revenue responsibility among the pipeline and its customers in an individual rate case filed to reflect the adjustments in sales and transportation service. Thus, Order No. 436 leaves to individual rate cases the determination of whether a pipeline, or its customers, or both, will bear any risk or revenue responsibility for actual take-or-pay expenditures.

Finally, the Commission rejects the argument that Order No. 436 fails to "adequately deal" with take-or-pay problems. Part B of Order No. 436 reaffirms the April 10, 1985, Statement of Policy issued by the Commission on take-or-pay "buy-outs" negotiated by pipelines and producers. Part B was adopted in the final rule in lieu of the more specific presumption of prudence for certain specified take-or-pay settlement costs proposed in the Notice of Proposed Rulemaking. This more specific proposal was unanimously rejected *as inadequate* by the overwhelming majority of interstate pipeline commenters and producer and LDC commenters as well.

For this reason, the Commission in Part B of the final rule reaffirmed the take-or-pay policy statement and adopted a new policy statement on expedited producer abandonment. This new policy statement provides that the Commission will expeditiously review unopposed applications for abandonment of gas subject to take-or-pay relief or substantially reduced takes. In the latter case, even where take-or-pay relief is not an express element of the abandonment application, the abandonment and sale of the gas elsewhere may make available to former pipeline purchasers the usual contract remedies against the producer for mitigation of damages, including mitigation of take-or-pay obligations.

The Commission notes with interest the study on high-cost gas contracts appended to AGA's petition for rehearing. This appendix indicates the bulk of high-cost "problem" contracts without "market-outs" may be those entered into prior to 1982 involving offshore gas regulated under NGPA section 102. To this extent, Order No. 436 as well as a recent order of the Commission [24] indicate that producers of such gas will not be granted blanket transportation authority independent of that provided by pipelines on a voluntary basis under Order No. 436. Producers of such gas may be able to obtain blanket authority to abandon their service obligations to pipelines and sell such gas elsewhere. However, voluntary release of such gas may be the subject of take-or-pay negotiations. In fact, Order No. 436 positively encourages on-going and potentially successful private negotiations between the parties regarding their take-or-pay rights and obligations, such as the recent contract settlement between Columbia and its customers and suppliers.[25]

Finally, regardless of whether these three assertions by petitioners are true or not, the Commission declines to condition producer access for another reason: conditioning producer access on take-or-pay relief would be patently inconsistent with the non-discriminatory access requirements of Order No. 436 as well as sections 4 and 5 of the NGA.

Where a willing producer-seller and a willing buyer agree to a contract for the sale of gas, it would be unduly discriminatory for a pipeline to refuse to provide transportation service for the gas under Order No. 436, merely because the producer and pipeline cannot agree on take-or-pay relief in another contract. Such a refusal would discriminate not only against the producer-seller, but also against the willing buyer who has never been a party to the take-or-pay contract in the first place.

Moreover, nothing precludes any gas shipper, whether end-user, LDC, or independent broker, from negotiating *on its own behalf* a condition in a "self-help" gas sales contract which would require the producer-seller to grant take-or-pay relief to the shipper's pipeline supplier before the shipper takes delivery of the gas. This is especially true where the shipper is attempting to purchase gas supplies that are currently under contract to a pipeline, but are not

[24] Tenneco Oil Co., *et al.*, Order Permitting and Approving Limited Term Abandonments and Granting Certificates, Docket No. CI85-633-000, *et al.* (Oct. 29, 1985).

[25] *See also* "Columbia Gas Says 4 Suppliers Reduced Prices," *Wall Street Journal*, November 12, 1985.

being taken because of the pipeline's reduced need for those gas supplies.

For all these reasons, the Commission declines to condition producer access to non-discriminatory transportation on take-or-pay relief.

IV. Discussion of Transportation Issues (18 CFR Part 284)

A. Non-Discriminatory Access Under §§ 284.8(b) and 284.9(b)

1. Legal Authority Under NGA Section 7(e)

In Order No. 436, IV. A., the Commission defended the non-discriminatory access condition against attacks that it equates with the imposition of mandatory carriage requirements by explaining that the requirement that pipelines transport natural gas without undue discrimination is only "a *condition* on the certification or authorization of certain self-implementing transportation services which a pipeline may voluntarily choose to perform or not."

Some applicants believe that the mandatory nature of the decision to provide transportation services under Order No. 436 is further emphasized by the Commission's "threats" regarding the adverse consequences of a refusal to provide transportation services under Order No. 436. (*See* Tennessee Gas Pipeline at p. 7, NGPL at p. 25, Texas Gas Transmission at pp. 20–21.) These applicants cite the Commission's statements in Order No. 436 that it "fully intends to closely scrutinize projected levels of service and rates of return filed in rate cases as a means of assuring that pipelines bear their fair share of the risks of maintaining pipeline throughput" (Order No. 436 at IV. A.) and that the Commission intends to establish imputed sales levels and to remove underutilized facilities from pipelines' rate bases as incentives for pipelines to offer transportation services to maintain pipeline throughput.

Further, as noted by NGPL (at p. 25), there is no guarantee that non-discriminatory access conditions will not be attached to certificates issued in traditional section 7 proceedings, as the Commission indicated in Order No. 436 (at IV. A.) that it might on a case-by-case basis.

Several applicants emphasize that only Congress can impose common carrier status upon contract carriers [26] and that Congress has consistently refused to require mandatory carriage or to impose common carrier status on natural gas pipelines, as recognized by the Commission in Order No. 436 (at IV. A.).[27] Tennessee Gas Pipeline notes that in hearings on H.R. 11662, a predecessor to the bill that became the Natural Gas Act of 1938, Congressman Cole and Dozier A. Devane, Solicitor of the Federal Power Commission, clearly stated that natural gas pipelines would not be common carriers:

> MR. COLE: Where you find a line is not transporting gas to its fullest capacity, the idea is to compel that line to take gas from anyone in the field where the pipeline gets its gas?
>
> MR. DEVANE: There is no provision in here which gives the Commission the authority to make them take gas, no; they would have to have available at the source sufficient gas to fill the pipeline to its capacity.
>
> MR. COLE: They are not made common carriers.
>
> MR. DEVANE: No; not the gas pipelines.[28]

As evidence of Congressional reluctance to impose common carriage requirements on pipelines, several petitioners [29] point out, as discussed below, that in section 602(b)(2) of the NGPA, the Congress specifically provided that:

> *Common Carriers*—No person shall be subject to regulation as a common carrier under any provision of Federal or State law by reason of any transportation . . .
>
> (2) Authorized by the Commission under section 311(a) of this Act.

Further the applicants emphasize that the only instances in which Congress has empowered an agency to require natural gas pipelines to render services are (1) the Outer Continental Shelf Lands Act of 1978, 42 U.S.C. 1334 (e) and (f), which requires that pipelines authorized to transport OCS gas provide transportation on a non-discriminatory basis; and (2) section 7(a) of the Natural Gas Act which authorizes the Commission to order a natural gas company to provide sales service to a local distribution company if (a) no undue burden is placed on the natural gas company, and (b) there is no resulting impairment of the Company's ability to render adequate service to its other customers.

INGAA (at p. 15) and CIG (at p. 36) further argue that the court's mandate in the *Maryland People's Counsel v. FERC* cases, 761 F.2d 768; 761 F.2d 780; 768 F.2d 450 (D.C. Cir., 1985) and consolidated case 85–1086 did not require that the Commission adopt regulations that indirectly impose common carriage.

These applicants assert that pipelines and their customers should be permitted to negotiate transportation access on terms that recognize the individual circumstances of particular systems. There should be some recognition of the long-standing contractual relationships among the customers themselves. Order No. 436 would, they assert, abruptly cancel these contractural relationships and cause cost-shifting among customers. However, desirable the objective of non-discriminatory transportation, reasonable latitude should be permitted to pipelines and their customers to work out arrangements that would clearly pass non-discrimination tests without drastic economic consequences either to the pipeline or its customers.

In short, these applications claim that: (1) Order No. 436 is coercive and hence in fact an involuntary program; (2) the non-discriminatory access condition, because it is involuntary, effectively mandates carriage and hence unlawfully turns pipelines into common carriages; (3) the Commission erred in determining that it is *per se* unduly discriminatory for a pipeline to refuse to transport gas that displaces its own sales; and (4) the rate and CD adjustment conditions are unreasonable.

The Commission considered most of the arguments raised by the applicants which suggest that the Commission lacks legal authority to apply the non-discriminatory access condition to interstate transportation under the NGA prior to issuing Order No. 436. Further, the Commission reviewed the requirements of the NGA, the legislative history of the NGA, and relevant case law.

Section 7(e) of the NGA, which was added as an amendment to the act in 1942, states, in pertinent part, that:

> The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

According to the Supreme Court:

> The Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges . . .

[26] *See* Northern Natural at p. 5, *citing* FCC v. Midwest Video Corp., 440 U.S. 689, 702–709 (1978) and Florida Power and Light Company v. FERC, 660 F.2d 668 (5th Cir. 1981).

[27] *See, e.g.*, Tennessee Gas Pipeline at p. 8; Northern Natural at p. 5; NGPL at p. 22; Florida Gas Transmission at p. 14; and CIG at p. 37.

[28] Tennessee Gas Pipeline at p. 8, quoting Roach & Gallagher, *A Compilation of the Legislative History of the Natural Gas Act* (1935—July 1, 1968) Part I, at page 70.

[29] *See* Tennessee Gas Pipeline at p. 6; Northern Natural at p. 5.

. . . In view of this framework in which the Commission is authorized and directed to act, the initial certification of a proposal under section 7(e) of the Act as being required by the public convenience and necessity becomes crucial. This is true because the delay incident to determination in section 5 proceedings through which initial certificated rates are reviewable appears nigh interminable.[30]

Thus, as stated by the Commission in Order No. 436 (at Section IV.A.), the Commission's certificate and conditioning authority is the means by which it effectuates the purpose of the NGA to underwrite just and reasonable rates to the consumers of natural gas.[31] Any attack on a condition in a certificate issued by the Commission must confront the well-established principle that generally the Commission has extremely broad authority to condition certificates of public convenience and necessity.

While determined to use the full breadth of its section 7 conditioning authority to end discriminatory transportation practices and thereby fulfill its obligation under sections 4 and 5, the Commission recognized that its actions could neither directly nor indirectly impose common carrier obligations on pipelines in violation of the NGA.[32]

Further, the condition only applies with regard to each of the individual types of Order NO. 436 transportaiton sesrvice offered. Therefore, for example, an interest pipeline may transport under the Part 284, Subpart G blanket certificate program without becoming subject, by reason of such blanket certificate transportation, to an obligation to provide service under Subpart B of Part 284 and vice versa. Further, the non-discriminatory access provisions of §§ 284.8(b) and 284.9(b) *per se* do not cover transportation under existing individual section 7 certificates or new individual section 7 certificates filed outside of the optional expedited certificate procedure.

The Commission agrees with those petitioners that state that the court's mandate in *Maryland People's Counsel* v. *FERC*, 761 F.2d 768 and 768 F.2d 780 (D.C. Cir. 1985), was not intended to require that the Commission adopt mandatory carriage regulations. In any event, the Court's mandate clearly did judicially recognize all that is necessary for present purposes, that is the Commission has the authority to impose non-discriminatory access conditions on piple line transportation.[33]

The Commission determined that the non-discriminatory access conditions in Order No. 436 did not amount to a "direction" or a "mandate" to pipelines to transport for others as an "affirmative duty" because the condition is only a condition. As it stated in the order: "a *condition* on the certification or authorization of certain self-implementing transportation services which a pipeline may *voluntarily choose to perform or not*, strictly at its own option." Thus, Order No. 436 does not "direct" or "mandate" a pipeline to do anything. Further, the non-discriminatory access condition, even when accepted by a pipeline as part of its self-implementing transportation program, does not impose any "affirmative duty" on a pipeline to transport. It only requires that when a pipeline *does* choose to transport on a self-implementing basis, it must provide those transportation services in a non-discriminatory manner. Nor does the condition cover all transportation services and thus operate as mandatory *in effect*. A pipeline remains free to seek authorization for other transportation not covered by the condition and the Commission will review them on a case-by-case basis.[34]

Furthermore, the Commission is not dissuaded by the comparisons made by several petitioners including, e.g., NGPL (at pp. 12, 28) and City of Willcox, Arizona (at p. 35), between Order No. 436 and the legislative proposals to mandate common-carriage transportation that have been considered, but not enacted by Congress over the years. Nor does the Commission believe that Order No. 436 is inconsistent with section 602(b)(2) of the NGPA, which provides that no person shall be subject to regulation as a common carrier by reason of any transportation authorized under section 311(a) of the NGPA. In the first place, the Commission notes that neither the NGA nor the NGPA defines "common carrier." Nevertheless, the provisions of

[30] Atlantic Refining Co. v. Public Service Commission of New York, 360 U.S. 378, 388–89 (1959) (CATCO).

[31] Id. at 389.

[32] An important factor in the Commission's determination that it does not have the authority to mandate common cariage was the legislative history of sections 303 and 304 of Title III of H.R. 5423 which was introduced on February 6, 1935, (74th Congress 1st Session) by Representative Sam Rayburn, Chairman of the House Committee on Interstate and Foreign Commerce.

Sections 303 and 304 of H.R. 5423 provided in pertinent part (emphasis added):

Section 303(a). *It shall be the duty of every distributor to* furnish natural gas, to exchange natural gas with, and *transmit natural gas for any person* upon reasonable request therefor; and to furnish and maintain such services and facilities as shall promote the customers, employees, and the public, and shall be in all respects adequate, efficient and reasonable . . .

Section 304. Whenever the Commission after notice and opportunity for hearing finds such action necessary or desirable in the public interest, *it may by order direct a distributor* to make additions, extensions, repairs, or improvements to or changes in its facilities, to establish physical connection with the facilities of one or more persons, to permit use of its facilities by one or more persons, or utilize the facilities of, sell natural gas to, purchase natural gas from, *transmit natural gas for*, or exchange natural gas with *one or more other persons* . . .

. . . [T]he Commission may prescribe the terms and conditions of the arrangement to be made between such persons, including the apportionment of reimbursement reasonably due to any of them.

Sections 303 and 304 must be read in the context of sections 4(b) and 5(a) of the NGA as enacted. In contrast to the affirmative duty of unenacted section 303 of H.R. 4523, section 4(b) of the NGA flatly prohibits "any undue preference or advantage" and "any reasonable difference" in service or as between classes of service. In contrast to the discretionary proposed authority in unenacted section 304 of H.R. 5423 to *order* transportation, section 5(a) of the NGA contains *no express authority to order transportation*. Instead, section 5 limits the Commission to fixing prospectively by order the "just and reasonable . . . rule, regulation, practice or contract" to be observed.

[33] In its order on the blanket certificate program (No. 84–1090), the court noted (761 F.2d at 769 n.19) that MPC's plea that blanket transportation certificates be conditioned on non-discriminatory access accords with the recommendation of the Department of Energy: "To achieve the benefits of a properly developed spot market for natural gas . . . FERC should use its authority over natural gas transportation to require pipeline companies to provide carriage on a non-discriminatory basis whenever there is idle pipeline capacity." Second DOE Section 123 Report at p. 82. The court further noted that the Commission does not question that it has such authority, *citing* Tennessee Gas Pipeline Co. v. FERC, 680 F.2d 212, 214–15, (D.C. Cir. 1982); Transcontinental Gas Pipeline Corp. v. FERC, 589 F.2d 186, 190 (5th Cir. 1979) (invoking "the well-established principle that generally the Commission has extremely broad authority to condition certificates of public convenience and necessity"), *cert. denied*, 445 U.S. 915 (1980).

[34] Several petitioners argue that Order No. 436 is similar to regulatory programs rejected by the courts in Moss v. CAB, 430 F.2d 891 (D.C. Cir. 1970) and Consolidated Edison Company of New York v. FPC, 511 F.2d 372,377 (D.C. Cir. 1974). The Commission does not believe these cases are germane in this instance. In *Moss* the Civil Aeronautics Board failed to comply with the public notice and hearing requirements of the Federal Aviation Act in prescribing a fare formula for domestic airlines. Moreover, the court found that the formula actually amounted to a prescription of rates, because the Board admitted that the pressures on carriers to file conforming rates was "great if not irresistable." In a similar vein, the court held in *Consolidated* Edison that if end-use curtailment plans were not filed voluntarily by pipelines but were the result of coercion by the Federal Power Commission the plans would be invalid, because the Commission could not impose a change on an existing tariff without complying with section 5 of the Natural Gas Act.

Neither of these cases applies to the circumstances of Order No. 436. In the first place, Order No. 436 was issued in compliance with applicable rulemaking procedures, which involved extensive public participation. Moreover, as the Commission has already explained, the self-implementing transportation program is voluntary and indeed alternative authority is fully available under traditional Natural Gas Act procedures.

Order No. 436 do not regulate pipelines as common carriers, as that term is commonly understood.[35]

For instance, even though Order No. 436 requires, as the cited legislative proposals would have required, non-discriminatory access, the all-important distinction is that Order No. 436 allows a pipeline the option of applying to provide transportation services under individual NGA section 7 certificates. Order No. 436 also gives a pipeline that has opted for self-implementing transportation the opportunity to cease such transportation and resume its status as a merchant. None of the mandatory common-carriage proposals considered heretofore by Congress have included any equivalent option. While a transportation application under the regular NGA section 7 procedures is open to challenge on the grounds that approval of the application would result in undue discrimination, only the individual transportation arrangement covered by the pipeline's applications is at issue in a regular NGA section 7 certificate proceeding and, therefore, denial of a certificate in that proceeding does not prejudice certificate applications by the same pipeline in other proceedings. This option, unlike the legislative proposals for common-carriage, effectively allows a pipeline the discretion to determine whether or not to become a transporter of gas. Further, while allegations of unduly discriminatory effects will be considered in regular NGA section 7 transportation certificate proceedings, a regular NGA certificate is not conditioned on a pipeline's providing transportation to all shippers requesting service. For example, if the Commission should determine that approval of a regular NGA section 7 transportation certificate application would cause undue discrimination to another party, the discrimination could be cured by an amendment to the application as it affects a particular additional shipper.

The Commission cannot agree with those applicants that insist that it is not unduly discriminatory for a pipeline that transports gas to refuse to transport gas that displaces the pipeline's sales. This is precisely what the court found objectionable in *Maryland People's Counsel v. FERC*, 761 F.2d 780 (D.C. Cir., 1985). Pipelines that were willing to transport gas for their fuel-switchable customers were not required to transport for their captive sales customers that were incapable of switching fuels.

2. Effects of Non-Discriminatory Access

a. *On Order No. 319 Transactions.* Certain of the applications for rehearing request that the Commission amend the final rule to allow new transactions to provide transportation for local distribution companies and high-priority end users, previously authorized under NGPA § 311 and Order Nos. 319 and 60, to continue to be made without requiring interstate pipeline companies to provide non-discriminatory access. Philadelphia (passim), CIG (at pp. 25–28) and BUG (at pp. 3–8) assert that the access condition is inconsistent with the NGPA and is not required by the *Maryland People's Counsel* decisions of the D.C. Court of Appeals. Huffco (at pp. 17–18) contends that certificates for the transportation of gas to high-priority end users are required to be issued by section 7(c)(2) of the NGA.

Existing transportation for high-priority end users that had been authorized under § 157.209(a) of the regulations has been permitted to continue for the term of the transportation arrangement, subject to the terms and conditions existing at the time it was authorized. *See* § 284.223(g). New high-priority end-user transportation, section 311 transportation for intrastate pipelines and local distribution companies, transportation for end users under § 157.209(e), and transportation for interstate pipelines, are subject to the express requirement that the transporting pipeline provide non-discriminatory access for all shippers and the various other requirements of § 284.7 *et seq.* The Commission has determined that the practice of restricting access to transportation is unduly discriminatory and preferential and has prevented consumers from obtaining the lowest reasonable rates for both gas and transmission. With that determination, and in view of the many other reasons expressed in the final rule for requiring open access for future transportation, it would be inconsistent with the whole rationale underlying the final rule (and, in the Commission's view, with the rationale underlying the *Maryland People's Counsel* cases as well) to permit new transactions to be initiated for service without adherence to the requirements of the final rule.

BUG alleges that by imposing new conditions on the transportation of gas under section 311 to local distribution companies, the rule will deprive it of gas at a time when it is most needed, during the coming winter heating season. BUG claims that the new conditions should not be made effective until after the winter is past.

BUG advises that several pipelines now transporting gas under section 311 have indicated that they do not intend to transport long-term and non-SMP gas supplies after December 14, 1985. However, BUG has not shown that gas service from its suppliers will not be available in fact. At most, its filing reflects only that some changes may be necessary in the prior terms and conditions of its transportation arrangements. Moreover, the rules allow most transportation services which had commenced on or before October 9, 1985, to continue under the pre-existing conditions (except as to rates and reporting) until the earlier of the expiration of the term of the transportation agreement or October 9, 1987. These transition provisions should operate to diminish any discontinuance of service. Finally, pipelines now transporting long-term gas supplies under section 311 may also apply for NGA section 7 certificates to continue such transportation.

Section 7(c)(2) of the NGA provides that the Commission *may* issue a certificate for high-priority transportation. It does not *require* it, and certainly does not preclude certificates that are issued from being subject to a pipeline's providing nondiscriminatory access.

Section 284.10(a) is modified to allow new transportation arrangements under section 311 of the NGPA to be commenced or continued for a transitional period through February 15, 1986, without triggering the CD reduction/conversion condition. The purpose of this change is to extend through the major portion of the 1985–1986 winter heating season the transition period intended by Order No. 436. This transition period is intended to permit different segments of the industry to adjust their commercial arrangements to take advantage of the new opportunities under Order No. 436, without unduly disrupting transportation during the winter heating season.

b. *On Intrastate Pipelines.* The State of Louisiana (at pp. 4–9) asks that the Commission clarify that the non-discriminatory access condition only applies to interstate service and not to purely intrastate service even if the latter service is performed "on behalf of" an interstate pipeline acting as a broker, seller, or off-system seller.

As framed, the question answers itself for if the transportation is, in fact, purely intrastate, then the Commission lacks

[35] Since Order No. 436 does not have the effect of imposing common carriage status on contract carriers, cases cited for the proposition that only Congress can impose that status (FCC v. Midwest Video Corp., 440 U.S. 689, 702–09 (1978) and Florida Power and Light Co. v. FERC, 660 F.2d 668 (5th Cir. 1981) are not applicable.

jurisdiction over the transportation. The Commission declines, however, to render any generalizations about jurisdictional status. Persons may seek a declaratory order if they have questions regarding specific circumstances.

Louisiana Intrastate (at pp. 6–7), Termac (at pp. 4–6), Tenngasco (at pp. 9–10) Amoco Gas (at pp. 2–3), and Louisiana Resources (at 5) argue that the non-discriminatory access condition is arbitrary and discriminates against intrastate pipelines because they have no option to avoid that condition other than to become subject to the NGA or to completely withdraw from the interstate market. Amoco Gas also asserts that a NGPA section 502(c) adjustment is an alternative as well. Interstate pipelines, they assert, have an advantage because they can opt for a NGA section 7(c) certificate without the condition. Tenngasco, for example, urges that, if the condition remains, the rule should be modified to reinstate the prior approval application procedure that the Commission removed (§ 284.127). In that way, they would be permitted to seek prior approval of section 311 transportation without the non-discriminatory condition. Termac (p. at 8) adds that section 311(a) of the NGPA reflects Congress' intent that not everyone has a right to participate in a section 311 transaction.

The Commission does not agree that the non-discriminatory access condition is arbitrary or discriminates against intrastate pipelines. Contrary to some petitioners' assertions, section 7(c) certificates are available to intrastates on a "limited jurisdiction" basis without the full panoply of NGA rate and service obligations. That is, jurisdiction extends only to the specific service authorized, and the interstate remains non-jurisdictional with respect to its remaining operations (*See, e.g., United Gas Pipe Line Co.*, 1 Ferc ¶ 61,247(1977)).

Moreover, there are various differences in the Commission's treatment of intrastate pipelines that counter-balance the alleged disadvantage they have. In recognition of the different circumstances of intrastate pipelines, the Commission has given intrastate pipelines the advantage of being able to choose whether or not to offer firm transportation, interruptible transportation, or both.[36] Participating interstate pipelines must provide both types of service. Moreover, interstate pipelines who accept optional expedited certificates for transportation also must accept the non-discriminatory access condition.[37] And, among other counter-balancing differences, interstate pipelines alone are subject to the CD reduction and conversion provisions of § 284.10.

Finally, the Commission notes that §§ 284.107 and 284.127 were dropped because the reasons for their existence (the system supply test and the two-year limitation) were eliminated by the final rule. But there is no reason to reinstitute them as a means of avoiding the non-discriminatory access provision. The nondiscriminatory access condition serves a valid regulatory purpose of being the first line of defense against arbitrary or exclusionary interstate transportation by any participating pipeline, whether inter- or intrastate.[38]

For these reasons, it would be counter-productive to reinstitute the prior approval procedure under section 311(a) just to provide a means for intrastates to avoid the condition that is the very cornerstone of the entire program.

c. *On Curtailment Plans of Interstate Pipelines.* Texas Gas, Northwest Natural and APGA assert in their requests for rehearing that Order No. 436 inadequately considers the effects of the non-discriminatory access condition (§ 284.8(b) of the final rule) on both capacity-related and supply-related curtailments. Texas Gas (at p. 28) is concerned that the final rule, by affording firm sales and firm transportation customers equal access to pipeline capacity during times of capacity-related curtailment, will induce low-priority sales customers to convert their existing sales entitlements to firm transportation. Texas Gas maintains that, as a result, transportation for low-priority end users will occur at the expense of higher-priority sales customers.

If pipelines manage their systems prudently the Commission would expect capacity-related curtailments to continue to be relatively rare. Capacity-related curtailments would only be expected to impact on firm service customers in the event of a pipeline's overbooking of capacity or short-run *force majeure* conditions. Also, *force majeure* conditions, which by their very nature are unexpected and temporary, are unlikely to alter a sales customer's long-term gas purchasing profile. In addition, pipeline practices in booking firm transportation service and assessing capacity reservation charges are subject to prudency review under sections 4 and 5 of the Natural Gas Act and remedies for overbooking can be fashioned in individual cases by the Commission.

A pipeline overbooking its firm pipeline capacity could also be subject to contractual liability in the event that it was unable to provide the contracted level of service. Nothing in the Commission's final rule operates to affect the contractual provisions between the parties that may govern liability relating to a pipeline's overselling or overbooking its pipeline capacity.

Thus as a practical matter, the Commission expects that the non-discriminatory access condition of the final rule will have slight effect on pipeline curtailment plans for gas supplies.

Northwest Natural (at p. 12) and APGA (at pp. 21–26) are both concerned that under the conversion option of § 284.10 of the final rule, sales customers serving essential agricultural users and process or feedstock requirements will lose the curtailment priority established for such end uses under sections 401 and 402, respectively, of the NGPA. They both foresee situations in which a firm sales customer will convert its service to firm transportation service and lose a high-priority claim to the pipeline's system capactiy. APGA goes on to urge that in the event of capacity curtailments the Commission requires that a pipeline allocate its capacity to both sales and transportation customers on the basis of end-use profiles. To do otherwise, it argues, violates Title IV of the NGPA.

At the time the NGPA was enacted, the curtailment plans on file with the Commission generally governed only the interruption of sales. In addition, most of these plans applied only to supply shortages, not capacity limitations. If Congress intended to require, as APGA suggests, that end-use curtailment be imposed on all transportation service as well as on sales, it would have done so explicitly. On the contrary, the Commission believes that in conferring high-priority status under NGPA sections 401 and 402 on certain end uses, it was intended that such priorities were to be applied in the context of the curtailment plans previously approved by the Commission. (Note that even before Order No. 436, customers could substitute transportation service for sales if the pipeline agreed to it and applied for appropriate authority under the Natural Gas Act.) If a pipeline's approved curtailment plan applies only to sales, then sales for essential agricultural, process or feedstock requirements, are entitled to the NGPA

[36] 50 FR 42434.

[37] 50 FR 42436.

[38] 18 CFR 157.102(a)(2).

priority, but transportation of shipper-owned gas is not affected. This interpretation is supported by the NGPA conference report, which states in relevant part:

> The conferees were concerned that these changes not burden the Commission with lengthy proceedings which might throw existing curtailment plans into disarray . . . . For example, the conferees do not intend the reopening of curtailment plans for this limited purpose to result in adoption of a new base year for curtailment purposes.

Joint Explanatory Statement of the Committee of Conference, Title IV, section 401, I FERC Statutes and Regulations ¶ 3101 at p. 3121.

AGPA maintains that in the event of supply-related curtailments, a pipeline transporter should be able to call on transportation gas owned by others and use that gas to meet its own high-priority sales requirements.

As the Commission stated in Order No. 436, 50 Fed. Reg. at 42,436, during the supply curtailment era it never allocated gas supplies owned by individual shippers among sales customers of the transporting pipeline. *See Sebring Utilities Commission v. FERC,* 591 F.2d 1013 (5th Cir. 1979). Aside from a declared emergency under section 303, nothing in the NGPA requires this. To do so would be inconsistent with the purpose of NGPA sections 311 and 312, which was designed in part to encourage transportation of excess gas supplies to relieve markets curtailed because of supply shortages.

Texas Gas suggests that the first-come, first-served requirement for the allocation of capacity to potential shippers means that in the event of capacity-related curtailments, pipelines are required under the final rule to interrupt transportation on a "last-on, first-off" basis. Texas Gas misunderstands the applicability of the first-come, first-served requirement. This stricture is to be followed in *contracting* for available capacity. Curtailment resulting from insufficient transportation capacity among firm contract customers because of pipeline overbooking is doubtful in light of contractual liability that may result. Capacity-related curtailment, if occurring at all, is likely to be caused by *force majeure* conditions, such as winter freeze-offs, compressor station failure, line failures, and the like. Incidents such as these generally impact on particular segments of a pipeline's system and overall system capacity may be unaffected or affected to a lesser extent. Remedial measures employed by the pipeline-transporter are usually of short duration, localized and traditionally affect only a small portion of its overall operations. Thus, if capacity is insufficient to meet demand, the final rule allows pipelines to allocate the limited capacity of their systems among their firm and interruptible customers—whether sales or transportation customers—on the same basis that they allocated capacity prior to the rule.

d. *On Prices of Natural Gas.* Laclede (at p. 20) asserts that, while distributors must be assured of long-term supplies at a reasonable cost to meet the needs of their high-priority markets, Order No. 436 gives no such assurance. Laclede argues that, regardless of Order No. 436, the only gas that distributors will be able to buy at a reasonable price likely will be short-term supplies on the spot market. Indeed, Laclede believes the cost of long-term supplies will be greater than that of current supplies. This projection is based on the assumption that the large producers, which alone can provide long-term reliable supply, will demand a price premium for selling gas to distributors because (1) the distributor will demand greater supply reliability than that usually needed by a pipeline buyer that has many supply sources; (2) a distributor will be a less predictable and less reliable purchaser than the much larger pipeline since a distributor is unable to take gas at even flow rates and perform other load balancing functions as efficiently as a pipeline; and (3) producers, in the hope that gas prices will rise, would rather sell their least expensive gas to low-priority end users, who will buy on a short-term basis, than bind themselves to low prices under long-term contracts with distributors.

Laclede (at p. 21) further argues that, even if distributors can buy reasonably-priced long-term supplies in the field, the Commission still assumed too much in issuing Order No. 436. Laclede emphasizes that bottlenecks in the pipeline system can prevent the transmission of gas to distributors' markets. Further, Laclede believes that Order No. 436 assumes unrealistically that available pipeline capacity will be in the right place to transport distributors' gas purchases to them.

In sum, Laclede attacks what it believes to be the basic assumptions underlying Order No. 436: that effective pipeline-to-pipeline competition exists and will increase and that distributors will be able to compete effectively with pipelines in purchasing competitively-priced gas from producers. Further, Laclede believes that producers that have gas supplies that cannot be marketed readily at today's average gas prices will be encouraged by Order No. 436 to sell lower-priced gas to the competitive industrial boiler fuel market which will purchase such supplies on a short-term basis. Under Laclede's scenario, captive high-priority markets will not get a fair share of lower-priced gas because the distributors cannot meet their long-term commitments by purchasing lower-priced gas, which producers would rather sell on a short-term basis. Producers do not have the fear that distributors may switch to other fuels, which would provide a contervailing incentive to provide lower-priced supplies to distributors, since the price of alternative fuels to distributors' residential and commercial markets would be much higher (after factoring in the costs end users would incur in converting facilities to alternative fuel-use capability) than the price charged to large industrial customers.

Laclede (at p. 23) criticizes Order No. 436 for failing to provide effective restraints against monopolistic pricing. Laclede believes that the Commission is wrong when it claims [39] that, having given pipelines a real opportunity to enter one another's markets, it can deregulate the prices that pipelines charge for much of their gas. This position is based on Laclede's assumption that the new industry structure created by Order No. 436 will not result in effective competition. Laclede states that, because of Order No. 436, the price of gas in its market could rise higher than the price of electric heat.

Southern Natural Gas Company (at p. 17) also believes the Commission's conclusions regarding the spot market for gas are incorrect. This petitioner states that the Commission is wrong in relying on the availability of spot market gas as a reliable long-term gas suply alternative since that gas presumably will be bought up by pipelines' customers that exercise their contract demand reduction rights under § 284.10.

Southern Natural (at p. 18) states that, unlike with oil and coal, there is no ability to stock-pile or to provide for any reasonable volume of gas to serve the nation's gas needs for a significant period; these requirements are met in the long run, not by gas deliverability, but by gas reserve addition. Therefore, according to Southern Natural, the Commission must distinguish excess gas deliverability from gas reserve inventory. Southern Natural states further that, whether the emergence of the current spot market for gas production results from excess deliverability, conservation, reduced gas markets, or other factors, the gas

[39] *See* Notice Requesting Supplemental Comments Mimeo at 78–82.

markets cannot have a long-term reliable gas supply based on the assumption there will be a continuing spot market for gas production. But, according to Southern Natural, such an assumption is implicit in Order No. 436, since it allows customers of pipelines maximum flexibility in tapping different sources of gas.

Southern Natural (at p. 19) alleges that the Commission has provided no findings to support the conclusion that gas reserves will be sufficient to allow a continuation of spot market sales at the current 2 to 2.5 trillion cubic feet per year level. According to Southern Natural, 85 percent of current spot market sales may be from excess deliverability or produced from existing committed gas reserves, although Southern Natural (at p. 20) admits it is unlikely that spot market sales depend so heavily on these sources of supply. It nevertheless criticizes the Commission for not explaining in Order No. 436 the sources of the 2 to 2.5 trillion cubic feet of gas currently moving in the spot market. Furthermore, Southern Natural (at p. 21) asserts that the Commission has not gathered either the individual or industry-wide data required to sustain a conclusion that the current spot market will be viable for the long run. In this regard, Southern Natural states that current gas consumption statistics are not a substitute for the facts on the volumes of gas in identified reserves.

Furthermore, Southern Natural (at p. 21) argues that, while the Commission recognizes that purchasers of gas are seeking the same opportunities to swing from one gas supplier to another, as partial requirements customers currently do, the Commission has failed to evaluate the consequences that customers' switching of suppliers will have upon the ability of pipelines to continue to offer reliable, long-term service to their sales customers in the future. Southern Natural (at p. 22) asserts that the comparative shopping by customers that is encouraged by Order No. 436 will make it virtually impossible for a pipeline to make efficient business judgments in acquiring gas reserves to meet the needs of its customers in the future since the pipeline will have no way of accurately forecasting the portions of those customers' demands for natural gas that they ultimately will expect the pipeline to satisfy. Southern Natural (at pp. 22–23) further states that, despite the Commission's assertions regarding the increase in storage capacity in the United States, a pipeline's knowledge that available storage capacity is sufficient to hold any gas it buys and cannot resell is not a reasonable basis, as the Commission seems to contend it is, for the pipeline to contract for the reserves needed to supply its customers' firm, peak-day requirements without having some assurance that its customers actually will purchase at least a certain level of supplies from the pipeline during the remainder of the year.

The Commission disagrees that it has not adequately supported its conclusions. There is sufficient pipeline-to-pipeline competition to justify expanding the opportunities for pipelines to transport into one another's traditional markets and for gas purchasers to reduce their contract demand entitlements in order to purchase gas from all available supply sources.

While it is true that pipelines generally continue to be fairly fully utilized during peak period operations, as indicated in Order No. 436, total deliveries through their systems have fallen sharply from the 1972–1973 period. This phenomenon has been reflected in lower annual load factors for interstate pipelines and higher unit costs of providing service. It has also meant a significant increase in the amount of capacity available for transportation outside of the periods of peak demand.

Further, the maturing of the pipeline industry in recent decades has meant that there is now an interconnected nationwide pipeline grid. This enables increasingly efficient transportation transactions through backhauls, displacement and exchanges, which enable the "transportation" of a particular supply to a particular purchaser that is far removed from the supply and indeed may not even be physically connected with the field supply source. Thus, even a customer that actually has only one supplier nevertheless has access to gas supplies located in virtually any producing area in the Nation, if the customer has non-discriminatory access to transportation services under just and reasonable rates. Conversely, a producer of gas—given the same non-discriminatory access to the transportation grid—now can seek markets for its gas virtually anywhere in the Nation.

In view of the above consideration, the Commission believes, contrary to Laclede's and Southern Natural's claims, that many LDCs and other purchasers will be able to arrange for transportation of competitively-priced gas supplies by their traditional pipeline suppliers, even if the supplies are not directly accessible to those pipelines. The Commission recognizes, however, that some LDCs, including some that exercise their § 284.10 contract demand reduction and conversion options, will not be able in all instances to arrange for transportation of lower-priced gas that they locate.

Admittedly, the pipeline configuration of those suppliers with which a customer is connected with sometimes make transportation of their customers' self-help gas purchases infeasible. Further, every gas purchaser will not be able to take advantage of the pipelines' expanded authority and its obligation to transport whenever the LDC can acquire cheaper gas.

An LDC, like Laclede, that is willing to accept that gas generally may be available in plentiful supply but at uneconomic prices or inaccessible to the LDC's pipeline suppliers, will have to consider these factors when deciding whether to exercise its option under § 284.10. In any event, the failure of Order No. 436 to guarantee to every gas purchaser that it always will be able to arrange for transportation of lower-price gas supplies does not diminish the substantial benefits to LDC and end users as the result of Order No. 436. The final rule is designed to provide all current and future gas customers with a broader array of supply options; it is not designed to guarantee that any one supply option is necessarily cheaper and/or less risky than all others, or that all potential shippers will be able to contract for and have transported gas that is cheaper than pipeline supplies.

Also, commercial storage has continued to increase over the years to a total of 8,043 Bcf in 1984. (*See* Order No. 436). The availability of this storage capacity means that gas does not have to be produced and consumed at identical rates in order to avoid the shutting in of production or the making of "dump" sales. Rather, a pipeline can take receipt of gas volumes even when it has no immediate market for the gas. Operational constraints remain a limitation, of course. But operational flexibility has increased enormously.

The spot market has been steadily increasing also. Thus, by the summer of 1985, the spot market was accounting for a substantial percentage of the total market. As shown in Order No. 436 (in Exhibit D, which summarizes experience under the Commission's transportation programs from January 1, 1985, to June 30, 1985; Exhibit J, which lists local gas utilities and intrastate pipelines receiving gas under NGPA section 311; and Exhibit K, which lists end-users receiving gas under blanket certificates), transactions under both NGPA section 311 and blanket transportation

certificates were being performed by virtually every major pipeline, hundreds of local gas utilities, and hundreds of individual end-users. Customers in the great majority of the states have been benefitting from access to the national gas market under the NGPA section 311 transportation program, the blanket certificate program, or both.

While it is true that estimates of the exact size of the spot market vary, a study submitted in this docket by the United States Department of Energy (DOE) estimates that by January 1985 the total spot market (including intrastate transactions) had increased to between 2 to 2.5 Tcf per year (compared to total gas consumption of about 17–18 Tcf). This figure represents a tripling in the size of the spot market in the space of one year. Moreover, the great bulk of this growth has taken place in the interstate market.

In addition, the DOE study documented several significant trends that are evident in the filings made with the Commission:

(1) The average size of the spot transaction is continuing to decrease, indicating a broadening of the array of buyers and sellers in the market.

(2) Local gas distribution utilities are increasingly involved as nearly all states have approved, or are considering, gas transportation rates for local utilities.

Finally, the Commission notes that over the last two years the market has developed an infrastructure that includes trade publications following prices and market developments and at least one electronic buy-sell exchange to which members of the public are free to subscribe.

For the above reasons, as more fully discussed in Order No. 436, the Commission concluded, and hereby reaffirms its conclusion, that in view of the breadth and variety of the spot market it is not a transitory phenomenon. Rather, the development of this market is an indication of the radical change that the natural gas industry has under gone and is continuing to experience as a result of the development of distinct gas markets and the reemergence of unbundled transportation service. To be sure, the exact size of the spot market in future years will change as the preferences of buyers and sellers change, again however, the Commission notes that it is only providing a framework within which all customers can participate in the market, it is not requiring them to so participate.

In view of these considerations, the Commission disagrees with Laclede's and Southern Natural's assertions that distributors will be unable to arrange with producers for long-term supply arrangements for gas at reasonable prices. Regardless of the nature of the spot market for gas transportation and supplies, Order No. 436 assumes that self-implementing and blanket transportation arrangements may be performed on both a short-term and long-term basis, in times of shortage as well as times of surplus, in response to current market conditions. By removing restrictions on eligible gas categories, shippers, and the duration of transactions, Order No. 436 actually enhances the flexibility of pipelines to maintain their role in providing long-term, reliable services to their customers, contrary to the assertions of the applicants.

Since the NGPA does not prohibit a producer from selling its gas below market clearing price or below the applicable NGPA maximum lawful price, the producer may charge different customers different prices. Laclede argues that, the producer will not reduce the price of the gas it sells directly to distributors because of the seasonal changes in the distributors' needs and because distributors require long-term supply arrangements. The Commission does not agree with Laclede's conclusion. The Commission believes that purchasers such as Laclede should be able to negotiate for supplies at prices representing their commodity value under contracts with market responsive provisions. Under such circumstances, it should be possible to arrange for longterm supplies.

e. *On Transportation of Gas from the Outer Continental Shelf.* One commenter, Ashland Exploration, Inc. (Ashland), addresses the issue of whether the non-discriminatory access condition applicable to new transportation service under §§ 284.8 through 284.10 conflicts with provisions of the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLA) (42 U.S.C. 1334 (e) and (f) (1982)).

Ashland (at pp. 2–3) asserts that (1) pipelines currently operating on the Outer Continental Shelf (OCS) have a mandatory obligation under the OCSLA to provide non-discriminatory access to their OCS facilities, (2) many pipelines have indicated that they will elect not to provide new system-wide non-discriminatory transportation under §§ 284.8 through 284.10, and (3) if pipelines decline to utilize Order No. 436 transportation authority, then the delivery of substantial volumes of OCS gas to the interstate market could be delayed and much of the flexibility and many of the competitive advantages envisioned by the Commission in Order No. 436 will be lost or frustrated. Ashland concludes that because the non-discriminatory access obligation of the OCSLA is mandatory, not voluntary, and since extending the obligation system-wide may have the effect of curtailing OCS transportation, the Commission should permit pipelines operating on the OCS to implement transportation under Order No. 436 to transport OCS gas subject to §§ 284.8 through 284.10 without subjecting their entire systems to non-discriminatory access requirements.

In issuing Order No. 436, the Commission neither relied on its authority under the OCSLA to require non-discriminatory transportation of OCS gas nor has it implemented such a requirement in the final rule. Order No. 436 provides an opportunity for persons to transport voluntarily under authorizations which provide for non-discriminatory access pursuant to statutory authority wholly separate and apart from the OCSLA.

Ashland may be correct that implementation of Order No. 436 may initially delay transportation of some OCS gas which is already subject to open access under the OCSLA. However, in *Maryland Peoples Counsel v. FERC,* 761 F.2d (D.C. Cir. 1985); 768 F.2d 1354 (D.C. Cir. 1985), the court directed the Commission to use its authority over natural gas transportation to provide carriage on a nondiscriminatory basis, if such transportation is to be offered at all. In any event, pipelines, including those operating on the OCS, retain the option of proceeding under section 7 of the NGA without triggering the access provisions of Order No. 436.

In conjunction with the *MPC I* and *MPC II* mandates, Order No. 436 establishes a comprehensive regulatory framework which provides the Commission the opportunity to allow the commodity market for natural gas to develop in a competitive fashion. On balance, the Commission believes that any short-term adverse consequences of Order No. 436, such as delay in transportation of OCS gas, are outweighed by the long-term benefits to be derived from, implementation of the rule on the comprehensive basis contemplated. Nothing that the Commission does in this rule, however, changes the obligation of pipelines to provide non-discriminatory access to the transportation of gas in the OCS. The Commission notes that most of this transportation is provided under individual section 7 certificates.

3. Relationship to Incremental Pricing

Northern Illinois Gas Company (NI-GAS) (at pp. 40–41) notes that the Commission did not address the comments by NI-GAS and others concerning the impact of the incremental pricing provisions of Title II of the NGPA or LDCs and interstate pipelines in light of the transportation provisions of Order No. 436. NI-GAS asserts that when industrial boiler fuel users can avail themselves of pipeline transportation services and purchase gas directly from producers or brokers, who are not required by Title II to impose incremental surcharges, LDCs and pipelines, who must impose the surcharges, will be placed at a competitive disadvantage.

The Commission did not address incremental pricing regulations in Order No. 436, even though various commenters on the NOPR suggested a concurrent suspension of those regulations because they are beyond the scope of this rulemaking proceeding. Title II of the NGPA requires the imposition of incremental surcharges on gas sales to large industrial boiler fuel facilities. The Commission has authority, however, under NGPA sections 206(d) and 502(c) to provide for an exemption from incremental pricing to any industrial facility, or category thereof, as necessary to prevent special hardship, inequity, or unfair distribution of burdens. The Commission recognizes there may be instances in which Title II of the NGPA creates a temporary competitive disadvantage. The Director of the Office of Pipeline and Producer Regulation has granted exemptions, from the operation of the Commission's incremental pricing regulations when the availability of lower priced fuel from alternative sources renders the incrementally-priced gas uncompetitive. *See*, for example, *Southern California Gas Company*, 30 FERC ¶ 62,138 (1985). The Director will continue to consider petitions for exemption on a case-by-case basis and will advise the Commission if experience under the Order No. 436 regulations indicates a need for revisions to the incremental pricing regulations.

4. Requests for Different Procedures, Minimum Commitments

The Commission indicated in Order No. 436 that pipelines which have elected to operate under any of the Order No. 436 programs may terminate their participation so long as they do so in a non-discriminatory fashion. Brooklyn Union Gas Company (at p. 15) requests clarification as to the Commission's intentions regarding how pipelines may exercise this discretion. Brooklyn Union Gas Company is concerned that some pipelines will seek to defeat or subvert the conditions of Order No. 436 by participating in the Order No. 436 programs only in the summer when competitive pressures are more intense. Such seasonal participation, according to Brooklyn Union Gas Company, would minimize the benefits of Order No. 436 to "captive" markets and local distributors serving such markets, as well as other gas users whose demands for gas are highest or occur primarily during the winter period. Brooklyn Union Gas Company states that all of its pipeline suppliers have indicated that their present intention is to forego participation in the Order No. 436 programs, and thereby avoid operation under the non-discriminatory conditions, for any extended period during the forthcoming winter heating season.

Brooklyn Union Gas Company (at p. 16) urges the Commission to clarify on rehearing that participation by pipelines in the Order No. 436 programs only on a seasonal basis is *per se* unduly discriminatory. Further, Brooklyn Union Gas Company requests that the Commission require that an election by a pipeline after January 1, 1986, to operate under any of the Order No. 436 programs will be binding for a minimum of one full year unless a Commission waiver of this requirement is secured in advance. Brooklyn Union Gas Company believes application of this requirement should be prospective only in order to avoid prejudice to any pipeline that already has made an election to participate in an Order No. 436 program on a short-term basis in reliance on the absence of any regulatory requirement that its participation continue for any fixed period of time.

The Commission denies Brooklyn Union Gas Company's requests. A pipeline's participation in Order No. 436 transportation programs only during the summer season would certainly raise the issue that the pipeline was opting in and out of the program in a discriminatory manner, but such a pattern of participation need not be held in and of itself to demonstrate discrimination. The Commission plans to review such cases that are brought to its attention on a case-by-case basis since legitimate operational considerations may conceivably limit some pipelines to seasonal participation. For the same reason, the Commission also will perform case-by-case reviews in instances where such action seems appropriate and necessary to determine whether a pipeline's decision to terminate its participation in an Order No. 436 program after less than a year had unduly discriminatory effects.

5. Non-discriminatory Access to Distribution Systems

API (at pp. 1–8), El Paso (at pp. 17–21), Tenngasco (at p. 13), and Industrial Groups (at p. 17) reiterate a request that was specifically rejected in the final rule (50 FR 42,433): that the Commission require that an LDC provide non-discriminatory access to its own system as a condition to any interstate pipeline being granted a blanket certificate to transport gas on the LDC's behalf. In Order No. 436, the Commission concluded that such a condition would bring the Commission into direct conflict with state authorities with regulatory responsibilities over such entities. Applicants now generally assert that there would be no conflict with the states because the program is voluntary and that this condition is necessary to prevent LDCs from becoming bottlenecks to direct access by end users to wellhead suppliers. API (at p. 3) argues that this condition, being voluntary, would not "mandate" transportation by LDCs any more than the non-discriminatory access condition established in Order No. 436 mandates interstate pipelines to transport gas. El Paso (at p. 17) asserts that non-discriminatory access by LDCs is mandated by *MPC I* and *MPC II* since end users who are captive customers of an LDC are denied direct access to wellhead suppliers unless the LDC chooses to allow such access. API (at p. 6) asserts that it is unduly discriminatory to allow an LDC to deny its customers access to low-priced self-help supplies while, at the same time, imposing the non-discriminatory access condition on its interstate pipeline supplier. In its opinion, this violates sections 4 and 5 of the NGA.

The Commission denies rehearing on this issue. The non-discriminatory access condition imposed on interstate pipelines transporting gas under section 311 or § 284.221 blanket certificate and intrastate pipelines in section 311 situations is not analogous to an open access condition on LDCs. The most critical distinction is that an interstate pipeline is a regulated entity under the Natural Gas Act and the open access condition applies to the interstate transportation of gas by such entities. On the other hand, the local distribution of gas (or Hinshaw transportation) is not subject to Federal jurisdiction.[40] Instead,

[40] Where an LDC engages in interstate transportation of gas, Order No. 436 treats it as an

Continued

NGA sections 1 (b) and (c) exempt LDCs and Hinshaw pipelines from NGA jurisdiction. Moreover, as stated in Order No. 436, a conflict with the states could arise if the Commission were to impose a non-discriminatory access condition on LDCs. Further, *MPC I* and *MPC II* do not compel a different result. The discrimination that concerned the court in each case was that committed by natural gas companies within the Commission's jurisdiction; those cases did not involve discrimination by non-jurisdictional LDCs. Any such discrimination, if it occurs, is within the province of the state authorities and does not result in a violation of the NGA or the NGPA. Only jurisdictional natural gas companies and intrastate pipelines engaged in interstate transactions, respectively, are subject to its provisions.

B. Producer Access to Pipeline Systems and Take-or-Pay Relief

1. Take-or-pay Relief as a Pre-Condition

In Order No. 436, the Commission considered and rejected various proposals by commenters to condition producer access to intersate transportation on producer waiver of take-or-pay provisions in gas purchase contracts. In general, these commenters asserted that the Commission has the requisite legal and statutory authority to impose such a condition on producer access to transportation and that such a condition is required to prevent increased take-or-pay liability.

On rehearing, numerous applicants again urge the Commission to impose a producer access condition on transportation and require producers to waive or renegotiate take-or-pay provisions in contracts.[41] INGAA (at p. 11), Con Ed (at p. 4), AGA (at p. 10), Northwest Pipeline (at p. 19) point out that in the SMP orders, the Commission always required take-or-pay relief for gas released by a pipeline into an SMP and purchased by another party. AGA suggests that proliferation of producer-sponsored SMPs, plus many recent applications for limited-term abandonment, show that producers willingly trade contract rights for transportation rights. These applications assert that the Commission's decision to continue to allow unconditioned access by producers is arbitrary and capricious, and discriminates against interstate pipelines.

AGA (at pp. 3–8) says that if the rule provides meaningful take-or-pay relief, there will be an incentive, rather than the current disincentive,to participate in transportation. AGA would require producers to renegotiate and amend contracts to include market-out or price redetermination clauses. Appended to AGA's application is a study purporting to show that 17 percent of major interstate supplies of gas is purchased under old (pre-1982), high-priced contracts. Most of these contracts contain take-or-pay clauses. AGA strongly believes that unless pipelines can condition transportation on contract relief, it will be virtually impossible to renegotiate these contracts.

Applicants maintain that the Commission has broad conditioning authority under section 7(e) of the NGA to impose an access condition, INGAA, AGA (at p. 9) and El Paso (at p. 24) point out that since such a condition would attach to the pipeline's blanket *transportation* authority and would not require a producer to provide take-or-pay relief; therefore, the question of regulation of first sales or producer contracts is avoided.[42] INGAA (at p. 10) states that the Commission can find that the threat to pipeline financial viability makes it in the public interest to condition access to certificates.

Similarly, Natural (at p. 18) asserts to the rule falls short by instituting a jurisdictional program without considering non-jurisdictional impacts and whether appropriate access conditions were developed.

The applicants assert that the non-discriminatory access requirements of the new transportation scheme, coupled with the contract demand reduction/conversion feature, will increase pipelines' take-or-pay liability and market loss and that the access condition is needed to offset this. AGA points out that as long as the weighted average cost of gas remains above the spot market price, distribution companies will be pressured to cut back their pipeline purchases, thus increasing take-or-pay liability.

The Commission declines to revisit its decision not to impose a producer access condition. As it said in the final rule, the Commission cannot allow some shippers to be "more equal" than others if its goal is to provide equal and non-discriminatory access to transportation. The Commission has considered the extensive legal arguments made by petitioners, and is unpersuaded that the reservations it expressed in the final rule are misplaced.

Applicants also argue that the rule is deficient in failing to address the take-or-pay issue or provide any take-or-pay relief.[43] Without such relief, it will be difficult for the other parts of the package to work. INGAA (at p. 6–7) charges that the Commission failed to meet its statutory obligations to consumers and pipelines. Transco believes the Statement of Policy is unsatisfactory since it contains no presumption of prudence. AGA (at p. 2) flatly asserts there is no take-or-pay relief under Order No. 436 and that the Commission must provide relief if it wants new Part 284 to work. Similarly, Natural (at p. 16) asserts that the interstate pipelines have "excess baggage" in the form of high-cost, high take-or-pay contracts that have to be shed before pipelines can become effective participants.

The final rule fully explains the Commission's decision not to promulgate Part B and to affirm its April 10, 1985, Policy Statement. Contrary to applicants' arguments, the Policy Statement procedures are effective, as evidenced by the number of settlements reached under them. The Commission continues to believe the procedures in the Policy Statement are best suited to providing a framework within which parties can resolve current take-or-pay problems. It does not believe that the situation has changed appreciably since comments were filed on the proposed rule, except that now the pipelines imply that they will not participate in the new authorized transportation program unless additional take-or-pay relief beyond that in the Policy Statement is granted. The Commission concludes that the Policy Statement guidelines provide an adequate requlatory framework within which pipelines can address take-or-pay problem contracts.

2. Unilateral Reduction in Obligations by Pipelines

The final rule permits customers to reduce or covert to transportation their

intrastate pipeline, subject to the access condition in the same fashion. *See* § 284.8(b) of the final rule.

[41] Florida Gas, at p. 5, 16; El Paso, at pp. 21–24; INGAA, at p. 7; Transco, at pp. 3–8; AGA, at pp. 3–11; Consolidated Nat., at p. 3; Natural, at pp. 15–25; Memphis, at p. 2; Northwest Central, at p. 9; and Northwest Pipeline, at pp. 2, and 18–22.

[42] A substantial part of the problem contracts identified by AGA are contracts for gas supply that qualifies under NGPA section 102(d). Such gas is therefore subject to the Commission's NGA jurisdiction and producers who makes sales for release of such gas in interstate commerce are natural gas companies under the NGA. The decision concerning take-or-pay relief, however, is not based on whether the *producers* are jurisdictional. Instead, the question is whether such a condition would be a reasonable exercise of the Commission's authority over interstate transportation, regardless of the source of the gas.

[43] Transco at pp. 13–17; AGA, at p. 2; ANR, at p. 25; Consolidated Nat., at p. 3; Natural, at pp. 3, 15–20; Memphis, at p. 1; ConEd., at pp. 1–2.

sales contract entitlement. Some applicants believe pipelines should have a corresponding right to unilaterally reduce their contractual obligations to producers. Florida Gas (at p. 17) argues that even though a pipeline may have kept its gas supply and sales in balance, exercise of the CD reduction/conversion option could create take-or-pay liability. Similarly, Consolidated Natural (at p. 7) foresees declining sales, but no relief from existing minimum bill obligations.

Transco (at p. 7) asserts that granting open access at the distribution end—by permitting distributors to abrogate their contracts with pipelines—is totally inconsistent with precluding pipelines from a concomitant modification of their producer contracts.

The Commission does not believe that a right to reduce obligations under producer contracts necessarily flows from its decision to permit customers to reduce or convert their contract demands. The Commission instituted the CD reduction/conversion option to allow customers and purchasers to obtain access to other supply sources and to choose the type of service best suited to their individual needs. Because customers will have more options, pipelines will have more incentive to keep sales and transportation services competitive and to engage in continued renegotiation of "problem" take-or-pay contracts. Indeed, a customer's CD reduction may not increase a pipeline's take-or-pay obligations because the customer may only be bringing its CD in line with its new market requirements and would not have bought additional gas under any circumstances.

The contracts under which pipelines purchase gas from producers are straightforward commercial agreements, not utility-type "service agreements." A reduction in the volumetric level of a pipeline's service agreement with its customers may or may not result in a change in the rate for providing the reduced service depending on the disposition of the pipeline's subsequent rate case. A reduction in the volume level of a take-or-pay clause in a producer's contract to sell gas to the pipeline, however, would simply reduce the minimum dollar obligation of the pipeline; the producer cannot file a subsequent rate case to seek to collect the same level of revenues over a smaller number of sales units. In short, the analogy drawn between pipeline-LDC and producer-pipeline contracts confuses utility service agreements under a regimen of cost based rates with commercial contracts for the sale and delivery of a commodity.

The Commission denies these rehearing requests because it does not have jurisdiction over many of the producer-pipeline contracts at issue. It would be inequitable to allow pipelines to reduce their takes only under contracts still subject to the Commission's NGA jurisdiction, particularly because many of the problem contracts are not subject to the Commission's jurisdiction. Finally, as it indicated in Order No. 436, the Commission is convinced that the April 10, 1985, Statement of Policy provides an adequate framework within which pipelines may address the problem of take-or-pay liabilities. Moreover, many pipelines have made progress in renegotiating their contracts and substantial liabilities have been settled.

C. Firm Sales Entitlements Reduction and Conversion Under § 284.10

1. Legal Authority Under NGA Sections 5 and 7

a. *Alleged Contract Abrogation.* Section 284.10 of the final rule provides that a firm sales customer of an interstate pipeline will have the option to reduce its firm sales entitlements (or contract demand) and the option to convert firm sales entitlements into firm transportation. Specifically, Order No. 436 established § 284.10(c), which provided the customer the option of reducing its firm sales entitlements by up to 25 percent per year as long as it gives the pipeline written notice not later than 150 days before the proposed reduction. Similarly, § 284.10(d) provided the customer the option of converting up to 25 percent per year of its firm sales entitlements to firm transportation so long as it gives the pipeline 60 days written notice before the proposed conversion. The two primary purposes of this section, as originally promulgated and as amended in this order, include the "freeing up" of presently contracted firm service so that the transmission capacity presently "bundled" with the sales entitlement may be sold separately to willing shippers and permitting customers of pipelines flexibility in the services they take from pipelines.

A significant number of applicants addressed this issue, most of which challenged the CD reduction/conversion condition as an unlawful unilateral abrogation of pipeline contractual rights. Panhandle, at pp. 5–7; Tetco, at p. 13; CIG, at pp. 20–25; Northwest Pipeline, at pp. 4–7; Algonquin, at pp. 11–34; Monterey, pp. 13–15; Northern Natural, pp. 6–9; MRT, pp. 2, 11; Texas Gas, p. 14; Natural, pp. 16–18, 30, 40; Pan-Alberta Gas, at pp. 1–2, 6–9; and Coastal, at p. 2.

Generally, the applicants state that the Commission erred by instituting a mechanism allowing unilateral alteration of the terms of the contract without satisfying the statutory requirements under section 5 of the NGA. They state that the unilateral contract abrogation will have a destabilizing effect both upon pipelines and the consuming public and that long-term service arrangements and the security of supply have been sacrificed by focusing on spot market considerations. (INGAA, at p. 19). They further state that the right of customers to abrogate such contracts constitutes a unilateral right to abandon the certificated service without a proper factual showing that abandonment is in the public convenience and necessity as required by section 7(b) of the NGA. (INGAA, at p. 20). They state that this provision imposes an unjustifiable economic squeeze on pipelines which have procured gas to meet their firm sales contract obligations, and therefore would subject the pipelines to reduced sales and increased take-or-pay (or minimum bill) obligations related to that very same gas supply. (Algonquin, at p. 20). Since those sales contracts are the underpinnings for the pipeline industry and for lenders who made their investments predicated on those contracts, this rule would disrupt settled expectations. (Algonquin, at p. 21). They further contend that the contract demand reduction requirement is improperly coercive, in that participation in the program is not truly voluntary. (Algonquin, at p. 29). As demonstrated by the decision in *ANR Pipeline Co. et al.*, 33 FERC ¶ 61,149, Docket No. CP85–621–000, *et al.*, (October 31, 1985), commenters argue that it appears the substantive aspects of the rule are being applied to individual section 7 certificate applications and that the Commission's generic definition of a public convenience and necessity has been modified to comport with that stated in Order No. 436. (Algonquin, at pp. 29–32).

They state that there is no basis for allowing customers who no longer require their contract demand to repudiate their existing contractual commitments, and that the Commission has failed to show any "unequivocal public necessity" for relieving any party to a contract of its bargain. (Northwest Natural, at pp. 17–18).

The Commission disagrees with the applicants that the CD reduction/conversion condition is an unlawful unilateral abrogation of the pipeline's contractual rights. Order No. 436 neither modifies contracts by its own terms nor creates any "unilateral" rights to breach contracts. Nor is the Commission here

relying on the statutory requirements of section 5 of the Natural Gas Act. Rather, the CD reduction and conversion options in § 284.10 are merely a condition—imposed pursuant to the Commission's authority under section 7(e) of the Natural Gas Act and section 311(c) of the NGPA—to which the pipeline must agree in order to provide service prospectively under the self-implementing transportation rules. When changes occur, the rates charged for that converted transportation will continue to be set under the Natural Gas Act, with proper consideration given for changes in cost incurrence and cost responsibility. 50 FR 42439. Since the final rule does not require that a pipeline operate under the self-implementing rules, the final rule does not override any existing contracts. And the provisions of section 5 of the Natural Gas Act do not apply because the Commission is not modifying the provisions of any existing certificates. As stated in the final rule, one purpose of the CD reduction option is to permit a "freeing up" of unused firm capacity that existing customers may have "booked" but not longer need and no longer desire to reserve. 50 FR 42440. Therefore, the final rule does not modify the contracts parties have entered into, but merely provides that a condition of participating in the self-implementing operating rules, is for the pipeline to agree to provide the reduction and conversion options to its firm sales customers as a condition of that choice.

It is the voluntary decision of a pipeline to accept self-implementing transportation authority that reflects the concomitant agreement to provide the contract reduction and conversion option to its customers. 50 FR 42440. A pipeline that believes such a commitment is at odds with the "settled expectations" reflected in its sales contract (Algonquin, at p. 21) is free not to participate. The assertion that the Order No. 436 program is, in effect, coercive and mandatory rather than voluntary is discussed above. The discussion need not be repeated.

Algonquin's suggestion that the Commission applied the provisions of Order No. 436 to an application under NGA section 7 in *ANR* is wrong. The order issued in that case merely set the proceeding for hearing, to resolve issues of *material* fact raised by an intervenor. The hearing was required by the Natural Gas Act. While the order does indicate that the Commission will review under section 4(b) of the NGA allegations of discrimination in the context of its decision to grant individual section 7(c) transportation certificates, the order cited did not resolve any substantive issues as to what will constitute such discrimination.

b. *Alleged Certificate Amendment.* A number of applicants state that the Commission is applying its conditioning authority under section 7(e) of the Natural Gas Act to permit the CD reduction/conversion option. Panhandle, at p. 5; Texas Eastern at p. 8; Memphis, Light Gas & Water Division, at pp. 11–12; Natural Gas Pipeline, at p. 50; Algonquin, at p. 25; Amoco, at pp. 2, 4–5, 9–10; Mississippi River Transmission, at pp. 18–19; Northwest Natural, at pp. 19–21; Monterey, at p. 14; Indicated Producers, at pp. 6–10; Transwestern, at p. 19. Generally, the applicants state that the conditioning authority under section 7(e) can only be exercised when the certificate is issued, and unless a pipeline requests or agrees to the modification or ratification of a certificate or has violated the terms of its certificate, the Commission has no authority to modify or revoke an existing section 7 certificate. (Indicated Producers at p. 6). For example, Algonquin (at pp. 26–27) states that the Natural Gas Act does not give the Commission the power to alter, amend or in any way modify a certificate of public convenience and necessity. They state that while section 7(e) of the NGA authorizes the Commission to place reasonable conditions upon a certificate, that certificate must stand until the pipeline seeks abandonment of the service under section 7(b) of the NGA.

Amoco Production Company (at pp. 9–12) states that the Commission is attempting to use its section 7 transportation authority as a substitute for performing its duties under section 5. They contend that the 25 percent reduction/conversion provision in the final rule is being applied to the blanket *transportation* certification, and not to the certificate governing the jurisdictional firm *sale* to be affected. They contend that the condition is being applied to the wrong certificate. They contend that *Panhandle Eastern Pipeline Company v. FERC*, 613 F.2d 1120 (D.C. Cir. 1979) makes clear that the Commission cannot use its section 7(e) authority as a proxy for its section 5 authority. They acknowledged that while *Panhandle* dealt with a rate issue, the decision is essentially founded on the same basic interplay between sections 5 and 7(e). Amoco Production further contends that even if the reduction/conversion rule is a valid section 7(e) condition, it is unreasonable. Amoco states that the Commission's purpose for permitting this option is to "free up" capacity for transportation under the new rule. However, the Commission has not indicated why this option outweighs the long-recognized importance of private contractual agreements. Moreover, Amoco Production (at pp. 13–17) contends that the Commission failed to consider how a voluntary mutual negotiation between pipelines and suppliers could not achieve essentially the same result.

Virtually all of these arguments were raised in comments to the Commission's proposed rule and were addressed in its Order No. 436. 50 FR 42439. As explained more fully in the final rule, these applications appear to assume that the rule would automatically allow firm sales customers to shift cost responsibilities on to other customers or on to the pipeline's shareholders. Before any such shifting occurs, the pipeline is required to file appropriate adjustments to its rates. The Commission will review any proposed reallocation of fixed costs in the rate case. In the case of the conversion option, the Commission notes that the reservation charges permitted for firm service recognize cost responsibility for firm service and sharply reduce the potential for cost-shifting.

Second, as stated earlier, the CD reduction option is intended to allow a "freeing up" of firm capacity and does not establish rate levels. Moreover, the CD reduction and conversion options are not mandatory. They are merely a condition of participating in self-implementing transportation programs. Pipelines that choose not to participate in the new program will not be subject to the CD reduction and conversion options. Pipelines, however, that choose to participate in the new program will be agreeing to the condition and accepting *new* certificates with the CD reduction and conversion conditions. To this extent, the Commission is not amending previously issued certificates, but is allowing pipelines the opportunity to accept a new certificate with new conditions that apply prospectively.

In the *Panhandle* case cited by applicants, the court found that the Commission could not use revenue crediting to reduce previously approved rates, without a finding under section 5 of the NGA that the previously approved rates were not just and reasonable. Order No. 436, by contrast, will not reduce previously approved rates by revenue credit or any other means. Pipelines voluntarily choose whether to participate in self-implementing transportation. Similarly, the pipeline is free to choose when and if it wishes and make an appropriate

rate filing under section 4 of the NGA to reflect the changed circumstances resulting from customers' exercise of the CD adjustment options. As noted above, such rate filings will be reviewed on a case-by-case basis.

c. *Alleged Bias For Firm Sales Customers.* Indicated Producers (at p. 5) state that the conversion option discriminates unduly in favor of a pipeline's firm sales customers and is contrary to the prohibition against undue preference and discrimination in sections 4(b) and 5(a) of the Natural Gas Act. They stated (at pp. 3–5) that while firm transportation capacity is generally available on a "first-come, first-served basis", firm sales customers that convert to firm transportation are given priority over other potential customers. They state that once a customer makes the business decision to reduce its purchases, it should stand in no better position than any other prospective shipper who seeks transportation on a first-come, first-served basis.

The Commission disagrees with this analysis. Firm sales customers, who are already on the system and have been paying to reserve firm capacity all along, have a legitimate claim on that capacity. Whether they call on that capacity in the form of sales or transportation, the capacity available for new customers is generally the same. While the Commission recognizes that in some cases a customer will be seeking to use different segments of the pipeline system, these situations can be dealt with on a case-by-case basis.

d. *Alleged Unlawful Delegation.* A number of applicants claim that the Commission has in effect delegated to private parties its abandonment responsibilities under section 7(b) of the Natural Gas Act.[44] Generally, applicants state that specific findings under section 7(b) of the Natural Gas Act would be required in order for the Commission to permanently reduce a customer's contract demand. By authorizing contract demand reductions at the sole option of a customer without any case specific finding, they contend the Commission has delegated its responsibility under section 7(b) to the pipeline's customer (Northwest Natural Gas, at pp. 6–13).

Other customers contend that the Commission has delegated its authority under section 5 of the Natural Gas Act. (Algonquin, at p. 5; and Amoco Production, at p. 7.) For example, Algonquin states that section 5 requires the Commission to make findings that the contract provisions are unjust, unreasonable or otherwise unlawful. However, the Commission has not made these findings, says Algonquin, but rather has given the pipeline customer authority to unilaterally modify the firm contract demands up to a certain percent per year. Amoco Production contends that while the Commission has delegated its authority to third parties, it attempts to justify that delegation by setting limits on that delegation. In effect, the customer and not the Commission determines what is the lawful exent of the firm service reduction. Amoco Production (at pp. 6–9) states that these determinations must be made by the Commission in accordance with section 5 and cannot be delegated to the customers.

The Commission disagrees with the applicants. Furthermore, it is clear from § 284.10(f) of the final rule that abandonment authority will be available if a customer exercises its conversion or reduction options under § 284.10. On the other hand, this abandonment flexibility is not mandatory, *i.e.*, a pipeline may choose to retain its section 7 sales certificate in order to stand ready to permit its customer to "swing" back on to sales service. Moreover, a customer and a pipeline always retain the flexibility, even where a certficate has been abandoned, to apply for a new or amended section 7 certificate to resume the sales service or some other form of transportation service. 50 FR 42443.

Section 284.10 is not a delegation of any responsibility under section 7(b) of the Natural Gas Act. Section 284.10(f) specifically provides that if a customer exercises an option to reduce or convert its firm sales entitlements, the pipeline may file an application under the Commission's rules to abandon that portion of the sales service.

Moreover, the Commission is not invoking its authority under section 5, because the final rule does not modify any contract provisions. Pipelines that apply for a certficate under the new program are agreeing voluntarily to all the terms and conditions of that program as set out more fully in the regulations. Similarly, a pipeline customer who uses the CD reduction and conversion option is making a determination that it desires to amend its current service contract. Nothing in the statute prevents the Commission from permitting parties from agreeing to amend or modify their contracts.

2. Effects of Reduction/Conversion Options

a. *Reasonableness; Unlawful Taking.* A few applicants claim that the CD reduction and conversion option essentially establishes a methodology for avoiding existing contracts between pipelines and distribution companies, and that such action constitutes a taking of property without just compensation in violation of section 5 of the U.S. Constitution. (Panhandle, at p. 9; Texas Eastern, at p. 24; Algonquin, at p. 29; Natural Gas Pipeline, at pp. 46–50). For example, Natural Gas Pipeline (at pp. 46–50) contends that the Commission's action interferes with private contractual relationships. They state that while the Commission attempts to justify the interference on the basis that the action is voluntary on the part of the pipeline, it is not clear why a pipeline's willingness to transport should automatically trigger a contract reduction option. They contend that the Commission has no statutory authority to abrogate the pipelines' contracts.

Similarly, Texas Eastern (at pp. 24–27) states that the CD reduction and conversion options deprive it of its lawful contract rights without due process and are in violation of the Fifth Amendment. They further contend it violates the Natural Gas Act which requires the pipelines' rates to be "just and reasonable". Under their interpretation, this means that those rates not only must yield revenues to cover prudently-incured costs, but also that the rates must allow an opportunity to earn a return on invested capital. They claim that the CD reduction and conversion options threaten the financial integrity of pipeline companies, both with respect to operating revenues and in terms of servicing the dividend on stock.

As explained above, the final rule does not override contracts. There is no requirement that a pipeline operate under the self-implementing rules. For the same reason, there is no taking of property. If pipelines decide that the generic CD reduction and conversion options may adversely impact their financial integrity, they may exercise their business judgment in deciding not to participate in the new program. As long as the condition is reasonable under the NGA and the NGPA, it must pass constitutional muster.

The Commission also disagrees with Texas Eastern's argument (at p. 25) that pipelines have been assigned all the additional risks associated with the rule. A pipeline's customers that decide to exercise the CD reduction or conversion

[44] Foothills, at p. 713; Algonquin, at p. 16; Mississippi River Transmission, at pp. 18–19; Texas Eastern, at pp. 18–21; Northwest Natural, at pp. 4–12; Northwest Central, at p. 6; Natural, at p. 8.

option also incur a risk by selecting an alternative source of gas supply and will be deemed to have waived rights to protest abandonment application.

ANR Pipeline Co. (ANR) (at p. 7) asserts that a reduction in firm sales entitlements to a customer means that the customer will pay a lesser proportion of the demand costs of the pipeline which must then be borne by other customers. Further, ANR argues that while conversion to firm Transportation service can offset the revenue loss from the reduction in firm sales entitlements, such offset will not be complete because such items as pipeline supplier demand charges will not be recovered from transportation customers. For this reason, ANR asserts that other customers or the pipeline will be injured by a conversion from firm sales entitlements to firm transportation.

ANR also asserts (at p. 8) that to the extent a reduction or conversion of firm sales entitlements results in less gas purchases than would have resulted absent the reduction, then a pipeline's take-or-pay and minimum take liabilities will cause increased costs which will adversely affect all consumers.

ANR argues (at pp. 13, 16) that § 284.10 should be eliminated or changed on rehearing. The change requested by ANR is that customers who convert their purchase entitlements to transportation entitlements should be required to pay fully compensatory rates for transportation service (at p. 16).

Finally, ANR argues (at p. 16) that a pipeline should not be required to file an adjustment to its rates under § 284.10(g) every time a customer's firm sales entitlement is changed under § 284.10. ANR asserts that a change may not be necessary, and that under the Natural Gas Act, pipelines have the option to file for rate changes.

Trunkline Gas, Trunkline LNG, and Panhandle assert (at p. 9) that any reduction of firm sales entitlements and any conversion to firm transportation should be permitted only on a single annual date to be fixed by the pipeline after prior notice of at least nine months. Further, they seek clarification as to the effect on pipeline minimum bills of a reduction in firm sales entitlements and a conversion to firm transportation. They point out that § 284.10(c)(4) requires a reduction of minimum commodity bills by an amount proportionate to any reduction of firm sales entitlements, while § 284.10(d)(5) requires a credit against the minimum commodity bill for each unit of firm transportation service purchased, and that it is not clear that only one of these provisions will apply exclusively in each case (at p. 10).

As set forth below, rehearing on these issues is generally denied. With regard to ANR's concern, the Commission recognizes that some cost shifting may occur as a result of the conversion and reduction provisions; however, as stated in Order No. 436.

> First, by adding the conversion option and specifically allowing for reservation charges for firm service, the final rule recognizes cost responsibility for firm service and sharply reduces the potential for cost shifting. Second, the primary purpose of the CD reduction option is to allow a freeing up of firm capacity, not to allow existing customers to simply reduce the level of monthly payments. The issue of establishing rate levels is left to individual cases; the instant rule seeks only to establish a rate structure. 50 FR 42439.

Order No. 436 further states that:

> The rule in no way resolves the issue of how those costs [resulting from CD reductions or conversions] will be allocated, however. Hence, the cost allocation issues will be decided on a case-by-case basis. 50 FR 42442.

Thus, while some cost shifting may occur under the rule, the case-by-case review of cost allocation provided by the rule provides a forum so as to prevent any unreasonable cost shifting.

The Commission agrees with ANR that a pipeline should not be required to file an adjustment to its rates everytime a customer's firm sales entitlement is changed under § 284.10. The Commission notes that under § 248.7(b)(2), a pipeline operating under the new rules must file transportation rates that conform to the standards of § 248.7. Pipelines must, of course, make appropriate adjustments to a customer's demand and minimum bill charges when a reduction or conversion becomes effective. After that, there is no need to require additional filings, because no cost-shifting to other customers can occur prior to any new filing; so there is no harm to pipeline customers. Of course, nothing in the rule precludes a pipeline from filing to adjust its rates at any time. Accordingly § 284.10(g) will be deleted from the final rule.

With regard to Trunkline Gas, Trunkline LNG, and Panhandle's arguments, the final rule provides that a pipeline may establish a single date during each calendar year for *reductions* to take effect, and that customers must provide the pipeline with 150 days notice before a proposed reduction. As discussed in Order No. 436, (50 FR 42445) this procedure should accommodate the needs of pipelines to prepare any necessary rate filings. With regard to the applicants' concern about effects on pipeline minimum bill provisions as a result of reductions or conversions of firm entitlements, the rule clearly provides that § 284.10(c)(4) applies to customers who simply reduce their firm sales entitlements, while § 284.10(d)(5) applies to customers who convert their firm sales entitlement to firm transportation.

b. *Shippers on the "Prebuild" Portion of ANGTS.* Pan-Alberta Gas and Foothills Pipe Lines (Yukon) express concern over the potential impact of the contract adjustment provisions in § 284.10 on the financial integrity of the "prebuilt" portions of the Alaska Natural Gas Transportation System (ANGTS). Pan-Alberta sells Canadian natural gas to Northwest Alaskan Pipeline Company, which in turn resells that gas to shippers at the U.S.-Canada border. Foothills transports the Pan-Alberta gas from Alberta to the border through the "prebuilt" Canadian segment of the ANGTS. The gas is then transported for the shippers from the border into the U.S. by the U.S. "prebuilt" segments of the ANGTS.

The Commission notes, at the outset, that the transportation programs authorized by Order No. 436 are purely voluntary. In that respect, the final rule differs significantly from Order No. 380, cited by Pan-Alberta. Because of its voluntary nature, Order No. 436 does not undermine the financial integrity of the ANGTS. Indeed, Pan-Alberta and Foothills themselves acknowledge in their requests for rehearing (Pan-Alberta, at p. 8); Foothills, at p. 4)) that § 284.10 does not threaten the financial integrity of the ANGTS. In any event, the Commission affirms that no action taken here is intended to alter its prior commitments made with respect to that ANGTS pre-build. To the extent that Pan-Alberta, Foothills, and Westcoast Transmission argue that § 284.10 indirectly threatens the financial integrity of "the North American Gas industry," their arguments parallel arguments advanced by others. These points are addressed by the Commission throughout this order.

c. *Nexus Between CD Adjustments and Transportation.* A few applicants state that the Commission has not established a nexus between the contract demand reduction condition and the exercise of transportation rights under the NGPA and the NGA. Texas Eastern, at p. 12; Algonquin, at p. 17; ANR, at p. 13, Amoco, at pp. 12–17. The Commission disagrees. The nexus lies at the heart of Order No. 436 and is simply stated. While pipelines legitimately exercise "natural" monopoly power in many geographic areas over interstate *transportation,* there is no clear economic basis for pipelines to wield

"natural" monoply power over the purchasing and selling of the natural gas *commodity. Pennzoil v. FERC*, 645 F.2d 360, 378–379 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982). Accordingly, there is a sound regulatory basis for the Commission to take those steps necessary to fulfill the NGPA goal to remove federal price regulation over markets for the natural gas commodity at the wellhead.

The CD adjustment options, by allowing a freeing-up of capacity now booked for firm sales service, allow shippers the ability to book *equally firm* transportation service in order to link up the two sides of a competitive market in the gas commodity. Algonquin makes a somewhat different point when it states (at pp. 17–22) that pipeline facilities typically have been constructed to provide capacity for firm sales and transportation requirements. Unless these contracts have expired or been amended through bilateral agreements approved by the Commission, the available firm jurisdictional pipeline capacity is fully subscribed. Since the rule requires pipelines to accord firm sales customers a priority opportunity to convert their firm sales rights to firm transportation, some customers, Algonquin states, will convert all of their firm sales entitlements to transportation. If the customers need the capacity, it is likely they would convert their firm sales entitlement to firm transportation.

If Algonquin's analysis is correct, then it only means that customers will prefer the conversion option over the reduction option. If Algonquin is wrong, then the reduction option will serve as a useful device to free up capacity that consumers no longer wish to pay for. In either event, the Commission sees no reason to modify this feature of the rule because the Commission's objective is to free up capacity not required for sales or transportation service to existing customers.

d. *On Contracts Providing for Annual Entitlements.* ANR asserts in its application for rehearing (at p. 6) that the term "firm sales entitlements", as used in § 284.10, is not defined but seems to include not only "contract demand," or "Maximum Daily Quantity" amounts, but also "annual contract quantity," or "Annual Entitlement" amounts. ANR seeks clarification that the latter, annual amounts are included in the definition of firm sales entitlements. Memphis asserts in its application for rehearing (at pp. 11–13) that the Commission erred in Order No. 436 by not allowing customers of pipelines to reduce their firm sales entitlements for D–2 quantities which relate to expected annual purchases or curtailment entitlements, under the modified fixed-variable rate design. As set forth below, rehearing on these issues is denied.

With regard to ANR's concerns, Order No. 436 provides that "firm sales entitlements" means ". . . not only contract demand but such Annual Contract Quantities, or perhaps certain curtailment entitlements. To the extent that there may be some particular questions as to whether a specific vehicle operates to fix firm sales entitlement, these issues may be appropriately addressed on a case-by-case basis." Thus, firm sales entitlements covers both peak and annual volumes. With regard to Memphis' concern, Order No. 436 clearly provides that the CD reduction and conversion options are intended to allow reductions in the volumetric levels of service, not in the amount of fixed charges paid to the pipeline under a particular rate design. However, as set forth above, Memphis may pursue its argument, to the extent it relates to volumetric reductions, in an individual case. For these reasons, rehearing is denied on these issues.

e. *On existing Full Requirements Customers.* In Order No. 436 we held that customers served under a contract that required them to buy all their gas from one supplier or were subject to a sole supplier clause could neverthless reduce or convert their firm sales entitlement. 50 FR 42445. The Commission declined, however, to hold that the customers served under contracts like these could continue to purchase gas under the pipeline's full requirements rate schedule. The Commission did so because there could be differences between the costs of providing full requirements sales service and full requirements transportation service. It said, however, that if there were disagreements on what the proper rate should be, they would be resolved in individual cases. *Id.*

On rehearing Tennessee Small General Service Customer Group (at pp. 3–4), CILCO (at pp. 2–17), and Illinois (at pp. 2–12) argue that the Commission erred in not addressing the rate question. The Commission sees nothing in CILCO's or Illinois' arguments; however, that warrants a different conclusion. The full requirements rate schedule establishes certain criteria that customers must meet in order to be subject to the full requirements rate schedule. (The full requirements rate schedule is typically a more favorable rate schedule than a partial requirements rate schedule, in terms of the price that is paid for a unit of service). If after taking advantage of a reduction or conversion a customer still complies with the criteria for being a full requirements customer, then that customer should continue to be a full requirements customer. If that customer no longer meets the criteria for a full requirements customer after a reduction or conversion, then that customer would be a partial requirements customer and come under whichever rate schedule that meets the customer's current contract. A customer that moves from a full requirements customer to a partial requirements customer as a result of a contract reduction or conversion may then use the next rate case as an opportunity to argue that the criteria for full requirements customers should be amended so that it could continue to take advantage of the full requirements rate schedules. In the interim before the next rate case is filed, the customer should pay under the rate schedule that meets the criteria for its contract. For example, if a customer reduces its entitlement by, say, 15 percent and takes no gas from any other pipeline and takes no transportation services from the pipeline with which it has a contract, then, as long as there is not a volume minimum for contract demand for full requirements customers, it would continue to use the full requirements rate schedule. If the customer converted 15 percent of its firm sales contract demand to transportation service but still continues to take all of its pipeline services from the pipeline with which it has the contract (even though it buys some gas directly from producers) then, if this is not prohibited by the full requirements rate schedule, the customer would continue to be a full requirements customer. If the full requirements rate schedule, however, prohibited customers from buying gas directly from producers and transporting it on the pipeline, then the customer would no longer be a full requirements customer.

3. Proposed Procedural Changes

a. *Length of Notice.* As stated earlier, § 284.10 provides that customers that exercise their CD reduction option or conversion option are required to give the pipeline 150 days notice or 60 days notice, respectively, before the proposed change. INGGA states that the 60 day notice period is too brief if pipelines are to plan their long term supply arrangements at the lowest reasonable rate. They suggest that the Commission should require all such parties converting service to file at the same

time annually, with that conversion to be effective nine months thereafter (INGGA at p. 18).

Washington Natural Gas Company states that even assuming a pipeline elects to accept the new blanket certificate, local distribution companies do not have enough time by the February 1, 1986, deadline in the final rule to determine whether it is a prudent economic decision to reduce or convert their contract demands. Moreover, Washington Natural maintains that the Commission's proposal on block billing in Part D of the rule will also affect the distributors' decisions. (Washington Natural Gas Company, at p. 4).

Kansas Power and Light Company states (at pp. 2–3) that in the second and subsequent calendar years, it appears that § 284.10(c)(2) permits the pipelines to designate dates on which CD reductions will occur. If this is correct, Kansas Power and Light states that pipelines could set the first election date after February 1, 1986 at December 31, 1987. This means that a pipeline's customers would only be allowed to make one CD reduction election which would be effective in the first three winters after the issuance of Order No. 436. They further state that it is unclear whether § 284.10 permits the pipeline to change the election date from year to year or whether it must select a permanent annual election date. If the date is not permanent, they state the pipeline could pick January 1, in one year and December 31, in the next, and thereby impede the implementation of the CD reductions. They suggest that the Commission require pipelines to select an initial CD election date in the period from February 1, 1986, to May 18, 1986 and that that date would be a permanent election date.

The Commission believes that the 60-day notice period is reasonable. This notice period is the minimum period within which a pipeline's customers may give notice of a CD conversion. Presumably, some customers will give notice before that date. Even if other customers provide only the minimum notice period, that 60-day period may be the earliest time at which the customer can assess the options available to it. The Commission believes that the 60-day notice period appropriately balances the time needed for the pipeline to assess its supply and demand against the customer's need for flexibility in assessing its options. Further, a converting customer will continue to contribute to the recovery of fixed costs at essentially similar levels. As contrasted with a reducing customer, the converting customer is not leaving the system.

With respect to Washington Natural's comment, the earliest for electing CD reductions for 1986 was February 1, 1986, under Order No. 436. If a customer does not exercise its CD reduction option in 1986, it can still elect that option for 1987. In any event, the CD conversion option may be exercised at any date each year following the appropriate 60-days' notice.

Finally, Kansas Power and Light is correct that § 284.10(c)(2) allows pipelines to designate the date during each calendar year that the CD reductions are to take effect and that the pipeline may change this date from year to year.

In response to these requests, § 284.10(c)(2) is modified to establish more certain notice deadlines and effective dates for customers to exercise their CD reduction options. Under § 284.10(c)(1), the "trigger" date for the availability of the CD reduction option is the date the pipeline first commences or continues a new section 311 arrangement after February 15, 1986, or accepts a new blanket certificate. Section 284.10(c)(2), as modified, would require that, unless the pipeline agrees otherwise, a customer wishing to exercise its CD reduction option the first year it is available, must give the pipeline written notice of the level of its first year reduction not later than 45 days following the "trigger" date established under § 284.10(a). This 45-day notice requirement is only applicable to firm sales customers in the first year the CD reduction option is available. Because § 284.10(c)(1) establishes a single date for first year reductions to take effect, the 45-day notice requirement is intended to provide customers adequate time to decide their first reduction elections under § 284.10.

In addition, § 284.10(c)(2) requires that, in the first year, all such customer reductions take effect 150 days following the close of the required 45-day customer notice period. This will assure that all customers enjoy the same 45-day period to make their CD reduction elections, and that all such CD reduction elections will take effect on the same day the first year. The Commission intends this modification to provide pipelines and their customers with the certainty and predictability necessary to plan their first service agreement modifications and tariff filings under Order No. 436.

In subsequent years, § 284.10(c)(2) is modified to permit a pipeline to establish a single effective date for all CD reductions to take effect, as long as the pipeline provides its customers with 180 days written notice prior to such date. This change would permit pipelines the flexibility to change the effective date for CD reductions in subsequent years, as long as the changed effective date is no later than the "anniversary" date of their customers' last such reduction, and as long as their customers are provided prior notice of the changed effective date. In this way, a pipeline may choose to require that all CD reductions take effect on a single date, and customers will be assured that such effective date is no later than 12 months following the effective date of their last such reductions.

b. *Gradual Phase-in.* Several petitioners argue on rehearing that the Commission should have considered alternatives to the schedule of phasing-in the CD adjustment options. Elizabethtown Gas Company states (at pp. 11–12) that the Commission should limit the options to a total of 20 percent over a four-year period. Petitioners state that until the Commission has had actual experience with the effect of its program on the maintenance of continuous, adequate and reliable natural gas service, such a limitation would not prevent pipelines and their customers from negotiating larger reductions and conversions, but that those reductions and conversions would be subject to case specific applications under section 7(b) of the Natural Gas Act. They suggest that this approach would afford a meaninful recognition of the competitive market while testing the ability of the pipeline to meet its obligations through firm transportation services. Elizabethtown also argues that limiting the options would mitigate adverse cost-shifting.

American Public Gas Association (APGA) and Wisconsin Distributors Group (WDG) make arguments (at p. 36 and at p. 11, respectively) similar to Elizabethtown's that limiting the CD adjustment options would mitigate the problem of shifting costs to remaining customers. Specifically, APGA recommends that the 25 percent annual ceiling be reduced to 15 percent, so that CD adjustments would be more gradual and spread over a greater number of years. WDG simply supports reducing 25 percent to a smaller percentage.

MPC (at pp. 9–12) takes issue with the Commission's four-year phased-in approach to CD conversions (25 percent maximum each year). It charges that LDCs will be put in a dilemma of having to use up their CD reduction option to avoid cost shifting when their large

industrial/commercial customers swing to direct producer purchases. Accordingly, MPC (at p. 12) recommends elimination of the 25 percent limitation on CD conversions. Alternatively, it urges that LDCs be given credit toward their contract demand charge payments to their pipeline suppliers to the extent that their large industrial or commercial customers purchase transportation directly from the pipeline servicing the LDC. It asserts that this latter option would prevent LDCs from having to use up their limited 25 percent options to eliminate their payments for CD capacity that are already being made directly to the pipelines by the LDCs own former sales customers who are now purchasing transporation.

In addressing these concerns over the schedule adopted in Order No. 436 for phasing-in CD reductions and conversions, the Commission believes it is important to reiterate the intent and purpose behind CD adjustments as a general matter. Order No. 436 is designed to promote alternatives to the traditional marketing of gas in which the pipeline purchases gas at the wellhead, transports it and resells it to its customers. The CD reduction/conversion options provide pipelines' firm sales customers, especially full requirements customers, with a greater ability to purchase gas from nontraditional suppliers and to have it transported on a firm or interruptible basis. For this policy to be effective, there must be access to firm pipeline capacity. Otherwise, interruptible loads, including the large volume of fuel-switchable load, would be primarily, if not virtually the exclusive, beneficiary of the freed-up gas supplies.

At the same time, it is clear that a transition period is appropriate in view of the need for so many business participants to review and perhaps revise their existing arrangements in light of wellhead decontrol and Order No. 436. The Commission also must assure that its approach will allow it to monitor the evolution of the market, to respond to problems as they arise, and to make any mid-course adjustments that become necessary.

The Commission provided for a transition period in Order No. 436. However, we are persuaded by the petitions, especially those of APGA and WDG, associations of primarily small, full-requirements customers, that the transition period should be slightly more graduated and gradual.

The Commission is therefore granting rehearing in order to modify the CD reduction/conversion phase-in period. First, it will provide for a five-year phase-in period. Second, it will cap adjustments at 15 percent for each of the first two years, 20 percent for the third year, and 25 percent for each of the last two years. (The "years" will be twelve-month periods dating form the date on which the pipeline first becomes subject to § 284.10 by virtue of commencing a new section 311 transaction or accepting a new blanket certificate under § 284.221.) Third, it will require that the adjustments be cumulative.[45] Accordingly, the Commission adopts the following schedule:

Year	Annual changes (percent)	cumulative reduction/conversion (percent)
1	15	15
2	15	30
3	20	50
4	25	75
5	25	100

The Commission believes that the modifications to the CD reduction/conversion schedule adopted herein will better enable pipelines to accommodate their customers' CD adjustments in a more orderly and less disruptive manner. Pipelines and their customers will benefit from a more gradual CD adjustment program to the extent it ensures a more predictable transition and mitigates potential take-or-pay exposure. Most significantly, as pointed out by APGA and WDG, limiting the CD adjustment options will help to mitigate adverse cost-shifting.

The nondiscriminatory access conditions in Order No. 436 are intended to give all customers of a pipeline access to available transportation capacity. In the near future, as pipeline customers revisit their traditional relationships with pipeline suppliers and gain experience in finding and purchasing non-traditional supplies, most transportation services will probably be on an interruptible basis. A customer's ability to obtain interruptible transportation service does not necessarily depend upon CD reductions and conversions.

However, Order No. 436 recognizes the possibility of structural changes in the gas industry. Distribution customers and end-users may choose to purchase more of their gas supplies, either short-term or long-term, from producers, brokers and other nontraditional suppliers. In these cases, pipeline customers would require long-term firm transportation arrangements. The CD reduction/conversion options are important in this respect to free up some pipeline capacity and to give firm sales customers, especially full requirements customers, greater options. However, recognizing that these new pipeline service options involve structural changes in the industry, the Commission must ensure that use of these new options does not greatly disadvantage any one class of customers.

Changes in purchasing patterns may be more prevalent in some areas of the country than others, or for some customers more than others. Partial requirements customers have historically been able to "swing" on a competitive basis between multiple pipeline suppliers, an ability that was enhanced by Order No. 380. It is reasonable to assume that the ability to "swing" has translated to expertise on the spot market as well. In this regard, the Commission notes that data on file at the Commission and reproduced at Exhibit D of Order No. 436 indicates that the overwhelming majority of transportation arrangements undertaken on behalf of local distribution companies in the first six months of 1985 have been for partial requirements customers with alternate pipeline suppliers and *not* for full requirements customers supplied solely by one pipeline.

Since many partial requirements customers have greater experience with spot market and interruptible transportation transactions, we believe that they have developed greater knowledge of the competitive market infrastructure, with greater resources to make direct purchases of competitively priced gas. This customer class may be better situated, therefore, to take immediate and full advantage of the CD options.

Full requirements customers, on the other hand, have not had the same opportunities to play the competitive field between pipeline suppliers. Nor in many cases have they had the opportunity to gain extensive experience in making spot market or direct producer purchases. Accordingly, many may be reluctant to immediately forgo the reliability of service which comes from their present suppliers' firm sales obligations. As a result, full requirements customers will probably be unwilling to reduce or convert their firm entitlements as rapidly as many partial requirements customers.

To the extent partial requirements customers can better take advantage of the CD reduction election than full requirements customers, there may be

[45] The "cumulative" requirement here implements the Commission's intention that firm sales customers be provided maximum options for transportation services, regardless of whether they choose to exercise those options to the full extent from year to year during the CD reduction/conversion phase-in schedule.

cost-shifting from partial to full requirements customers. This is so because some portion of fixed costs are allocated on the basis of firm entitlements. If partial requirements customers reduce their entitlements in a disproportionately greater amount than the reductions by full requirements customers, these latter customers may be allocated a greater share of the fixed costs. By setting the CD reduction cap higher in the initial years, the Commission inadvertently may have disadvantaged the very customers that the CD reduction provisions are intended to benefit. Therefore, as indicated above, we have decided to modify those provisions to provide for a more graduated and gradual phase-in period.

c. *Reduction of Transportation Entitlements.* One applicant, Columbia Gas Transmission Company, states that the Commission should also allow reductions in exisiting firm transportation contracts. It states that, as a corollary to the Commission's regulations permitting pipeline customers to reduce their sales contracts by a certain percent a year, customers with the ability to reduce their firm transportation contracts by a similar percent a year should be afforded the same treatment. Columbia contends that this is especially important for upstream pipelines who are transporting gas for the benefit of another pipeline's system supply. It states that present over-supply situations have resulted from down stream pipelines paying significant demand charges which are in excess of daily deliveries of gas by the upstream pipelines. It also believes that the situation will be aggravated as additional pipelines sales are replaced by greater transportation quantities under Order No. 436. (Columbia, at p. 15).

The purpose of the rule is to provide greater use of transportation services, to encourage the development of a competitive wellhead market and to give customers' options to take either sales or transportation service, There is nothing that precludes a firm transportation customer from negotiating for a reduction in its firm transportation entitlement and seeking the necessary certificate authority. However, that is beyond the scope of this rule, which is directed toward encouraging greater use of pipeline capacity for transportation. *See Mississippi River Transmission Corp. v. United Gas Pipeline Co.,* 29 FERC ¶ 61,171 (Nov. 13, 1984); 33 FERC ¶ —— (1985).

4. Allocation by Distributors of Minimum Bill Credits That Arise From Reduction/Conversion

Memphis (at pp. 13–14) and Panhandle Eastern (at p. 10) request clarification that the Commission intended no double reduction in an LDC's minimum commodity charges under §§ 284.10(c)(4) and (d)(5) when an LDC reduces sales CD in the process of converting sales CD to transportation CD under § 284.10(d)(5). Each section provides for concomitant reductions in minimum commodity bills to reflect the reduced sales CDs. Panhandle Eastern states that nothing indicates that the two provisions will apply exclusively in each case. BUG (at pp. 9–11), on the other hand, interprets the conversion provision of § 284.10(d)(5) to be discriminatory because, in its view, the provision provides no mechanism for a reduction in minimum commodity bill charges and has the effect of indirectly assigning such charges to transportation in contravention of § 284.8(d). Frito-Lay (at pp. 2–3) seeks clarification that the minimum bill reduction and credit provisions of § 284.10(c)(4) and (5) apply when an end-user elects to take transportation services from an interstate pipeline, even though the LDC has not elected to reduce or convert its contract demand for sales.

At the outset, the Commission notes that the minimum bill reduction/credit provisions of §§ 284.10(c)(4) and (d)(5) are mutually exclusive and cannot result in a duplicate reduction in minimum commodity bill liability in the event of a CD conversion. If the LDC converts CDs, then § 284.10(d) applies to the CD volume converted. If it elects to reduce CDs (and seek a new source of supply, for example), § 284.10(c)(4) applies to the CD volumes reduced. Both rules cannot operate with respect to a conversion. Further, BUG is off the mark in its comments. Section 284.10(d)(5) does expressly effect a reduction in minimum commodity bill charges and is therefore not different in that respect, than § 284.10(c)(4), CD reductions. Moreover, while the net effect of a conversion on the pipeline's recovery of fixed costs may be minimal (due to the reservation fee provision) (*see* 50 FR 42444), the fact that the LDC that converts CDs may pay more than one that strictly reduces CD is justified. The converting LDC still should pay to tie up the pipeline's firm capacity even it is now in the form of firm transportation service. Further, and differences in cost recovery as a result of CD reductions will ultimately depend on the outcome of the pipeline's rate proceeding. (*See* 50 FR 42440). The purpose of both the CD reduction and the CD conversion provisions is to free up unused capacity by allowing reductions in volumetric levels of sales service; not to reduce costs *per se.*

Frito-Lays' requested changes are at odds with the plain language of §§ 284.10(c)(4) and (d)(5). No minimum bill reductions or credits arise unless the LDC elects to reduce or convert its demand for sales service. It is equitable to preclude the same minimum bill reductions or credits when an end-user obtains transportation that by-passes the LDC because the pipeline still must maintain by capacity and stand ready to serve that LDC in the event it is able to replace the end users and require its full contracted service.

D. Rate Conditions Under § 284.7

1. Value of Service

Several applicants state that the rate criteria in §§ 284.7(c) and 157.103(d)(2) for transportation under Part 284 and any new service under optional expedited certificates, respectively, are invitations to "value of service" ratemaking; *i.e.,* all fixed costs will be charged to on-peak customers thus giving off-peak customers a "free ride."

APGA asserts in its application for rehearing (at pp. 42–43) that the Commission has authority under the Natual Gas Act to consider seasonal differences in the cost of rendering service in setting rates, as provided in §§ 157.103(d)(5) and 284.7(d)(3) of the rule. APGA further asserts that because pipelines can develop cost based rates for peak and off-peak periods, it is unnecessary to include §§ 284.7(c) and 157.103(d)(2) in the rule. These sections are essentially similar and set forth the rate objectives related to self-implementing transportation and optional expedited certificates. Section 157.103(d)(2) provides as follows:

> Maximum rates for both peak and off-peak periods must be designed, to the maximum extent possible, to achieve the following three objectives:
>
> (i) Rates for service during peak periods should ration capacity;
>
> (ii) Rates for firm service during off-peak periods and for interruptible service during all periods should maximize through-put; and
>
> (iii) The certificate holder's revenue requirement allocated to firm and interruptible services should be attained by providing the projected units of service in peak and off-peak periods at the maximum rate for each service.

APGA contends (at pp. 43–44) that §§ 157.103(d)(2) and 284.7(c) serve no useful or legally permissible purpose, that the sections will be used by pipelines to adopt "value-of-service"

rates rather than cost-based just and reasonable rates, and that the sections should be eliminated from the rule.

As set forth below, APGA's application for rehearing on this issue is denied. Order No. 436 clearly provides that rates under the final rule must be cost-based and must be designed so that the pipeline has a reasonable opportunity to recover its costs. Further, the rates should be designed to ration capacity at the peak and to encourage full utilization of the pipeline. *See* 50 FR 42448. Order No. 436 also provides that "the rates for firm or interruptible transportation under this rule will be based on the fully allocated, separately established cost of providing the service and shall separately identify the cost-component attributable to transportation, storage, and gathering." (*Id.*) Because of the strong support for cost-based ratemaking in Order No. 436, APGA's concern that the Commission will permit pipelines to abandon cost-based ratemaking in favor of value-of-service ratemaking is unfounded. For these reasons, rehearing is denied.

2. Generic v. Case-by-Case Approach

Section 284.7(d) imposes numerous rate conditions on pipelines transporting natural gas under Subparts B, G, or H of Part 284. This section provides that the rates must be volumetric, one-part rates that recover costs allocated to the service on the basis of projected units of service, except to the extent a reservation fee is permitted by § 284.8(d) for firm transportation; separately identify the cost component attributable to transportation, gathering, and storage; and reasonably reflect any material variation in the cost of providing service due to the time at which the service is provided and the distance over which it is provided.

Several commenters argue that rates designed consistent with these conditions will not enable pipelines to recover their costs. Several of these commenters—El Paso (at pp. 13–14), UDC (at pp. 44–52), Transwestern (at pp. 17–20)—contend that the solution to this problem is to eliminate the rate conditions and provide that the rates will be established on a case-by-case basis.

The Commission sees no merit in this argument. The rate conditions in § 284.7(d) simply establish the basic ratemaking framework. The actual rate levels will be set on a case-by-case basis. 50 FR 42448. Moreover, as stated in Order No. 436, one of the critical elements to be considered in setting rates for transportation under Subparts B, G, and H is to design rates that will allow the pipeline to recover its costs plus a fair return. Finally, the essence of § 284.7(d) is that rates must be designed so that the pipeline will recover the costs allocated to the service if it transports the volumes (the "projected units of service") used to design the rates. This is exactly the same method the Commission uses to design rates for other pipeline services, such as firm sales. No tenable argument can be made that this method does not permit pipelines to recover their costs plus a fair return.

Nor does the Commission see any merit to the arguments when the specifics of § 284.7(d) are considered. El Paso (at pp. 9–10) and UDC (at pp. 48) argue that § 284.7(d) will not permit pipelines to recover their costs because § 284.7(d)(3)(i) requires the rates to reasonably reflect any material variation in the cost of providing the service due to "whether the service is provided during a peak period or an off-peak period." This is so, El Paso argues, because the rate for transportation during the peak period will be higher than the rate for sales services, which generally do not differentiate between peak and off-peak periods. Hence the customers will tend to buy gas during the peak period. But during the off-peak periods the transportation rate will be lower so that customers will transport rather than buy gas. The problem with this argument is that it assumes that all the fixed costs associated with providing self-implementing transportation will be allocated to the peak period.

The final regulations do not presuppose that all fixed costs will be allocated to the peak period. That will be determined in the rate case in light of the rate objectives of § 248.7(c) and other basic goals and elements of the rate design process, such as the necessity of designing rates that permit pipelines to recover their costs. *See* 50 FR 42447–48. Furthermore, nothing precludes a pipeline from using the rate objectives of § 248.7(c) when designing its sales rates

El Paso and UDC also argue that pipelines will not recover their costs because the rate conditions require pipelines to offer "unbundled rates" for transportation while sales rates are not "unbundled." Section 284.7(d)(1) provides that the rates must "separately identify the cost components attributable to transportation, storage and gathering costs." To the extent certain services are not required for the transportation of gas, some of the costs can be avoided by pipelines. Other costs will have to be reallocated in rate proceedings, depending on the reasons for their incurrence. This does not mean that the pipelines will be unable to recover costs prudently incurred.

Finally, UDC argues (at pp. 44–95) that the pipelines will not recover their costs because the reservation fee does not "guarantee recovery of an appropriate level of fixed costs." Nothing in the statute requires us to guarantee the recovery of fixed costs. All that is required is that the pipeline be given the opportunity to recovery its costs. *FPC* v. *Natural Gas Pipeline Co.*, 315 U.S. 575, 590 (1942). The reservation fee provided by the regulations gives pipelines the opportunity to recover essentially the same level of transportation-related fixed costs recovered in their sales demand rates. Indeed, if the maximum volmetric rate is collected for the projected units of service, the pipeline will recover its fixed costs even without charging a reservation fee. Accordingly, the Commission sees no reason to grant rehearing on this issue.

3. Reservation Fees

a. *Diminution of Risk of Pipelines.* APGA (at pp. 37–38) argues that no reservation fee should be permitted for firm transportation under subparts B, G, and H or for sales service. APGA argues that this is necessary to place pipelines at risk. The Commission disagrees. First, the question of the appropriate method of developing rates for sales service is considerably beyond the scope of this rule. Second, the reservation fee pipelines may impose for firm transportation under subparts B, G, and H enables them to recover no more than the same portion of fixed costs recovered in their sales demand rates. It does not guarantee recovery of all fixed costs. Those costs remain at risk, depending on the level of throughput. *See* 50 FR 42471.

b. *Proposed Exemption for Small Sales Customers.* APGA (at p. 39) also argues that, if pipelines are permitted to impose a reservation fee, they should not be permitted to impose a reservation fee on a customer that converts from firm sales to transportation where the rate the customer paid for sales service was a one part rate. In short, APGA argues that, if the customer did not pay a demand charge when it was a sales customer, it should not pay a reservation fee when it converts to firm transportation. The Commission disagrees. In Order No. 436, the Commission decided pipelines should be permitted to impose a reservation fee for firm transportation to minimize the possibility that, because of the non-discriminatory access condition, customers would "overbook" capacity. 50 FR 42449. Sales service is not subject

to a non-discriminatory access condition. Consequently, the Commission sees nothing in the fact that customers do not pay a demand charge for sales service to warrant exempting them from the reservation fee for self-implementing transportation. Moreover, the program is voluntary. If the customer is better off as a sales customer; it will remain a sales customer. If it is better off as a transportation customer, notwithstanding a reservation fee, it can exercise the option it prefers.

c. *Applicability to Intrastate Pipelines.* Producers Gas (at p. 8) seeks clarification of whether the permission that the rule gives to interstate pipelines to impose a reservation fee applies to intrastate pipelines. It does to the extent that the intrastate pipeline offers firm transportation subject to the non-discriminatory access condition in § 248.8 and that the total rate meets the fair and equitable standard. If a pipeline provides firm service in intrastate commerce and charges a reservation fee for that service that is consistent with the requirements of § 248.8(d), the pipeline may use that reservation fee for service provided under Supbart C. If the pipeline has no such reservation fee and seeks to impose a reservation fee for firm interstate service, it must, consistent with § 248.123(b)(2), file the reservation fee with the Commission and support it. *See* § 248.123(b).

4. Cost Allocation Issues

a. *Reasonableness of Allocating Between Peak and Off-Peak Periods.* Section 284.7(d)(3)(i) provides that rates must reasonably reflect any material variation in the cost of providing service due to whether the service is provided during peak or off-peak periods. APGA (at p. 44) argues that the term "off-peak period" should be construed in accordance with pre-existing cost classification and allocation precedents, such as *Atlantic Seaboard Corp.*, 11 FPC 43 (1952). APGA's point seems to be that in setting rates for self-implementing transportation the Commission should follow its past practice of allocating a substantial amount of fixed costs to off-peak periods.

The Commission is not adopting this clarification. Although the result of the ratemaking process may or may not be that substantial amounts of fixed costs will be allocated to the off-peak period, the Commission sees no reason to determine the result now. Instead, the question of how much of the pipeline's fixed costs are to be allocated to off-peak periods will be determined on a case-by-case basis in light of the rate objectives in § 248.7(c).

b. *Meaning of "Properly Allocated".* Section 284.7(d)(4) provides that the rates for a transportation service provided under subparts B, G, and H must recover "solely those costs which are properly allocated to the service to which the rate applies." APGA (at pp. 45–57) argues that the Commission should modify § 248.7(d)(4) to require pipelines to allocate storage, production, gathering, and "as billed" fixed costs to their firm transportation services on the same basis that these costs are allocated to their firm sales service.

The Commission declines to adopt this modification. The basic rule the Commission follows in allocating costs to sales service is to allocate to each service and each class of customers the costs the pipeline incurs in serving them. *See generally Columbia Gulf Transmission Co.*, Opinion No. 173, 23 FERC ¶ 61,396, at 61,850 (1983), *aff'd sub nom., City of Charlottesville v. FERC*, No. 83–2059 (D.C. Cir. Oct. 18, 1985). The Commission intends no departure from that rule in allocating costs to transportation services. *See* 50 FR 42448. Hence the general rule to be followed in allocating costs to transportation services will be the same as the rules followed in allocating costs to sales services. The consequence of this, however, may well be that the amounts and types of costs allocated to transportation services will differ from those allocated to sales service. For example, a pipeline may incur production costs to provide sales services, but it may not incur those costs to provide transportation services. Consistent with the general rule, the pipeline should therefore not allocate production costs to transportation. Accordingly, the Commission sees no basis for requiring pipelines to allocate to transportation services the same costs allocated to sales services. Instead, the costs to be allocated to transportation must be resolved, as they always have been, in individual rate cases.

5. Selective Discounting

a *Legal Authority.* Among the rate conditions imposed on transportation performed under subparts B, G, and H is the requirement of § 284.7(d)(5)(i) that the rate schedule set forth a maximum rate and a minimum rate. A pipeline may then charge a customer the maximum rate, the minimum rate, or any rate in between. *See* § 284.7(d)(5)(ii).

APGA (at pp. 47–67), Laclede (at pp. 12–14), NI-Gas (at pp. 22–30), Southern Indiana (at pp. 29–35), Ohio Association (at pp. 2–4), and IOGA (at pp. 2–3), oppose this aspect of the rate. Each argues that section 4(b) of the Natural Gas Act prohibits a pipeline from charging one customer one rate and another customer a different rate. The Commission disagrees.

In Order No. 436 the Commission reviewed the applicable law and precedents. It concluded that section 4(b) was not intended to prohibit pipelines from discounting its rates to its customers to meet competition. *See* 50 FR 42452.

None of the parties opposing § 284.7(d)(5)(ii) challenge the Commission's analysis of the statute's legislative history. Instead, they argue around the question. For example, APGA argues (at pp. 57–59) that allowing pipelines to discount their rates to particular customers to meet competition is inconsistent with the holding of the D.C. Circuit in *MPC II*, which is, APGA alleges, that the NGA requires the same rate to be charged to captive and non-captive customers. The problem with this argument is that the issue before the court was not whether the Commission could allow a pipeline to offer a discount to a particular customer to meet competition. The issue was whether the Commission could allow a pipeline to deny access to transportation (and therefore to the competitive nationwide market for gas supplies) to some customers. To be sure, there is language in the court's opion, 761 F.2d at 784–85, that says the NGA requires pipelines to charge the same rate to captive and non-captive customers. But this language is in the section of the opinion in which the court is summarizing the petitioner's arguments. Nothing in the rest of the opinion suggests that the court was thereby adopting those arguments as its own statement of the law on an issue that was not then before it.

NI-Gas also argues (at pp. 25–27) that § 284.7(d)(5)(ii) is inconsistent with the D.C. Circuit's holding in *MPC II*. But NI-Gas. argument is that to permit pipelines to charge customers different rates for transportation amounts to allowing pipelines to discriminate among customers in terms of access to transportation. This is incorrect. The two situations are different. In the case before the court in *MPC II* the Commission had denied captive customers access to transportation. Here, by contrast, the Commission's regulations require pipelines to grant access to transportation to all customers willing to pay the just and reasonable rate.

NI-Gas (at pp. 28–30) and Laclede (at pp. 13–14) argue that permitting pipelines to offer a discount to a particular customer will remove the

competitive pressure on producers to reduce the price of gas at the wellhead. But in Order No. 436 the Commission examined the impact that permitting pipelines to offer discounts to particular customers might have on wellhead prices. 50 FR 42454. The Commission concluded that permitting pipelines to discount selectively would likely have no effect on prices at the wellhead. The Commission sees nothing in the arguments of NI-Gas and Laclede that requires a different conclusion.

b. *Anticompetitive Effects.* APGA (at p. 47), Ohio Association, IOGA, and Southern Indiana (at p. 32) argue that permitting pipelines to discount selectively will have anticompetitive effects. For example, Southern Indiana argues that a pipeline could use § 284.7(d)(5)(ii) to charge the maximum rate to an LDC while charging an end-user, formerly served by the LDC, a discounted transportation rate, thereby imposing a price squeeze on the LDC. The problem with this argument is that it overlooks the fact that the conduct of a pipeline offering a discount to one customer but not to another is still subject to scrutiny under both the antitrust laws and sections 4 and 5 of the NGA. The Commission made that clear in Order No. 436. *See* 50 FR 42454.

Moreover, *both* rates are fully subject to the Commission's rate jurisdiction and full remedial powers. Hence, the situtation is entirely distinguishable from the price squeeze issue as it arises under the Federal Power Act. *Cf., Mid-Tex Electric Cooperative* v. *FERC,* 773 F.2d 327, 355–56 (D.C. Cir. 1985) (sl. op., at pp. 58–59).

In short, all that Order No. 436 provides is that a pipeline offering a discount to one customer but not to another is not by that mere fact engaging in unduly discriminatory conduct. It does not provide that a pipeline may engage in anticompetitive or unreasonable conduct or that the Commission will not take action to remedy unduly discriminating rates being charged. Accordingly, the Commission sees no reason to eliminate § 284.7(d)(5)(ii).

c. *Proposed Upward Flexibility.* Several pipelines—Cascade (at p. 10), Florida Gas (at pp. 17–18), ANR (at p. 27), and Tennessee (at pp. 31–35)—argue that not only should they have the flexibility to offer discounts below the maximum rate but also that they should have the flexibility to charge rates above the maximum. Essentially two reasons are given in support. First, ANR and Florida Gas argue that allowing pipelines to charge above the maximum rate is necessary to balance the fact that the rate conditions will allegedly produce non-compensatory rates. Second, Cascade argues that allowing pipelines to charge above the maximum when competitive conditions permit is consistent with the behavior of unregulated companies.

The Commission sees no merit in these arguments. With respect to the first argument, it does not believe rates designed in conformity with the rate conditions will be non-compensatory. Simply put, the rate conditions provide that the rates must be designed to provide the company a reasonable opportunity to recover the costs allocated to the service, including a fair profit, by transporting the volumes used to design the rates. This does not differ from the method used to design rates for other jurisdictional services. No tenable objection can be made to that time-tested method. Nor is it an objection to the rate conditions that the pipeline offering a discount may not recover its costs. If the Commission did not permit the pipeline to discount, the alternative to offering a discount and not recovering some costs would be to not transport certain gas at all and recover even fewer costs. Moreover, depending on the elasticities of the customers' demands, discounting the rate may enable the pipeline not only to recover all of its costs, but also to earn increased returns. In short, downward flexibility in unit rates does not necessarily mean reduced total revenues.

With respect to the second argument, the Commission sees nothing in the fact that an unregulated company may charge more than its costs plus a fair return when competitive conditions permit. In an unregulated industry, business usually can set the price of its goods at a level above what is needed to recover costs plus a fair return only when the business has a degree of market power. The Commission regulates pipelines to prevent them from exercising the market power they have. Hence, the Commission sees no justification for allowing pipelines to charge a rate higher than is needed to recover their costs plus a fair return.

d. *Discounts to Affiliates.* AGD (at p. 31), Consolidated Fuel Supply (at p. 3), and the Ohio Association (at p. 3) argue that the Commission should at least prohibit or restrict the ability of a pipeline to offer discounts to its affiliates. In Order No. 436 the Commission recognized that a discount offered to an affiliate may be made for legitimate competitive reasons. The Commission also notes that there are certain safeguards to prevent pipelines from abusing its discounting authority. As stated in Order No. 436, such discounts will be carefully scrutinized. 50 FR 42454. AGD, Consolidated Fuel Supply, and Ohio Association do not challenge this conclusion. Accordingly, the Commission sees no reason to grant rehearing on this issue and prohibit pipelines from offering discounts to their affiliates.

e. *Filing Requirements.* Southern Indiana (at pp. 33–34) argues that § 284.7(d)(5) is inconsistent with section 4(c) of the NGA. The purpose of section 4(c) is to give the Commission notice of the rate the pipeline is charging. *See City of Cleveland* v. FPC, *525 F.2d 845, 854 (D.C. Cir. 1976). The Commission sees nothing in § 284.7(d)(5) that contradicts this purpose. The rate for the service—reflecting the reasonable range between the maximum and minimum—is required to be on file prior to the service being offered. In addition, § 284.7(d)(5)(iv) requires the pipeline charging a customer a discounted rate to file a report with the Commission. This report, which will be attached to the pipeline's rate schedule, will show the rate within the range that the pipeline actually charged. 50 FR 42455. In response to Southern Indiana, the Commission will modify the reporting requirement to ensure that such reports will be filed 15 days after the close of the billing period, as compared to the 45 days contained in Order No. 436. See* new § 284.7(d)(5)(iv). This will provide sufficient notice to the Commission and the public of the rate the pipeline is charging.

f. *Miscellaneous Matters.* There are also two requests for clarification of § 284.7(d)(5). First, the Association of Texas Intrastate Natural Gas Pipelines seeks clarification of whether intrastate pipelines may offer discounts below the maximum rate. Section 284.7(d)(5) does not apply to intrastate pipelines transporting under Subpart C of Part 284. By its terms, § 284.7 applies only to interstate pipelines transporting under Subparts B, G, or H. *See* § 284.7(a). Thus, the rates intrastate pipelines may charge will be subject to the same rules they always have been. *See* 50 FR 42408. Since those rules permit intrastate pipelines to charge a customer a rate that does not exceed the fair and equitable rate, *see, e.g., Red River Pipeline Co.,* 30 FERC ¶ 61,226 at 61,452 (1985), intrastate pipelines may continue to offer discounts to customers.

Second, Columbia (at p. 20) argues that the basic intent of Order No. 436 is that the pipeline may offer a discount if the discount is not anticompetitive and the pipeline assumes all risks of under-recovery. Columbia seeks clarification because the Commission's discussion, 50 FR 42452, of *Sea-Land Services Inc.* v.

ICC, 738 F.2d 1311 (D.C. Cir. 1984), suggests that a discount must be offered to all "similarly situated customers." A discount to one customer need not be provided to any other customer. Discounts in transportation rates may be offered on a selective basis. Since a pipeline operating under the new rules will be operating in a more competitive environment, it is appropriate to provide it greater flexiblity—within the approved maximum and minimum—in pricing its services. Under the conditions contained in the new rates, where it is clear that the discount is solely at the pipeline's expense, selective discounts will not ordinarily be unduly discriminatory. Complaints will be entertained as a means of determining whether a particular discount is pernicious.

Finally National Fuel Gas Supply Corp. asks how long beyond December 15, 1985, it may transport gas pursuant to the transitional provisions of §§ 284.105 and 284.223 without becoming subject to the rate filing requirements of § 284.7(b)(2). If an interstate pipeline plans to terminate all transportation under Subpart B and G prior to July 1, 1986 (the date specified in § 284.7(b)(2) as the time by which new rates must be effective), § 284.(b)(2) will not be applicable, assuming all Part 284 transportation is actually terminated, as planned, prior to July 1, 1986. If new rates are not filed in time to be effective by July 1, 1986, transportation must be interrupted on that date, as the interim rate under § 284.7(b)(1) apply only until July 1, 1986.

6. Effective of Waiver Request for Applicability of Rate Conditions

Northern Border requests (at p. 2) the Commission on rehearing to clarify: (1) Whether it may file for a blanket transportation certificate under subpart G of Part 284 of the Commission's regulations which does not conform to—and thus requires a waiver of—certain of the requirements of Order No. 436; and (2) whether the mere filing of a proposal would subject Northern Border to the "open access" and rate requirements of Order No. 436, or whether such requirements would only apply if Northern Border's filings is approved as filed. Northern Border states that its participation in a blanket certificate program under the revised regulations or in self-implementing transportation is possible only if the new rate conditions which attach to such transportation can be modified to be compatible with Northern Border's underlying financial agreements and a prior Commission order approving its cost of service tariff.

Northern Border is a partnership which primarily transports Canadian natural gas owned by shippers from the international border in Montana to a terminus near Ventura, Iowa. It does not buy or resell gas. Northern Border states that, under the loan agreement to finance construction of Northern Border's pipeline, it may be found in default if the pipeline's tariff is amended or modified and such change materially and adversely affects eiher the ability of Northern Border to perform its obligations under the loan documents, or the rate of amortization of the notes held by the lender. The pipeline states that under the rate conditions of new § 284.7(d), its costs, previously assured of recovery under a full cost-of-service tariff, would be placed at risk (at p. 9). Thus, it would be unable to continue the interruptible transportation service currently performed for certain of its customers. Revenues from those services are currently credited to its cost of service. The company states that it presently operates under an open and non-discriminatory tariff and that the incentive to provide incremental transportation is already present, since each of Northern Border's shipper-partners benefits from the crediting of revenues to Northern Border's cost of service.

In response to Northern Border's questions, as the Commission stated in Order No. 436, the program is completely voluntary. If Northern Border can show that its proposed transportation services achieve the objectives of Order No. 436 and that it has valid reasons for not being able to conform to all of the rate conditions of § 284.7(d), Northern Border should file for a waiver of the specific provisions that impede its participation in the Order No. 436 programs. The mere filing of such waiver request with a blanket certificate application does not automatically subject the applicant to the rate conditions of § 284.7(d) and the non-discriminatory access conditions. Northern Border should, however, request a waiver prior to beginning self-implementing transportation, since the rate charge for such transportation must comply with subpart A of Part 284. If Northern Border is unable to show good grounds for waiver, its transportation rate would be subject to revision. Any request for a waiver will be carefully scrutinized to ensure that pipelines are not placing imaginary obstacles in the way of implementing either the non-discriminatory access provision or the rate conditions. Waivers can thus only be considered in a case-specific setting.

E. Transitional Treatment of Existing Transactions

1. Nondiscriminatory Access as a Condition

DOE recommends that the final rule be amended to provide for continuation of transactions for only those pipelines that apply to participate in the nondiscriminatory transportation program. DOE points out that some reductions in transportation services have occurred, as most pipelines have been unwilling as yet to apply for a new blanket transportation certificate. A decision to limit the interim continuation of on-going transportation arrangements solely to situations where the pipeline agrees to the nondiscriminatory access condition, and the other conditions of the final rule, would operate to eliminate the voluntary nature of the program, and open the Commission to a charge that it was mandating common carriage. The Commission believes that the acceptance of the program by pipelines must be voluntary if the program is to be found valid under the existing statutory authority. As discussed in the final rule, the transitional provisions were carefully adopted to occasion minimum disruption in existing transportation arrangements, while endeavoring to establish and foster a framework for the widest possible acceptance of the new terms and conditions, conditions which do not have the features of the earlier transportation programs found objectionable by the Court of Appeals in the *Maryland People's Counsel* cases. The numerous clarifications of Order No. 436 issued since the Order's adoption should serve to diminish many of the piplines' initial concerns and to permit on-going transportation arrangements to continue under the conditions of the final rule.

2. Transactions Under NGPA Section 311

a. Continuation of Long-Term Transactions. Louisiana Resources (at p. 6), Louisiana Intrastate (at p. 9–10), Amoco Gas (at p. 4) and Tenngasco (at p. 8) contend that the provision of the final rule limiting transitional treatment of existing section 311 transportation arrangements by intrastate pipelines on behalf of an interstate pipeline or local distribution companies served by an interstate pipeline to the earlier of the expiration of their term or October 9, 1987, is arbitrary and discriminatory. Willcox likewise argues that all such section 311 transportation arrangements entered into and commenced before the final rule became effective should be

permitted to remain in effect without change for their full contractual term.

The pre-existing Part 284, subpart B regulations automatically authorized all contracts which satisfied the criteria of section 311(a)(1). Section 284.102(b), however, imposed a maximum two-year term as a condition on such contracts. In Order No. 46 which first promulgated Part 284 and in which the two-year term first was applied, the Commission stated that successive extensions of two years on section 311(a) transactions would be self-implementing "unless the Commission decides that an extension is not in the public interest." In § 284.5 of the regulations, the Commission reserved authority to impose further terms and conditions prospectively, as deemed appropriate, on transactions authorized by Part 284. The Commission concludes, for reasons amply expressed in that final rule, the further extension of authority after expiration of the time limits authorized in the rule are not in the public interest unless the conditions of the new rule are met. Contrary to Willcox's claim (at p. 46), such determination is within the Commission's reserved authority and does not constitute a retroactive revocation of prior pre-granted approval for the full contract term of all section 311(a) gas transportation agreements entered into and commenced before the final rule became effective.

Tenngasco argues that existing section 311 transportation arrangements performed by intrastate pipelines that had received prior approval under former § 284.127 of the regulations, and were not subject to the two-year limitation imposed on self-implementing transactions, should be continued after October 9, 1987. The request is denied. The same reasons that justify a limited authority to continue self-implementing transportation transactions are applicable to transactions of the type referred to by Tenngasco. Because Order No. 436 eliminates the two-year term restriction on NGPA section 311 arrangements, shippers now have the same flexibility to enter into long-term arrangements under all section 311 provisions as they did under former §§ 284.107 and 284.127. Thus, the transitional provisions should be identical for both.

b. *Alleged Discrimination Against Transactions Not Effective on or Before October 9, 1985.* The Fertilizer Institute (FI) has requested that the final rule be amended to allow continued transportation for high-priority end users without regard to whether such transportation was commenced under § 157.209(a)(1) or was certificated by separate SMP authority. The request must be denied. All SMP transportation authority and all end-user transportation under § 157.209(e) ceased with the termination of those programs on October 31, 1985, in accordance with the *Maryland People's Counsel* cases (except for transactions allowed to continue under § 284.223(g)(2), subject to conditions consistent with the mandate of those cases). High-priority end user transportation authorized under former § 157.209(a) and commenced on or before October 9, 1985, is authorized for its full term. Continued transportation can only be effected if consistent with the new regulations. See *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol* (Midwest Solvents Company), Docket No. RM85-1-000, issued October 31, 1985 (Order Denying Request For Clarification).

FI asserts (at p. 3-4) that new end-user transportation, and extensions of end-user transportation previously authorized under Order No. 234, should be authorized on the same basis as transportation on behalf of pipelines and local distribution companies. The request is denied. The reasons for the differentiation have been expressed amply in the preamble to the final rule. In the Commission's opinion, the provisions for the initial 120-day authorization and the notice and protest procedure set forth in § 157.205 will be adequate to consider whether such transportation should be authorized further and the appropriate conditions therefor.

Citizens Energy requests that the Commission reduce the duration of the two-year grandfather period on self-implementing section 311 transactions to possibly July 1, 1986. The two-year maximum period was selected in light of the authorized duration of many existing self-implemented transactions and to avoid the necessity for unduly infringing on those arrangements. The Commission finds no validity in Citizens Energy's proposal. The provisions as established in the final rule will remain unchanged.

Citizens Energy also requests clarification (at p. 3-4) whether a change may be made in the supplier of gas to be transported or the agents utilized by the local distribution company in effecting the transportation arrangement without violating the transitional provision. This matter was answered in an order issued on October 30 , 1985, in response to a request for clarification. See *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol* (Hadson Gas Systems, Inc.), 33 FERC ¶ 61,142 (1985). In brief, the "grandfathered" transportation transactions must continue without change as they existed on October 9, 1985, including with regard to the supplier of the gas.

Finally, Northern Illinois (NI-Gas) recommends (at p. 7) that the Commission allow pipelines to provide local distribution companies and high-priority end users new transportation services until the earlier of July 1, 1986, or the effective date of a pipeline's rate case in which representative levels for self-implementing transportation transactions are reflected. Such interim provision of new section 311 or Order No. 319 transportation would be on a non-discriminatory basis, and would not trigger § 284.10 unless the pipeline elected to become an open access transporter under either Subparts B or G of Part 284 of the Commission's regulations.

As the Commission has indicated previously, the reductions and conversions of entitlements provided by § 284.10 are essential in order to make the non-discriminatory access conditions for transportation meaningful for pipeline sales customers. The Commission does not believe that there is good reason to delay implementing the condition as suggested by NI-Gas.

3. Blanket Certificate Transactions Under NGA Section 7

a. *Forty-five Day Period for New Certificate Applications Should be Extended.* Several applicants have alleged that the 45-day grace period for deciding whether to file for a blanket certificate under the new rules is too short and should be extended. Southern Union Gathering (at p. 7-8) and the Industrial Groups (at p. 16) ask that the time be set at 60 days after a final order on rehearing. Southern Union Gathering specifically includes rehearing of the final rule regarding block billing, which has yet to be issued. Consolidated Natural (at p. 6) requests that the transitional period be extended, at a minimum, to the end of 1985. Tenneco (at p. 8) requests March 31, 1986, as the end of the transition period.

The requests are denied. The Commission believes it is important that the transportation program, and any necessary accommodating adjustments, be initiated without undue delay. The Commission believes the existing transitional period is adequate to allow the final rule to be evaluated and the requisite managerial decisions to be made on a timely basis. It is not convinced that additional time is necessary and, in particular, that the period need be extended until a decision is made on the block billing proposal. Moreover, the Commission notes that

there is nothing that precludes a pipeline from determining to proceed under the new rules at any later date.

Tenneco points out that no transition period was provided for gas that had been authorized to be sold to end users after October 31, 1985, under blanket section 7(c) authority. The Commission assumes Tenneco is referring to the blanket SMP certificate program vacated by the Court of Appeals in *Maryland People's Counsel*, 761 F.2d 780 (D.C. Cir. 1985). Since that program was found inadequate and could not be continued, it has been replaced under the new rules. No transition period is required or is appropriate in this situation.

b. *Existing Transportation Rates Should be Continued.* Pacific Gas contends (at p. 6–8) that the rate structures for all existing section 311 transportation arrangements should be allowed to continue for their remaining duration under the transitional provisions. Southern Union likewise requests modification of the transitional provisions of Order No. 436 to permit all transactions commenced before October 9, 1985, to continue without modification until the earlier of their scheduled expiration or October 9, 1987. Both applicants seek a change in § 284.7. That section permits an interim rate to be charged until July 1, 1986, provided it is a one part rate included in an appropriate rate schedule on file and effective prior to November 1, 1985. After July 1, 1986, the rate must meet the requirements of §§ 284.7 (c) and (d).

The Commission believes this provision should remain unchanged. Existing rates may not meet the objectives set out in § 284.7(c) which, in its opinion, are necessary for the provision of truly viable, non-discriminatory transportation services at reasonable rates. The Commission preceives no reason why the rates for these transportation arrangements, some of which can remain in effect for an extended period into the future, depending on the service provided and the form of the authorization secured, should not be required to conform to the rate objectives as soon as reasonably possible.

Pacific Gas raises a special concern regarding the interrelationship of its rates under its cost-of-service tariffs and the "extraordinary historic facts" underlying those tariffs. This issue is more appropriate for consideration in a petition for waiver of the rule as it applies to Pacific Gas than in a request to modify the generic effect of the rule on rehearing.

4. Proposed Procedural Changes

MRT (at p. 12), Louisiana Intrastate (at p. 9–10) and the Industrial Groups (at pp. 3, 16) have requested that the Commission extend the term and/or scope of the transitional provisions. Louisiana Intrastate's petition has been considered above in the section of this order disallowing its request that section 311(a) transportation arrangements that were not eligible for self-implementation be continued for their full contract term. It contends that there is no justification for requiring long-term section 311 transportation transactions to terminate by October 9, 1987, while allowing section 7(c) authorizations to continue. The Commission disagrees. The Commission has determined as a matter of policy that all section 311 authorizations should be required to conform to the non-discriminatory access condition not later than October 9, 1987. The transition period of up to two years gives transporters adequate time to make adjustments. In this respect, there is no basis to differentiate the treatment on the basis of the original authorization.

MRT asks that all transportation contracted for prior to November 1, 1985, be allowed to continue through October 31, 1987, and under the rate conditions previously applicable until July 1, 1986. The Commission stated in the final rule why different treatment has been accorded various forms of transportation transactions. MRT has presented no basis for a change in those conclusions. The provision in § 284.7(b) dealing with interim rates for Part 284 transactions is, the Commission believes, a reasonable requirement to assure that the objectives of the final rule will be accomplished and that such rates are just and reasonable.

The Industrial Groups request that the December 15, 1985, date by which pipelines must discontinue transportation service under the non-discriminatory access statements, in the absence of a filing for a blanket certificate under § 284.221, be changed to sixty days after issuance of the order on rehearing of Order No. 436. The petition presupposes that substantial changes in Order No. 436 will be made on rehearing. In the Commission's view, affected pipelines will have had adequate time by December 15, 1985, to study the Commission's orders and to decide whether they will avail themselves of the opportunities therein presented. The request for an extension is denied.

F. Capacity Allocation; First-Come, First-Served Rule; Annual Filings

1. Effect of "First-Come, First-Served" Rule on Existing Contracts and Supply Arrangements

Consolidated Edison argues that the Commission's first-come, first-served policy with regard to the allocation of pipeline capacity should be revised. According to Consolidated Edison, under that policy, customers who have never paid any of the pipeline's fixed costs of providing capacity should not stand on an equal footing with customers who have paid such costs. Transwestern Pipeline Company also contends that pipelines should not be required to allocate capacity on a first-come, first-served basis and that they should be allowed to use other just and reasonable methods. The Commission disagrees. The first-come, first-served method ensures that capacity will be allocated on a non-discriminatory basis and is consistent with the concept that the non-discriminatory access condition is a contract carriage condition, rather than a common carriage condition. While other methods of allocating capacity could be devised, the requirement that all pipelines operate on the first-come, first-served principle ensures that they all stand on an equal footing in obtaining customers and their customers stand on an equal footing in obtaining service.

The Interstate Natural Gas Association of America (INGAA) contends that the adoption by the Commission of the non-discriminatory access provision, the first-come, first-served capacity allocation mechanism, and the CD reduction procedure means that pipelines will lose their ability to manage their own systems so as to provide for the long-term needs of existing customers. According to INGAA, by this impairment of pipelines to render adequate service, the Commission has shirked its role of consumer protection and has thereby violated its statutory mandate. The Commission does not agree. Nothing in the rule precludes pipelines from entering into long-term agreements for firm transportation or sales service. Nothing precludes a pipeline from seeking authority to construct new capacity to provide the service under either traditional section 7(c) procedures or under the optional expedited procedures. Hence, pipelines will not lose their ability to manage their own systems as claimed by INGAA.

Tenngasco Corporation requests clarification as to the meaning of first-come, first-served. In particular, it

wishes the Commission to make clear whether an executed contract (or commencement of service) is required to establish priority status or whether a nomination to the pipeline reserves the shipper's position in line.

Natural Gas Pipeline Company of America (Natural) urges that the first-come, first-served policy should not be applied to interruptible transportation service and that such service should be governed by contract. Natural contends that pipelines need the ability to overbook interruptible service to provide a reasonable opportunity to earn the allowed return, to maximize customers' utilization of facilities, and to provide customers an incentive to sign up for firm service and pay a reservation charge.

In response, the final rule discussed how the Commission intended the first-come, first-served principle to work.

> Prior to offering any transportation services pursuant to the rule, a pipeline will make a determination of capacity available for such services. . . . The amount so determined will be proposed and supported in the pipeline's rate case. In fulfilling its non-discriminatory obligations, a pipeline must accept nominations up to this level. As the pipeline accepts nominations for firm transportation services the amount of remaining capacity available for firm transportation will decrease. 50 FR 42450.

In response to Tenngasco's request for clarification as to whether first-come, first-served applies to executed contracts or to requests for services, the final rule makes it clear that a customer's place in line is determined by when it makes a request for service, not when his contract is executed. The pipeline must consider whether there is sufficient capacity available to serve customers who request service on a first-come, first-served basis. The pipeline cannot accept requests for service over a period of time and determine which contracts to execute and then determine a shipper's place in line by virtue of the executed contracts. As the Commission discusses below, however, a person's place in the line is only ensured by a request for service if the customer is willing to pay the maximum rate for service, including any reservation fee where applicable, and of course to meet the reasonable operational conditions on file.

Columbia Gas Transmission Corporation and United Distribution Companies request that the Commission clarify that the allocation of interruptible capacity will not disturb the priority for existing interruptible shippers. In other words, Columbia contends that existing interruptible shippers who already have been receiving transportation service should be considered as having already "come" on the system for capacity allocation purposes. Similarly, Brooklyn Union Gas Company requests that the Commission confirm that existing long-term, certificated, interruptible services are to be accorded a higher priority of service than new, self-implementing and optional certificate interruptible service and sale arrangements.

Baltimore Gas and Electric Company (BG&E) seeks clarification that a pipeline must award capacity to a shipper willing to pay a higher transportation rate than another shipper (within the rate limits of § 284.7) even though the first shipper is further down in line. BG&E contends that two shippers closely placed in line for transportation capacity could compete for that capacity on the basis of the rate to be paid.

Several petitioners request that the Commission clarify how the first-come, first-served concept will work for interruptible service. As noted above, if a customer requests interruptible service, and is willing to pay the fully allocated rate established for interruptible service then the pipeline must provide service to that customer after all prior requests (including shippers existing prior to the date of the final rule) for interruptible service have been satisfied by the pipeline. The Commission notes, however, that a pipeline is *never* required to accept a request for service by a customer if that customer has not indicated a willingness to pay the maximum rate. Selective discounting is totally at the discretion of the pipeline. Thus, a customer that indicates that it will only book service if the pipeline provides such service at a discounted rate is subject to the willingness of the pipeline to discount. However, if a request for service at a discounted rate is accepted by the pipeline, it must honor that contract on a first-come, first-served basis. Parties may nevertheless agree to make such interruptible service subject to another customer coming in at a later point willing to pay a higher rate than the discounted rate determined between the pipeline and the first customer. The Commission notes, however, that this discretion would not exist with regard to the grant of a selective discount for firm service. To allow the pipeline to reserve the right to grant firm transportation capacity to a customer willing to pay a higher rate would essentially convert firm transportation service into interruptible service, that is, service that could be interrupted by a customer with a higher claim to the capacity. This, then, might be used to exceed the maximum rate (generally lower than the firm maximum rate) determined for interruptible service.

Mississippi River Transportation Corporation (MRT) requests that the Commission clarify that the reasonable operating conditions which a pipeline is allowed to impose on service by §§ 284.8(c) and 284.9(c) of the regulations would permit a pipeline to preclude or remedy a bottleneck on its system. MRT is concerned that a customer may desire firm transportation that would use only a few miles of the pipeline system and that such transportation might preclude the pipeline, under the non-discriminatory access provisions, from providing other transportation that would use more of the spare capacity available over a longer distance.

The question posed by MRT is too hypothetical to be addressed meaningfully at this time. Suffice it to say that an interstate pipeline engaging in self-implementing transportation may not, in general, decline to provide firm transportation because it would interfere with some other preferred use of its system capacity. Unusual circumstances that would produce unreasonable results under a strict application of the rule, however, are appropriately addressed in their reasonable operating conditions filing.

Monterey Pipeline Company seeks clarification concerning the relationship between an intrastate pipeline's NGPA section 311 transportation and the pipeline's strictly intrastate transportation and sales. First, Monterey requests that the Commission make explicit that the first-come, first-served principle applies to an intrastate pipeline's section 311 transactions only and that the Commission does not intend to require such pipelines to serve section 311 shippers to the detriment of their intrastate customers. This is already explicit in Order No. 436. The Commission reiterates that it does not intend for the regulations to impair the ability of intrastate pipelines to provide reliable service to their intrastate customers. An intrastate pipeline is not obliged to provide transportation in interstate commerce on a firm basis. In the event that it does offer firm interstate transportation, however, that transportation must be offered on a non-discriminatory basis. (This would necessarily include a first-come, first-served allocation of the firm capacity available to interstate transportation.) Similarly, if it offers interruptible interstate transportation, it must do so on a non-discriminatory basis. The

regulations apply to section 311 service, not to strictly intrastate service.

Monterey also requests clarification on whether the non-discriminatory access provision applies to all of an intrastate pipeline's system or only between those points on its system which the pipeline wishes to open up to section 311 transportation. Monterey poses the following example: If it provides section 311 service between points A and B, must it also provide such service between points C and D? The Commission makes clear that if an intrastate pipeline has physically separate segments of its system over which interstate transportation will be provided, that the provision applies to the physically individual systems rather than the intrastate corporate entity. If section 311 transportation is undertaken by the corporate entity, however, the provision applies to the entirety of its operations.

Finally, Monterey requests clarification as to how the Commission intends to implement the first-come, first-served principle as applied to section 311 transactions by intrastate pipelines. In response, a pipeline may provide section 311 service if capacity is available for that service. The pipeline may offer such service on a firm or interruptible basis. Firm service, if offered, must be offered on a first-come, first-served basis. Thus, exactly as for interstate pipelines, firm shippers have priority over interruptible shippers. Curtailments of service within each of those two shipper classes would be subject to the pipeline's contractual arrangements with the shippers.

2. Proposed Procedural Changes

a. *Protection for Small Companies; Lotteries.* The American Public Gas Association (APGA) contends that the first-come, first-served policy is not appropriate because not all potential transportation customers have the sophistication or resources to take advantage of the policy. APGA contends that the policy will ensure that those market participants with the closest ties to interstate pipelines or the greatest resources to devote to the race will be able to take an inordinately large share of available transportation capacity and that municipal distributors will not be able to effectively compete for capacity. APGA suggests that an acceptable solution to this problem would be a solicitation round of initial nominations followed by a lottery. In a similar vein, Consolidated Edison requests that the Commission adopt an allocation method that recognizes the superior rights of direct pipeline customers over indirect customers. Memphis Light, Gas and Water Division and Elizabethtown Gas Company contend that the regulations should provide priority transportation to local distribution customers.

The Commission believes that the first-come, first-served policy is appropriate. The purpose is to enable potential customers to receive transportation service on a non-discriminatory basis. The Commission, however, cannot guarantee that all potential customers will be able to book capacity. But customers will have an equal opportunity to do so. Moreover, as the Commission indicated in Order No. 436, the imposition of a resevation fee by a pipeline should discourage overbooking by customers. The Commission has discussed this issue more completely above. Accordingly, the nomination and lottery system proposed by APGA is not considered necessary to ensure equal access by potential transportation customers.

b. *Reservation Procedures Requested.* Indicated Producers argue that reservation fees for firm transportation may not be adequate to prevent overbooking of pipeline capacity and that the Commission should establish procedures, such as a "use it or lose it" condition, for making such capacity available again. The Commission does not believe that further procedures are necessary. A reservation fee should be sufficient to prevent overbooking by pipelines. It is not likely that a shipper will pay such a fee without intending to use the capacity reserved. Further, if a customer does not use its booked capacity, the pipeline may still use that capacity on an interruptible basis.

c. *Required Filings.* Transwestern Pipeline Company maintains that § 284.12 of the regulations, which requires pipelines to make an annual filing designating the capacity of their systems, is meaningless because conditions vary from point to point and day to day. The Commission believes that a pipeline should be required to shown the estimated peak day capacity, and the use of that capacity, of the system under reasonably representative operating assumptions. This should provide a reasonable estimate of pipeline capacity and is a necessary step in ensuring compliance with conditions for self-implementing transportation.

Maryland People's Counsel (MPC) requests that the Commission require pipelines to state the date on which they receive applications for service in the reports they are required to file pursuant to §§ 284.106, 284.126, and 284.233 of the regulations. MPC argues that the reporting requirement would not be burdensome to pipelines, but would provide disappointed shippers with a ready means of ascertaining whether they have been refused service in a discriminatory manner and would assist in determining whether to file a complaint with the Commission. The Commission rejects this request. The present reporting requirements strike an appropriate balance between the need for the Commission to obtain information concerning transportation transactions and the burden imposed on pipelines in supplying such information. The information requested by MPC is not needed by the Commission to monitor pipeline transportation.

d. *Nomination Procedures.* Consolidated Edison and APGA request that the Commission modify the regulations to set forth specific procedures to be followed by pipelines in accepting nominations for transportation service. The Commission does not believe that such a modification is necessary. Once the pipeline determines the level of capacity that is available for transportation, it may accept nominations for that capacity. Potential customers will specify in their nominations relevent information such as volumes to be transported, origins and destinations of the volumes, and periods of transportation. Pipelines will receive the nomination and make decisions as to whether customers can be accommodated. The regulations set out the pipelines' obligations should they elect to provide non-discriminatory transportation under the regulations. Spelling out the nomination procedures in further detail would be an unnecessary intrusion into the pipelines' management prerogatives.

3. *Deterrence to Overbooking Capacity.* Yankee Resources, Inc. requests that the regulations be modified to permit a pipeline to increase transportation volumes for a customer by up to 5000 Mcf per day for a period of 120 days during which time a new prior notice procedure under § 284.222 can be completed. Yankee Resources argues that this proposed procedure would enable pipelines to allocate capacity based on the actual needs of the customers rather than on inflated estimates of capacity needs and thereby prevent overbooking of capacity. The Commission will not modify the regulations as requested by Yankee Resources. A pipeline may require a reservation fee to prevent overbooking with respect to firm service. As to interruptible service, such service, by its nature, is interruptible when a pipeline is operating at full capacity.

NI-Gas argues that overbooking of firm capacity should be prohibited rather than treated as a contract matter susceptible to traditional measures of contract damages. As the Commission discusses above, the Commission does not think such a prohibition is necessary. As discussed in Order No. 436, overbooking of firm capacity by customers should not be a significant problem. Section 284.4(d) permits a pipeline to impose a resevation fee as a condition of providing firm transportation service to a shipper. Such fees should discourage overbooking. If experience shows that overbooking by pipelines becomes a problem, further steps can be taken to deal with it.

Pennzoil (at pp. 5–7) argues that a reservation fee is inadequate to solve the problem of customers' overbooking capacity. This is so, Pennzoil says, because customers will still reserve capacity and not use it even though they have to pay a reservation fee. Pennzoil suggests customers might do this to pre-empt the market or to sub-lease the capacity reserved. Pennzoil recommends that in addition to paying a reservation fee customers should be required to use the capacity they reserved within 90 days or lose it.

The Commission declines to adopt this suggestion. It has no reason to believe, let alone to speculate as Pennzoil does, that requiring customers to pay a reservation fee will not be effective to prevent customers from overbooking capacity.

G. Canadian Gas Imports

Mesa Petroleum (at p. 10) and the Panhandle Association (at p. 4) ask the Commission to revise the blanket certificate and self-implementing transportation provisions so that they would not be applicable to the first pipeline that receives imported gas at the U.S. border. They request that the first transportation by a U.S. pipeline of Canadian gas be made subject to the prior notice procedure.

The applicants, all of whom are domestic producers, state that the Economic Regulatory Administration (ERA) has recently adopted policies regarding natural gas imports that run counter to the NGPA-mandated objective of encouraging domestic exploration and development. Mesa Petroleum argues that, historically, the Commission could be relied upon to examine the impact of a proposed import on domestic reserves in a combined proceeding under sections 3 and 7 of the NGA. However, the division of responsibility between the FERC and ERA under section 3 of the NGA was redefined last year by Delegation Order Nos. 0204–111 and 0204–112 (49 FR 6684 Feb. 22, 1984) and all policy matters concerning imports are now considered by ERA. Since ERA has declined to consider the impact of proposed Canadian gas imports on domestic reserves, the applicants argue, "[it] is incumbent upon the Commission to provide an opportunity for interested parties to contest the importation of gas into the United States." (Panhandle, at p. 5.)

The Commission believes that the matters raised by Mesa Petroleum and the Panhandle Association are outside the scope of this rulemaking. First, the applicants attempt to do indirectly what they were unable to do directly, namely to stop the importation of Canadian gas. As Mesa Petroleum itself points out, the question of whether to permit the importation of such gas is a matter for ERA to determine. Thus, it is for ERA to examine the impact on domestic drilling and reserves of importing Canadian gas. The Commission's job, under sections 4, 5 and 7 of the NGA, is to determine the appropriate rate treatment of the imported gas, the rate to be charged for its transportation, the construction and operation of particular facilities, the siting of facilities and the place of entry for such imports. Those responsibilities do not include reexamining whether the authorized importation is in the public interest.

Second, permitting imported gas to be transported under the blanket certificate procedures in no way impairs the Commission's authority to examine, in the appropriate proceeding, such issues as the proper rate treatment of demand charges, pipeline minimum commodity bills and the treatment of take-or-pay liabilities. This, however, is not the appropriate proceeding. Contrary to Mesa Petroleum's assertions (at p. 12), such issues are wholly unrelated to the transportation of imported gas and are properly raised in a section 4 or section 5 case involving the sales rates for Canadian gas. Mesa Petroleum and the Panhandle Association are free to raise any issues affecting their interests in the appropriate rate case.

Since the Commission is presented with no valid reasons for distinguishing between the transportation of imported gas and the transportation of domestic gas, the Commission denies the applicants' request to make the first transportation segment of imported gas subject to the prior notice procedure. Moreover, the Commission notes that the bulk of commenters in the Notice of Inquiry proceeding urged the Commission to include imported supplies under the new rules.

Pursuant to authority delegated to him by the Secretary of Energy, the Administrator of the ERA has exclusive jurisdiction under section 3 of the Natural Gas Act to approve or disapprove the importation of natural gas into the U.S. Under those circumstances, it would be singularly inappropriate for the Commission to adopt more stringent procedures with respect to the transportation from the border of gas that the Administrator of ERA has authorized to be imported at that border.

H. Filing Requirements Under New Part 284

1. Reporting Requirements

Several applicants argue that the Commission's reporting requirements for transportation services are inadequate. The Order No. 436 procedures, set forth in §§ 284.106, 284.126 and 284.223, require pipelines to file: (i) Initial reports within 30 days after commencing transportation; (ii) subsequent reports reflecting any material change in the transportation arrangement within 30 days of such change; (iii) annual reports not later than May 1 of each year; and (iv) a final statement within 30 days after termination of service. The specific information that each report must contain is discussed in the final rule.

Con Ed (at pp. 11–12) states that monthly reports by pipelines of all interruptible service are necessary for a successful compliance monitoring program. Iowa (at pp. 9–10) also believes that reports should be filed on a more frequent basis to ensure the timely evaluation of program results. According to Con Ed, the reports should also identify, among other things, when the service was requested and agreed to. Hadson (at p. 1) is likewise in favor of monthly reports on all requests for section 7(c) certificate applications. Similarly, Mesa (at pp. 12–13) and Panhandle Association (at pp. 6–7) suggest that all interstate pipelines maintain for public inspection a log of all transportation requests. MPC (at pp. 20–21) also agrees that pipelines should indicate in the reports the date on which they receive applications for service. Finally, Industrial Groups (at pp. 12–14) claim that detailed tariffs or sworn statements of current transportation policies and practices would facilitate Commission oversight.

MRT (at p. 20), however, takes the position that, given the addition of the annual reporting requirement, the final report under § 284.106(d) is superfluous. In the alternatives, it asks that the

deadline for filing the statement be extended from 30 days to 60 days.

The Commission does not feel that further revisions to the reporting procedures are warranted. The present requirements provide the Commission and the public with sufficient information to monitor the transportation activities. In the final rule, the Commission attempted to strike a balance between the interests of all parties involved, including pipelines and shippers. On the one hand, the Commission sought to avoid unnecessary pipeline filings while, at the same time, it sought to guarantee adequate safeguards against discriminatory practices. Reductions were achieved in frequency (eliminating the 48-hour report) and quantity (*e.g.*, deleting information on price and end use). Measures to ensure compliance with the anti-discrimination provisions of the rule were also recognized (*e.g.*, pipeline operational conditions are to be stated in the respective tariffs). Moreover, potential shippers who believe that the pipelines are not complying with the open access requirements of § 284.8(b) and § 284.9(b) may file complaints in specific cases.

The Commission adopts Mesa's and Pandhandle Association's suggestion that interstate pipelines be required to keep a log of all transportation requests, however. The Commission believes that such a log will provide a protestor with the access to information it needs to determine whether the pipeline is acting on a discriminatory basis. The Commission is not requiring that the pipeline file this information with the Commission. Rather, the log should be maintained by the pipeline and be made available for inspection by the public at the company's corporate headquarters during the company's normal business hours. Information that may be contained in such a log could include, but not be limited to: (1) The date of the request for service; (2) the name of the person requesting transportation service; (3) the volume of gas to be transported; (4) the receipt and delivery points; (5) the duration of the service; (6) whether the service sought was firm or interruptible; (7) the percentage of pipeline capacity allocated to firm and interruptible volumes under contract at the time of the request; and (8) the date and manner of disposition of the request. As the Commission and the industry gain actual experience in operating under the new rules, additional mechanisms may or may not be found appropriate.

As for elimination of the notification of termination under § 284.106(d), the Commission again emphasizes that in order to fulfill its regulatory responsibilities in monitoring transactions conducted under Order No. 436 it needs to know when transportation arrangements cease, as well as the total volumes transported and the revenues received. Moreover, inasmuch as Order No. 436 allows the statement to be a simple one page notice or telegram, pipelines should not be inconvenienced by the 30-day time restriction.

2. Effective Date of New Blanket Certificates

Yankee proposes (at pp. 2–4) that the final rule be modified to permit pipelines to begin blanket transportation after November 1, 1985, on a self-implementing basis upon the filing of an application for a new blanket certificate under § 284.221, without the necessity of waiting until the certificate is issued and accepted. Any transactions implemented in the period before issuance of the certificate would be subject to the same terms and conditions as transactions which commence after issuance of the certificate.

As recognized in Yankee's application, this issue has already been considered and decided. In a clarification to the final rule issued to Panhandle Eastern on October 30, 1985, the Commission stated that if a pipeline elects to obtain a new blanket transportation certificate, transportation under the blanket certificate cannot be performed, under NGA section 7, until the blanket certificate has been issued. 33 FERC ¶61,139 (1985). The order also indicated that if the pipeline wishes to commence a transportation service prior to issuance of that new blanket certificate, it may use other self-implementing authority available to it under NGPA section 311. If a pipeline elects to initiate NGPA section 311 transportation on an interim basis pending the issuance of the blanket certificate, however, it will incur the responsibilities attached to that authority, such as, *inter alia*, the filing fee, initial report, and termination notice when the transaction is transferred to its blanket certificate authority, as well as the more substantive non-discriminatory access and CD reduction/conversion provisions.

The Commission believes that allowing a pipeline to commence service before the Commission has acted on its application for a certificate would be inconsistent with section 7 of the NGA as well as the notice requirements of the Administrative Procedure Act. Moreover, the Commission does not believe that these procedural requirements place unreasonable regulatory burdens on the participants, nor that these requirements will be the cause of delays and timing problems for multi-pipeline transactions. It also notes that the problems foreseen by Yankee will be minimized or eliminated if pipelines apply for new blanket certificates well in advance of the time such authorization is required.

With respect to blanket certificates available to Hinshaw pipelines and LDCs served by interstate pipelines, further modifications are in order. Given the generally small size of such entities and the fact that they are not subject to the Commission's jurisdiction apart from the blanket certificate, existing Order No. 63 certificate holders (issued pursuant to § 284.222 as it existed prior to November 1, 1985) need not file new applications for the § 284.224 certificate. Since the old and new certificates are identical but for the non-discriminatory access condition related to transportation transactions, the Commission is instead requiring that persons holding Order No. 63 certificates only file a letter with the Commission by (30 days from rehearing date) which either (1) ratifies the terms and conditions applicable to transportation transactions under § 284.224; or (2) surrenders the Order No. 63 certificate which will be deemed terminated as of November 1, 1985, as to new transportation transactions. Either option will not affect the grandfathering of transportation transactions begun prior to October 9, 1985, which are subject to § 284.125, or the sales and assignment authorization under such certificates. Furthermore, since the person holding an Order No. 63 certificate is neither amending its existing certificate, nor applying for a new certificate, no filing fee under Part 381 of the Commission's regulations is due. The Commission is merely requiring the pipeline to conform to the nondiscriminatory access condition.

The Commission notes here that the Order No. 63 or the new § 284.224 certificate merely puts the certificate holder in the same position as an intrastate pipeline with respect to NGPA section 311 and section 312 eligibility. That is, it permits sales, assignments and transportations. However, it is only the exercise of the transportation authority pursuant to subpart C of Part 284 that triggers nondiscriminatory access under § 284.8(b) or § 284.9(b).

Finally, through inadvertence, the Commission omitted delegation authority to the OPPR Director to issue § 284.224 blanket certificates. The

Commission is providing that authority here.

I. Intrastate Pipeline Issues, Generally

1. Requested Exemptions.

a. *From Environmental Compliance Under § 284.11.* Section 284.11 provides that any authorization granted under subparts, B, C, and H of Part 284 that involves construction or abandonment with removal of facilities is subject to compliance with various Federal environmental laws and regulations, as set forth in § 157.206(d). Producers Gas asserts that § 284.11, Environmental Compliance, should be amended to remove reference to subpart C, because intrastate pipelines are not subject to the Commission's jurisdiction. According to Producers Gas, intrastate pipelines which may conduct NGPA section 311 transactions under subpart C are not subject to the NGA certificate and abandonment authorization that applies to interstate pipelines, including environmental review under § 157.206. Producers Gas, therefore, believes that the reference in subpart C is an oversight. Producers Gas further asserts that the states exercise jurisdiction over construction and abandonment of intrastate pipelines, and therefore, there is no reason for the Commission to pre-empt state regulation with respect to environmental compliance.

In response, the Commission emphasizes that the application of § 284.11 to section 311 transactions by intrastate pipelines was not an oversight. The Commission has a statutory obligation under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* to assess the reasonably foreseeable impacts of its action on the environment. In order to ensure that this rule is not a major Federal action significantly affecting the quality of the human environment by authorizing unrestricted gas transportation arrangements, the Commission determined that all transactions under Part 284 must be made responsive to the mandate of NEPA and other environmental laws. The laws described in § 157.206(d) manifest environmental concerns that are shared by the states. The Commission has not delegated its NEPA responsibilities, however. The potential effects of non-jurisdictional construction or abandonment of facilities, which may be incidental to transactions under Order No. 436, are therefore its concern, particularly because intrastate transactions are increasingly an integral part of the Nation's gas transportation system. This comprehensive and integrated approach to NEPA implementation is not an attempt by the Commission to broaden its jurisdiction under the NGA or to preempt state regulation. It is, rather, a recognition that its responsibilities under NEPA may not be arbitrarily demarcated according to its NGA authority.

The Commission does not believe that the reporting obligations imposed on intrastate pipelines are unduly burdensome. The same rules apply to interstate pipelines and only apply to an intrastate pipeline that participates in transporting gas in the interstate transportation grid. A pipeline must undertake its responsibilities in compliance with Federal environmental laws.

Producers Gas also asserts that the notice provisions of the APA, 5 U.S.C. 553(c), were violated because the Commission gave no notice that it proposed to issue an environmental compliance condition in the NOPR issued May 30, 1985.

In Part VIII of the NOPR, issued May 30, 1985,[46] the Commission gave notice that it would be considering the potential environmental effects of the proposed rulemaking, including "secondary effects of non-construction transaction." Section 284.11 is a logical outgrowth of the Commission's intervening consideration of those effects as discussed in the environmental assessment above. Therefore, there was adequate notice and a reasonable opportunity to participate was accorded, even though the exact provisions of the final rule differed from those proposed.

b. *From filing tariffs with the Commission.* Sections 284.8(c) and 284.9(c) require each participating pipeline, if it seeks to impose reasonable operating conditions on the availability of transportation service, to file them as part of its "transportation tariff". Producers Gas (at pp. 7–8), Louisiana intrastate (at p. 11), Oklahoma Natural and ONG (at pp. 11–12), and Texas Intrastate Pipelines (at pp. 3–4) note that intrastate pipelines covered by the rule do not have such "tariffs" on file with the Commission. They assert that the rules should be modified to remove that obligation. Texas Intrastate Pipelines suggests that the intrastate pipelines could be permitted to post their operational conditions as part of their tariffs on file with the states or could include them as part of standard form transportation contracts. This would be in lieu of a new filing obligation which Texas Intrastate Pipelines asserts would be unduly burdensome. Producers Gas notes that applications for rate approval generally include transportation contracts; which should be sufficient. Louisiana Intrastate (at p. 11) requests that the Commission amend § 284.123 to require the pipeline to file a statement of its operating conditions.

The Commission agrees that it did not intend that intrastate pipelines be required to file "tariffs" with the Commission just to provide their operating conditions. However, it did intend that they file reasonable operating conditions as a condition to commencing transportation of gas under the program. A number of vehicles are available to obtain this information to enforce the non-discrimination provisions of the rules such as special filings, attachments to initial reports, or a modification of the Form 549–ST itself. Because of the nature of the information, the Commission believes that Louisiana Intrastate's suggestion has merit. The Commission is modifying § 284.123 by adding a new paragraph (e) that provides that each participating intrastate pipeline shall make a one-time filing containing a statement of the pipeline's operating conditions. This filing is due within 30 days of the date of issuance of this order for those pipelines that have already elected to participate in the new program. For those pipelines that do not now intend to transport under the new program but decide to do so in the future, this filing will be required within 30 days of commencement of the new service. The new rule also clarifies that changes in operating conditions must also be filed. The Commission does not believe that such a generally one-time filing imposes an undue burden that outweighs the benefits of the information to the Commission and to prospective shippers.

2. Extent of State Regulations of NGPA Section 311 Transactions

a. *Restriction to Interruptible Service.* Under the rules, intrastate pipelines have an option to provide either firm transportation, interruptible transportation, or both. Louisiana (at p. 3) requests that we clarify that state authorities can condition authorizations to perform section 311 transportation to require intrastate pipelines to offer only interruptible section 311 service. Louisiana asserts that, without this authority, federal-state conflicts will arise, as the Commission will be impermissibly regulating intrastate transportation of gas. The purpose, it asserts, is to prevent firm transportation service being required to be offered to

[46] 50 FR 24154

interstate shippers to the detriment of local needs.

The Commission cannot agree with Louisiana. At the outset, the Commission notes that its contention is based in part, on the incorrect premise that our non-discriminatory access condition constitutes regulation of purely intrastate transportation. Its involvement, and particularly the open access condition itself, only applies to interstate transactions after the intrastate pipeline has embarked on the interstate service. *See*, for example, *Sunray Mid-Continent Oil Co. v. FPC*, 364 U.S. 378 (1960). Any resultant impact on the level or quality of purely intrastate service performed by a participating pipeline would only be the result of the voluntary choices made by the pipeline itself and would not rise to the level of actual federal regulation of intrastate commerce.

b. *Allocation of Capacity*. Louisiana (at 3–5) asks that the Commission clarify that states have the power to set relative priorities of users competing for the capacity of intrastate pipelines who participate in the new transportation program. Louisiana asserts that local transportation, both firm and interruptible, must take precedence over new interstate transportation "mandated" by the rule, and that states should be the ones to decide how to allocate that capacity. Louisiana requests that the Commission modify § 284.8 either to delete the firm service option or to clarify that it is not intended to supplant any local service, firm or interruptible, whether in the past, present, or future.

The Commission believes that its program for section 311 transportation affords states sufficient latitude to perform their jurisdictional responsibilities. Nothing in Order No. 436 requires intrastate pipelines to offer firm transportation service.

Moreover, the Commission emphasizes and clarifies that existing local transportation arrangements can have priority over new interstate transportation. For example, there should be no question that a firm existing intrastate transportation service has contractual priority over a new interruptible interstate transportation. Likewise, firm interstate service has priority over non-firm interstate service. Accordingly, the Commission does not perceive any conflicts arising, at least in the near term, over priorities. The Commission's self-implementing rules incorporate the business decisions of the intrastate pipelines and only may affect them to the extent that the non-discriminatory access condition requires them to provide interstate shippers with access to capacity that the pipeline voluntarily chooses to make available to the interstate market.

3. Applicability of Non-Discriminatory Access Condition

Intrastate pipelines and state regulatory commissions and some interstate pipelines [47] cite the NGPA section 602(b) prohibition on common carrier status for section 311 transporters as an absolute ban on application of the non-discriminatory access condition to their operations. Some petitioners [48] also state that the condition is illegal under NGPA section 601(a)(2)(A), which exempts transportation by intrastate pipelines under section 311(a) of the NGPA from Commission jurisdiction for purposes of section 1(b) of the NGA.

As stated in Order No. 436 (at IV.A.23), the Commission has absolutely no intention of regulating *intra*state transportation of natural gas. Rather, the intent of Order No. 436 is simply that the same non-discriminatory access condition will apply to all transportation in interstate commerce, whether by an entity subject to Commission jurisdiction under the NGA or to other entities allowed by the Commission under the NGPA to engage in such interstate commerce without becoming subject to the NGA. Indeed, several changes were made in Order No. 436 to clarify this intent. First, the proposed rule was revised so that there would be no requirement that intrastate pipelines transporting under NGPA section 311 provide such transportation service on a firm basis. (*See* § 284.8(a)(ii).) Firm transportation is not prohibited, however. In the event an intrastate pipeline offers firm transportation, then § 284.8(b) requires that it provide "such" service on a non-discriminatory basis.

Similarly, if an intrastate pipeline offers interruptible interstate transportation (under § 284.9(a)(ii)), the only obligation is to provide interruptible service on a non-discriminatory basis. (*See* § 284.9(b).)

By means of these limitations, Order No. 436 completely avoids the situation whereby an intrastate pipeline is required to offer firm service for out-of-state shippers, thus, progressively being turned into an interstate pipeline against its will and against the will of the responsible state authorities.

With regard to the rate conditions of § 284.7, while the proposed rule would have required intrastate pipelines to comply with the same conditions, Order No. 436 makes it clear that the rate conditions of § 284.7 apply only to transportation under subparts B, G, and H of Part 284 of the regulations. Order No. 436 retains the pre-existing rules regarding rates for subpart C transportation. (*See* § 284.123.) With regard to the argument by some petitioners that the non-discriminatory access condition violates section 602(b), the Commission reiterates that the NGPA does not define "common carrier" and that there is but scant legislative history to section 602(b). The only mention of the purpose of section 602(b) in the Conference Agreement merely states that the House bill had provided that "the intrastate pipeline would not have been subjected to regulation as a common carrier. * * *" [49] The Commission notes that Congress did not directly authorize or create a right to section 311 transportation, as indicated by some petitioners, but gave the Commission the discretion to authorize such transportation under such terms and conditions as the Commission might prescribe under sections 311(c) and 501(a) of the NGPA.[50]

In Order No. 436, the Commission simply has ensured that where a new entity enters the field of offering interstate transportation services, that it do so on a non-discriminatory basis. The Commission cannot accept the premise that section 602(b) is a Congressional license to "intrastate pipelines" to enter into the field of interstate commerce on an avowedly discriminatory basis. Whatever else the prohibition regarding "common carriage" status may do, it does not sweep so broadly as to license unduly discriminatory rates or practices.[51] The same conclusion applies

[47] *See* Mississippi River Transmission Corporation at 17; Valero Transmission Corporation at 4; Louisiana Intrastate Gas Corporation at 4; the Association of Texas Intrastate Natural Gas Pipelines at 4; Florida Gas Transmission Company at 14; Panhandle Companies at 5; Oklahoma Natural Gas Company, a Division of ONE OK, and ONG Transmission Company at 2; Louisiana Resources Company at 3; State of Louisiana at 9; INGAA at 14; Houston Pipeline Company at 4; City of Willcox, Arizona, and Arizona Electric Power Cooperative at 14.

[48] The Association of Texas Intrastate Natural Gas Pipelines at 2; City of Wilcox, Arizona, and Arizona Electric Power Cooperative at 22.

[49] Joint Explanatory Statement of the Committee on Conference, H.R. 5289, Natural Gas Policy Act of 1978, at 106.

[50] Section 311(c) provides that "any authorization granted under this section shall be under such terms and conditions as the Commission may prescribe." Section 501(a) provides in part that the Commission "is authorized to perform any and all acts," and "to prescribe, issue, amend, and rescind such rules and orders as it may find necessary or appropriate to carry out its functions under this Act."

[51] Neither NGPA section 601(a)(2)(A)(ii) nor 311(a)(2)(B) exempt intrastate pipelines transporting under section 311 from the NGA prohibitions on undue discrimination.

to interstate pipelines operating under section 311.

Further, notwithstanding the arguments of some petitioners,[52] it appears from the legislative history of the NGPA that the Commission's conditioning authority under NGPA sections 311(c) and 501(a) is coextensive with the broad discretion granted to the Commission under section 7(c) of the NGA.[53] Section 311(c) must be read in light of the fundamental intention of the NGPA to facilitate the movement of gas between the intrastate and interstate markets following a period of severe curtailment of interstate supplies coincident with ample intrastate supplies.[54] In this regard, the Commission emphasizes that, while it has construed its conditioning authority under NGPA sections 311(c) and 501(a) to be coextensive with that under NGA section, 7, it has not relied, as some petitioners appear to believe, on its NGA section 7 conditioning authority in applying any conditions of Order No. 436 to NGPA section 311 transportation.

Although the Commission has determined that the non-discriminatory access condition does not violate section 602(b), the Commission emphasizes that it fully respects the bounds of its jurisdiction under section 1(b) of the NGA as reaffirmed by section 601(a)(2)(A) of the NGPA. The Commission has clearly indicated that it does not intend that any aspect of Order No. 436 intrude in any way whatsoever on the sound discretion of the states to regulate strictly intrastate transactions in the public interest. (*See* Order No. 436 at IV.A. 25–26.) Nor does the Commission intend Order No. 436 in any way whatsoever to impair the ability of intrastate pipelines to provide reliable service tho their intrastate customers.

4. Possible Detriment to Intrastate Customers of Intrastate Pipelines

Monterey (at pp. 6–8) seeks clarification of the "first-come, first-served" principle underlying the non-discriminatory access condition as applied to section 311 transactions. It seeks the Commission's assurance that the principle does not require intrastate pipelines to serve their section 311 shippers to the detriment of their intrastate customers, even if an intrastate arrangement is entered into subsequent to the section 311 transactions. Accordingly, Monterey would be permitted to discretion to reallocate its capacity as it sees fit, subject to any contractual constraints. Otherwise, it asserts, this program would have the effect of regulating intrastate commerce by affecting the amount of gas transported or sold in the intrastate market. Texas Intrastate Pipelines (at pp. 6–7) asserts that non-discriminatory access will impair the ability of intrastate pipelines to continue to provide adequate and reliable service at the state level by the displacement of sales and loss of revenues. Accordingly, it asserts that the condition improperly encroaches on the operation of state regulatory programs.

Certainly, the Commission did not intend that its rule would operate to harm intrastate consumers. And it believes that its program is flexible enough to accommodate exigencies that may arise. But the exact answer depends on the circumstances. The Commission's program is not intended to interfere with existing contractual obligations. Nor, for example, does it mandate that a new firm intrastate service take a lower priority than an existing interruptible interstate transportation service. What it does require is that once it contracts to provide *firm* interstate service, it may not then subordinate that service to subsequent customers, whether in interstate or intrastate commerce. If an intrastate pipeline does not wish to provide firm service to interstate customers, it does not have to. But having chosen to provide that service it cannot then favor intrastate interruptible customers at the firm customer's expense. If a new intrastate shipper is first in line, then so be it. If not, then it may have to wait for remaining capacity to become available again to the intrastate market. Otherwise, the progression to an integration of the inter- and intrastate transportation systems into a national transportation grid would be impaired. Moreover, for the same reasons expressed above with respect to state claims regarding authority to control allocations, the Commission rejects Monterey's contention that the Commission's action constitutes the unlawful regulation of intrastate transportation.

J. Section 311 Transactions and Distributor By-Pass

Southern Indiana (8–9), Laclede (10–14) and GDIS (passim) point out what they allege is an anomaly in the final rule. The prior notice and protest procedures of the earlier blanket certificate regulations, as restated in § 157.205 of the revised regulations, have been retained for certain NGA section 7 applications filed under Part 157, Subparts E and F, where transportation service by an interstate pipeline may be authorized by the Commission to permit direct delivery by the pipeline to an end-user without going through a local distribution company, *i.e.*, the local distribution company would be by-passed. However, the requirement for prior notice to the local distribution company and an opportunity for such company to protest is not required for transactions under NGPA section 311 and Part 284 of the regulations, which can be undertaken without prior Commission approval, i.e., self-implementing transportation transactions subject to automatic authorization, which likewise can lead to distributor by-pass.

Section 311 of the NGPA and § 284.102 of the regulations, issued pursuant to section 311, require that any transportation performed by an interstate pipeline pursuant thereto must be "on behalf of" an intrastate pipeline or a local distribution company. Section 284.122 of the regulations, the companion section to § 284.102 but applicable to transportation by intrastate pipelines, allows such transportation to be made without prior Commission approval "on behalf of" an interstate pipeline or a local distribution company served by an interstate pipeline. The applications for rehearing contend that the regulations issued in the final rule permit transportation for any of these potential sellers or intermediate transporters directly to an end-user customer, even if currently served by a local distribution company, without notice to the local distribution company and without any Commission scrutiny. They also note that since the earlier "system supply" requirement for section 311 transactions has been eliminated, facilities may be constructed and operated by a pipeline without further authorization to deliver gas to any local distribution company's customer as long as the "on behalf of" requirement is satisfied.

Finally, GDIS claims that even though the prior notice and protest procedure is embodied in § 284.223(b), transportation by-passing a local distribution company could be performed by an interstate pipeline by means of a series of short-term (less than 120-day) transactions as long as different "shippers" (such as spot sellers) are involved in each 120-day transaction.

The policy considerations relevant to transactions under NGPA section 311

[52] *See* City of Willcox, Arizona, and Arizona Electric Power Cooperative at pp. 6–12; Huffco Petroleum Corporation at pp. 8–10; and Valero Transmission Company at pp. 6–7.

[53] 124 Cong. Rec. H.13, 118–119 (Oct. 14, 1978).

[54] Committee on Interstate and Foreign Commerce, Report on *H.R.* 6831, "National Energy Act" (July 19, 1977) at 92–95.

are substantially different than those applicable to blanket certificates and other authorizations under NGA section 7. Section 311 involves gas moving from intrastate to interstate markets or vice-versa. The section reflects the fact that one of the main purposes underlying the NGPA was and is the integration of these two formerly wholly separate markets and that this purpose could outweigh the Commission's historic policy favoring service by local distribution companies to end-users located within the distributor's market area. This conclusion is demonstrated by the fact that Congress provided in NGPA section 311 for the Commission to authorize transportation by pipelines, not only on behalf of local distribution companies, but also on behalf of other pipelines without any condition that the gas would in turn be delivered by those pipelines to local distribution companies so that they could distribute the gas to end-users. Removal of the system supply test (which is not required by the NGPA) without also requiring that there be notice and opportunity for protest might not have been appropriate heretofore. However, application of the non-discriminatory access conditions to pipelines that undertake new NGPA section 311 transportation will allow distributors to avoid being by-passed by those pipelines, as the local distribution companies themselves can locate lower-priced gas for their customers and require that the pipelines transport the gas to the local distribution companies for distribution to the end-users.

Appropriate notice procedures are required by section 7 of the NGA for certificates issued thereunder. It is not required by the NGPA for transactions under section 311. In the Commission's opinion, the "integration of markets" purpose underlying section 311 justifies omission of the notice requirement in these instances. However, in order to ensure that LDCs and their state regulatory authorities are informed prior to commencement of section 311 services that would result in an LDC by-pass, the Commission is modifying the reporting requirements for both interstate and intrastate pipelines engaged in such arrangements to require that they make such notifications of potential by-pass in writing prior to commencement of service.

Insofar as notice of the construction and operation of facilities for the implementation of section 311 transactions is concerned, including transactions that may by-pass a local distribution company, the Commission observes that pipeline facilities to make such transportation possible can be used only for section 311 purposes. These facilities cannot be used for transportation or sales subject to the Commission's jurisdication under the NGA without further approval.

Finally, on the matter raised by GDIS regarding the possibility of successive 120-day transactions defeating the purpose of § 284.223(b), § 284.223(a)(2) makes clear that a second 120-day transaction is permitted between a particular transporter and an identified end-user, irrespective of the seller or sellers of the gas, only if the first 120-day automatically authorized transaction was followed by a transportation period authorized under the prior notice procedures of § 157.205.

V. Discussion of Take-or-Pay/Producer Abandonment Issues

A. Take-Or-Pay Relief

1. Conditioning

In their requests for rehearing, a number of applicants describe Order No. 436 as arbitrary, capricious, and not based on substantial evidence because the order does not condition producer abandonment on take-or-pay relief for pipelines. These applicants argue that producers should be required to waive take-or-pay obligations in order to quality for abandonment under the procedures adopted in the § 2.77 Policy Statement.[55] Upon review, the Commission concludes that the applicants' arguments are without merit and thus do not warrant modification of Order No. 436.

The April 1985 Policy Statement provides guidelines applicable to the regulatory review of the renegotiation of economically burdensome contracts. The Policy Statement addresses the situation where there is a reduction or elimination of pipeline take-or-pay liability under individual contracts in return for lump sum payments by the pipelines to producer-sellers. To the extent Commission abandonment authorization is needed to implement buy-outs of take-or-pay liability, the Policy Statement provides for expedited consideration of the producers' abandonment applications. It is thus clear that take-or-pay relief is the *sine qua non* of the Policy Statement. The Commission finds no basis in the rehearing applications to attempt to prescribe take-or-pay relife beyond that provided for by the Policy Statement.

Order No. 436 also provided for expedited consideration of abandonments in cases where the producer is subject to substantially reduced takes without payment. In many instances, producers of old, low priced gas are being subjected to reduced takes because pipelines are purchasing higher priced supplies in order to minimize their take-or-pay liability. The rehearing applicants request that in cases where abandonment is sought by a producer because of reduced takes, the producer should be required to provide take or pay relief to the purchaser. This is an issue that should be raised and considered in connection with individual abandonment cases.

2. Whether Order No. 436 Is a Force Majeure Defense To Take-or-Pay Contracts

Mesa and Panhandle Assoc. maintain that Order No. 436 does not create an imminent emergency on pipeline systems and therefore request clarification that the rule does not constitute a *force majeure* event. El Paso, on the other hand, requests that the Commission affirmatively state that it will not prohibit any contract defenses, specifically *force majeure* as a result of Order No. 436, which a pipeline may raise to terminate a contract.

Without referring to a specific page in the order, El Paso interprets Order No. 436 as suggesting that the rule may not legally operate as a *force majeure* for a pipeline seeking relief under take-or-pay contract provisions. Relying on *Pennzoil v. FERC*, 645 F.2d 360, 380–82 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982), which held that the Commission lacks the power to interpret pipeline-producer gas purchase agreements for the sale of gas removed from NGA jurisdication, El Paso claims that the Commission has no authority to rule on the validity of possible contract defenses a pipeline may raise against its producer-supplier.

Mesa and the Panhandle Association anticipate that pipelines will invoke *force majeure* to obtain relief from substantial take-or-pay obligations incurred because of historic projections of gas requirements of their customers. To eliminate the need for pipelines to raise this contract defense, Panhandle Assoc. suggests that the Commission clarify the rule to provide that a reduction in minimum commodity bills is not applicable to that portion of the rate that represents recovery of take-or-pay obligations. Mesa specifically requests

[55] Northwest Central Pipeline Corporation, at p. 9; Texas Gas Transmission Corporation, at pp. 11 & 26; American Gas Association, at Appendix A, p. 14; Consolidated Natural Gas Company, at p. 3; Pan-Alberta Gas Ltd., at p. 12; Baltimore Gas and Electric Company, at p. 7; Memphis Light, Gas & Water Division, at p. 2; Public Utilities Commission of the State of California, at p. 3; United Distribution Companies, at p. 54; Tennessee Gas Pipeline Company, at p. 11; and Consolidated Edison Company of New York, Inc., at p. 1.

that the Commission make inapplicable to take-or-pay clauses § 284.10(c)(4) of the rule, which presently mandates the reduction of minimum commodity bills in proportion to the reduction in contract firm sales entitlements. Mesa claims that if pipelines could file tariffs for the recovery of take-or-pay obligations which were not subject to this reduction, pipelines could continue to recover from those customers for whom they originally incurred such obligations.

Mesa also asks the Commission to instruct any pipeline believing the rule causes undue hardship to seek an adjustment under section 502(c) of the NGPA. Additionally, Mesa requests that when establishing an appropriate rate of return the Commission consider a pipeline's assertion that the rule operates as a *force majeure* occurrence.

As the Commission states in Order No. 436, nothing in the order, including the non-discriminatory access and CD reduction/conversion conditions, is intended to affect the rights and obligations of parties to gas supply contracts between pipelines and their suppliers. 50 FR 42443 (1985). Thus, to the extent an LDC or end-user contracts with pipelines for transportation services under Order No. 436, nothing in the order is intended to abridge the rights and obligations regarding take-or-pay liabilities under contracts between those pipelines and their suppliers, including any right to raise *force majeure* as a defense in an appropriate case. Because the Commission does not intend the rule to affect such contract rights, it need not reach the issue raised by El Paso concerning its authority to do so.

The Commission further states in Order No. 436 that it fully recognizes that the exercise of reduction and conversion options by pipeline customers might require pipelines to adjust their gas supplies under contracts with producers, and for that reason it reaffirmed in the rule the April 10, 1985 Policy Statement concerning take-or-pay buyouts. 50 FR 42443, 42462 (1985). Accordingly, the Commission believes that to mandate any type of take-or-pay "pass through" mechanism as proposed by Mesa and Panhandle Assoc. is inconsistent with the use of the guidelines in the Policy Statement as the means for addressing the recovery of take-or-pay obligations.

With respect to Mesa's remaining requests, a pipeline maintaining that the rule has created a special hardship is of course free to seek a waiver from any Commission regulation. Finally, in any section 4 rate case the Commission considers all relevant factors in establishing an appropriate rate of return and would therefore consider the impact on the pipeline of market conditions brought about by Order No. 436.

B. Expedited Producer Abandonments Under § 2.77

1. Lawfulness of the Policy of Expeditious Consideration of Abandonment Applications

A number of applicants for rehearing contend that the Commission's § 2.77 Policy Statement, which provides for review of abandonment applications on an expedited basis in cases where the producer is subject to substantially reduced takes without payment, is unlawful. These applicants include the American Gas Association (at p. 10), Kansas Power and Light Company (App. at pp. 14–18), Northern Natural Gas Company (at pp. 12–14), Public Service Electric and Gas Company (at pp. 5–6), Transcontinental Gas Pipe Line Corporation (at pp. 17–18), and United Distribution Companies (at pp. 52–54). Generally, the applicants view the Policy Statement as meaning that the Commission will grant producer abandonment applications on a generic basis based solely on a showing of reduction in takes even though the pipeline formerly purchasing the gas opposes the abandonment.

The applicants state that granting abandonment on such a basis would be unlawful since the Commission would not consider all relevant factors in determining whether abandonment is permitted by the public convenience and necessity as required by section 7(b) of the NGA.[56]

The answer to this contention is that Order No. 436 does not provide for the automatic granting of abandonment applications based upon a showing of reduced takes without payment. Rather, the Commission simply determined that it would, as a matter of policy, consider applications for abandonment in cases of reduced takes on an expedited, case-by-case basis and grant such applications where permitted by the public convenience or necessity. *See* 18 CFR 2.77(a). The Commission provided an opportunity for any person to intervene in order to oppose a producer's application for abandonment.[57] Nothing in Order No. 436 forecloses intervenors from raising any issue relevant to a determination whether abandonment is in the public interest or from seeking permission to conduct discovery or present evidence with respect to those issues. Indeed, the Commission expressly stated, "It is not possible to foresee all issues that may arise in connection with abandonment applications that are opposed and that must therefore be decided * * * on a formal basis consistent with the requirements of section 7(b) of the NGA. The Commission will therefore not attempt at this time to establish criteria to be applied in determining whether abandonment requests should be granted or denied. The standards to be applied will instead be developed on a case-by-case basis." The Commission continues to adhere to that position.[58]

One of the principal policy objectives underlying Order No. 436 is to insure that natural gas markets are sufficiently competitive so that natural gas service can be provided consumers at the lowest reasonable cost consistent with reliable, long-term service. It is clear that where a pipeline is purchasing high cost gas in order to minimize its take-or-pay liability while at the same time reducing its purchases of otherwise available low-cost gas, a significant market disorder is created. The NGPA is predicated on the proposition that the price and allocation of natural gas can and should be determined to a greater extent by market forces rather than by means of the strict utility-type regulation previously employed under the NGA. It is therefore imperative that obstacles to the orderly operation of market forces be eliminated to the extent possible. The Commission believes that in order to achieve this goal producers should be able to market low-priced gas. It is for this reason that the Commission provided for expeditious consideration

[56] In this connection, one applicant, the American Gas Association (at pp. 11–12), requests that the Commission state that take-or-pay payments for gas that cannot be made up violate NGPA Title I ceiling prices. This issue is beyond the scope of this rulemaking. It is presently before the Commission in a number of cases (*See, e.g.*, Producer's Gas Co., Docket No. GP83–48–000; El Paso Natural Gas Co., Docket No. G84–49–000; Transcontinental Gas Pipeline Corp., Docket No. GP85–1–000; and Southern Natural Gas Co. v. Pogo Producing, Docket No. GP85–11). The Commission believes it is more appropriate to address the issue on a case-by-case basis in those proceedings in the context of the precise fact situations there presented.

[57] The only exception is a buyer who agrees to cancellation of a contract in return for a take-or-pay buy-out. Such a buyer is considered to have waived any right to oppose the abandonment.

[58] Two applicants, Panhandle Producer and Royalty Owners Association and Independent Petroleum Association of Mountain States (at p. 5), request that the Commission set forth in its regulations all the situations in which it will permit abandonment. As stated above, the Commission believes that, at least until it has gained more experience, it is best to determine the exact circumstances in which abandonment should be granted by adjudication in individual cases rather than in this rulemaking. The issues involved are too varied and complex for the Commission now to determine all the situations in which abandonment would be justified.

of abandonment applications irrespective of the NGPA price category of the gas. Relevant policy considerations should and will be considered in determining whether abandonment is permitted by the public convenience and necessity, and the Commission's consideration of these factors is accordingly in no way inconsistent with section 7(b).

Three other assertions by applicants concerning the unlawfulness or wisdom of the policy statement require comment. Associated Gas Distributors (AGD) objects (at p. 30) to the Commission's direction to the Director of the Office of Pipeline and Producer Regulation to grant promptly any unopposed producer abandonment application pursuant to his delegated authority. AGD claims that even where an application is unopposed, the Commission must develop the facts relevant to the public interest, including whether the former pipeline purchaser's supply of gas is adequately protected, before granting abandonment.

The Commission rejects this contention. This aspect of the policy statement represents no change from the Commission's current treatment of unopposed applications for abandonment. Pursuant to 18 CFR 375.307(a)(6), the staff currently reviews each application. Unopposed producer abandonment applications are routinely granted by the Director of the Office of Pipeline and Producer Regulation. If any party feels that it would be adversely affected by a proposed abandonment, the Commission assumes that party would oppose the application.

Two applicants for rehearing, Pennzoil Producing Company (at pp. 8–9) and Indicated Producers (at pp. 8–10), object to the Commission's assertion in the policy statement that, upon expiration of the underlying contract, the purchaser has no obligation to continue purchasing from the seller although the seller has a continuing obligation to sell. The applicants contend that the purchaser does have a continuing obligation to purchase gas. This matter is not essential to the statement of policy. Regardless of a purchaser's obligation to continue purchasing gas upon expiration of a contract, the policy considerations underlying the Commission's statement of policy, including the need to enable producers to market low-priced gas, support the Commission's determination to provide for expedited review of abandonment applications. The Commission made this statement in explaining its concern about the need for abandonment in cases where the underlying contract has expired.

Finally, People Gas Light and Coke Company and North Shore Gas Company (at pp. 14–16) requests that the Commission delay implementation of the policy statement in order to allow adversely affected persons an opportunity to comment on the policy statement's guidelines for granting abandonment. The Commission sees no need to so delay implementation of the policy statement. As stated above, nothing in the policy statement prejudges whether any particular abandonment application will be granted. The Commission intends to determine whether contested abandonment requests will be granted on a case-by-case basis. Any person adversely affected by a particular application for abandonment may intervene in opposition to that application. Accordingly, there is no need to amend the policy statement or to provide for further comments concerning it.

2. Conditioning Abandonment on Take-or-Pay Relief to Pipelines

As previously stated, Order No. 436 does not modify the substantive criteria for deciding when abandonment should be granted, or what conditions should be attached to the grant of abandonment. The Commission continues to believe that these issues should be addressed on a case-by-case basis in connection with individual abandonment applications.

3. Pipeline Protests in Cases Where Take-or-Pay is Settled

In Order No. 436, the §2.76 Policy Statement was amended to provide that where an abandonment application is based on payments made in lieu of take-or-pay obligations pursuant to the Policy Statement, the interstate pipeline making the payments will be deemed to have waived any right to oppose the abandonment.

The American Public Gas Association (APGA) urges that § 2.76(e) be amended to provide for a rebuttable "presumption of nonopposition" to abandonment by the pipeline rather than an absolute bar. APGA is concerned that an adequate amount of reasonably-priced, long-term reserves remain to serve the pipeline's customers, and suggests that a pipeline be required to submit a statement explaining why it entered into the take-or-pay buy-out agreement and why it believes the agreement to be in the best interests of its customers. The Commission does not believe that any such statement is necessary. If APGA members are concerned about a particular abandonment application, they will have the opportunity to raise their objections at the time the application is made.

APGA also suggests that possibly a few cases might involve economic "duress" during the contract renegotiations, or a mutual mistake of fact, and that in such cases a pipeline should not be barred from later protesting the producer's abandonment application. We believe that any such situations, as APGA acknowledges, will be rare. Accordingly, there is no need to modify the procedures set forth in §§ 2.76 or 2.77. If in particular cases a pipeline believes that it is necessary in order fairly to protect its interests to protest a producer abandonment application related to a take-or-pay buy-out, it may request waiver of the prohibition against pipeline opposition. Any such cases will be decided based on the facts of the particular case.

4. Requested Procedural Changes

a. *Objections to the Fifteen-Day Notice Period Under the § 2.77 Policy Statement.* Several commenters [59] complain that the 15-day notice period provided for abandonment and certificate applications filed pursuant to the § 2.77 policy statement is too short to allow them to receive notice, review the matter, and file comments, and that these procedures, in conjunction with the abbreviated adjudiction schedule, will not afford them a fair opportunity to be heard.

Upon further consideration of this matter, the Commission concludes that the notice provisions of the § 2.77 policy statement should be clarified to reflect accurately the Commission's intent. The deadline for protests or interventions will be 15 days following publication of notice in the **Federal Register**. This will yield a total notice period of 15 days plus about a week, the approximate time required for a notice to appear in the **Federal Register**. The Commission believes that period is ample and that it should satisfy the objections raised on this point.

In this connection, the Commission believes the applicants overestimate the degree of complexity required in filings submitted in response to the notice. The critical information is the filing party's request to intervene and a statement of that party's position regarding the application and whether a hearing is requested. While the Commission welcomes more information, a filing providing the basic information is all

[59] Northwest Central, Northwest Pipeline, APGA, Kansas Power, Peoples, SoCal, UDC, and AGA.

that is required and, as a practical matter, is all that is usually filed at the comment-intervention point.

The procedures prescribed in § 2.77 do no differ materially from standard Commission practice. Unopposed certificate and abandonment applications are normally processed by staff and granted promptly by the Director, Office of Pipeline and Producer Regulation; contested applications are considered on a case-by-case basis. The main difference here is the procedures established for the purpose of expediting resolution of contested cases. The Commission intends to provide parties with the opportunity to present their comments, and, if necessary, evidence and relevant arguments on issues of law and policy. Accordingly, we find the objections to the § 2.77(b) procedures to be without merit.

b. *Burden of proof.* Arkla, Inc. requests that § 2.77(a)(1) not be deemed to grant producers a presumption in favor of abandonment. The Specified Producers on the other hand argue that the Commission should establish a rebuttable presumption in favor of granting abandonment applications filed pursuant to the § 2.77 Policy Statement. Under such a presumption, a protestor would have the burden of showing that abandonment is *not* in the public convenience or necessity. Specified Producers assert that the NGA may be interpreted to permit this presumption.

Under NGA section 7(b) and applicable case law, the applicant has the burden of demonstrating that an abandonment is permitted by the public convenience or necessity. *See, e.g., Michigan Consolidated Gas Co.* v. *FPC,* 283 F.2d 204 (D.C. Cir. 1960), *cert. denied,* 364 U.S. 913 (1960). In issuing Order No. 436, the Commission did not intend to relieve applicants of the burden of demonstrating that a proposed abandonment meets the statutory requirements of section 7(b) of the NGA. Requests that the Commission adopt presumptions either for or against abandonment are rejected. Commission decisions on abandonment applications will be based on the record in each case. The Commission will of course also consider the policies and purposes underlying Order No. 436 in ultimately determining whether abandonment is permitted by the public convenience or necessity consistent with the requirements of NGA section 7(b).

5. Definition of Substantially Reduced Takes

The Commission's § 2.77 policy statement provides for expedited consideration of producer abandonment applications in cases where the producer is subject to "substantially reduced takes without payment". Several applicants request the Commission to define the term "substantially reduced takes" with greater precision or to establish specific criteria to be applied in determining when takes would be deemed substantially reduced.[60] One applicant for example, asserts that substantially reduced takes should be defined as "50 percent of full deliverability."[61] These applicants state that clarification is needed to eliminate uncertainty and to enable affected parties to make informed business judgments.[62] The Commission is also requested to clarify whether § 2.77(a)(1) is intended to require any particular duration of reduced takes;[63] whether an allowance or exception is contemplated for temporary reductions caused by economic conditions or facility failures;[64] or whether any allowance will be made for applicable field or state production regulations.[65] The Commission is also requested to adopt the expedited abandonment procedures in situations involving drainage of gas, lease maintenance, and undeveloped acreage[66] and to clarify whether expedited producer abandonment procedures apply to first sellers who are not producers, such as gatherers, resellers, or interstate pipelines which sell their own production.[67]

Clarification of the term "without payment" is also requested by applicants.[68] In particular, Mesa Petroleum Company seeks clarification concerning whether acreage released in lieu of making a required take-or-pay payment, as contractually provided, would come within the scope of § 2.77(a)(1).[69] The Commission is also requested to expand application of the take-or-pay buy-out provisions of the § 2.76 Policy Statement to "all negotiated modifications of any and all forms of contractual pipeline purchase obligations. . . ."[70]

Modification of the subject policy statements has not been shown to be reasonable or necessary at this time. The Commission stated in Order No. 436 that it was not possible to foresee all issues which might arise in connection with abandonment applications filed pursuant to the rule and that it intended to proceed on a case-by-case basis.[71] The Commission will not attempt to establish in advance specific standards intended to apply to various hypothetical situations which may or may not arise in the future. In its policy statement the Commission reaffirmed that it would not depart from the traditional case-by-case approach to abandonments under section 7(b) of the NGA. Consequently, all parties will be free to present arguments regarding the definition or application of substantially reduced takes, including duration, drainage, undeveloped acreage and other factors, in individual cases arising under the rule. The Commission will rule on the issues raised at such time as the cases are decided. Further clarification or revision of the § 2.77 policy statement or of the provisions of the Commission's rule will be implemented only if shown to be justified based on experience gained in individual cases.

The Commission also declines at this time to modify the § 2.77 policy statement to add new categories of cases which would be subject to expedited procedures. References to possible situations involving drainage, lease maintenance, and undrilled acreage do not provide sufficient basis for establishing new categories. However, in these types of cases, producers are in no way precluded from filing abandonment applications in accordance with the Commission's normal filing requirements. *See* 18 CFR 157.18 (1985). Applicants may request expedited consideration of any applications so filed. Commission action will be based on the facts of each particular case. Accordingly, the requests for modification of the policy statement are denied.

The request for clarification of Southern Union Gathering company is reasonable and is granted. The expedited abandonment procedures set

[60] *E.G.,* Specified Producers, at pp. 4–5; Northern Natural Gas Company, at p.14; Northwest Central Pipeline Corp., at p. 15; Associated Gas Distributors, at p. 31; Arkla, Inc., at p. 10; Mesa Petroleum Co., at p. 4; Panhandle Producer, *et al.,* at p. 5; Kansas Power and Light Company, at p. 15; Southern Union, at p. 2.

[61] Specified Producers, at p. 4.

[62] *E.g.,* Northwest Central Pipeline Company, at p. 15.

[63] Specified Producers, at p. 5; Northern Natural gas Company, at p. 14.

[64] Northern Natural Gas Company, at p. 14; Associated Gas Distributors, at p. 31.

[65] Northern Natural Gas Company, at p. 14; Arkla Inc., at p. 10.

[66] Specified Producers, at pp. 6–7.

[67] Southern Union Gathering Company, at p. 2.

[68] *E.g.,* Specified Producers, at p. 6; Mesa Petroleum Co., at p. 9

[69] Mesa Petroleum Co., at p. 12.

[70] Northwest Central Pipeline, at p. 15. *See also,* Northern Natural Gas Co., at pp. 13–14; Specified Producers, at pp. 6–9.

[71] Order No. 436, 50 FR. 42465–466.

forth in the § 2.77 policy statement will be available to all first sellers of gas, including producers, gatherers, resellers, and interstate pipelines.

6. Abandonment Should Not Necessarily Be Limited to High-Cost Gas

Several rehearing applicants suggest that expedited producer abandonment procedures be limited to high-cost gas.[72] Generally, the applicants suggest that the expedited procedures should apply only to gas priced under NGPA sections 102(d) and 108 and should exclude gas priced under NGPA sections 104, 106 and 109.[73] The Iowa State Commerce Commission asserts that captive pipeline customers were to receive the benefit of the low-cost gas and will receive no benefit or protection from the expedited abandonment procedures.[74] Another applicant claims the Commission, in the NOPR to Order No. 436, acknowledged that Congress intended the economic benefits of low-cost gas to continue to "historical pipeline sales customers."[75]

The Commission declines to adopt the applicants' recommendations. The abandonment procedures and general policy do not establish binding substantive norms. Hence, all of these applicants' concerns may be fully aired and resolved in individual cases. As we have indicated on several occasions, Order No. 436 does not provide for the automatic grant of abandonments based solely on reduced takes. Each case will be decided on its merits consistent with the requirements of section 7(b) of the NGA. The Commission holds that there should be no automatic or general bar to the abandonment of particular gas supplies based solely on their NGPA price category.

7. Effects of Expedited Abandonment on Long-Term Supply

Memphis Light, Gas & Water Division asserts that the Commission erred in allowing producer abandonments without adequate safeguards for long-term pipeline supply needs. Memphis states that the §§ 2.76 and 2.77 Policy Statements violate section 7 of the NGA and do not adequately protect the long-term supply needs of the pipelines. In a similar vein, Peoples Gas Light and Coke Company and North Shore Gas Company argue that these sections should be revoked because they open the door to withdrawal from the interstate market of low cost regulated supplies.

These arguments are without merit. Nothing in Order No. 436 was intended to suggest that the supply consequences of abandonment would be ignored by the Commission or that affected parties would be precluded from arguing that a proposed abandonment should be denied because of alleged adverse effects on the existing purchaser or its customers. Section 2.77(b)(3) provides that in cases where certificate or abandonment applications are opposed, the Commission will consider the objections and rule on the applications if possible or, if necessary, will set the applications for hearing. A pipeline or distribution company will have full opportunity to show that the loss of a particular source of supply does not serve the public convenience or necessity and the abandonment should therefore either be denied or limited as to scope or duration.

C. Applicability of NGPA Section 315(a)(3) to Transportation of OCS Gas

Tenngasco Corporation requests the Commission to clarify its policy with regard to the application of NGPA section 315(a)(3). Tenngasco argues that this section should not be interpreted to require inflexible 15-year contracts involving the sale of OCS gas. Tenngasco argues that such an approach would be inconsistent with the Commission's stated goal of creating a competitive, price-responsive maket for gas and that in order to achieve this goal contracts must be permitted to include flexible, market-based pricing provisions. Tenngasco suggests that contracts for the purchase of OCS gas should be allowed to include flexible marketout provisions alllowing for termination of the contract in the event the parties are unable to agree on essential terms in the future. Tenngasco argues that there is nothing in the legislative history of the NGPA to indicate Congress intended otherwise.

The Commission is in basic agreement with Tenngasco on this point. The Commission has previously held that contracts subject to section 315(a)(3) do not comply with that section if they provide for a 15-year term subject to earlier termination by mutual agreement of the parties. *Tenneco Oil Company, et al.*, 31 FERC ¶ 61,301 (1985). Upon further review, the Commission believes this determination should be reconsidered. The Commission concludes, consistent with the views expressed by Tenngasco, that mutual termination and similar contract provisions are not precluded by the terms of section 315(a)3). While the Commission agrees with Tenngasco in principle, it is not possible to establish a general rule which would be applicable in all situations. To the extent of its jurisdiction, the Commission will review each case on its merits depending on the particular terms incorporated in the contract. The Commission's policy regarding application of NGPA section 315(a)(3) will accordingly be developed on a case-by-case basis.

VI. Discussion of Optional Expedited Certificates (Subpart E, Part 157) Issues

A. Presumption of Public Convenience and Necessity

A number of petitioners oppose the adoption of a presumption of public convenience and necessity established in § 157.104(c)(3) of the Final Rule.

Petitioners opposing the establishment of the presumption include primarily LDCs, but also serveral public entities, as well as associated groups such as the American Gas Association (AGA), the National Association of Regulatory Utility Commissioners (NARUC), United Distribution Companies (UDC), and the Wisconsin Distributors Group. For example, Columbia Gas Distribution Companies and Memphis Light, Gas & Water Division state that it is beyond the power of the Commission under the Natural Gas Act to establish the "competitive incentive" embodied in the proposed rule's rebuttable presumption, particularly in the situation where service is currently provided through the facilities of an LDC. Northern Illinois Gas Company states that a service cannot be presumed to be in the public interest merely because the pipleline is willing to place its shareholders at risk, because the Commission cannot fully shield customers from the costs of pipeline mistakes.

Other petitioners complain that the presumption provides a procedural barrier to protecting their interests. Gas Distributors Information Service, (GDIS) complains that simply to obtain a procedural right, a protestor must prove the ultimate issue. In this regard several petitioners such as the California Public Utilities Commission and GDIS intimate that legal discovery is necessary in order to rebut the presumption. Others such as Atlanta Gas Light Company and American Public Gas Association believe the Commission must consider the individual circumstances of each case and therefore, should provide formal hearings in all cases involving by-passes of LDCs. NARUC

[72] *E.g.*, American Public Gas Association, at p. 83; Public Service Gas and Electric Company, at p. 7; Peoples' Gas, Light and Coke Company, at p. 19; Kansas Power and Light Company, at p. 15, note 5; and Iowa State Commerce Commission, at p. 3.

[73] Public Service Electric and Gas Company, at p. 7; Peoples Gas, Light and Coke Company, at pp. 19–20; American Public Gas Association, at p. 83.

[74] Iowa State Commerce Commission, at p. 3.

[75] American Public Gas Association, at p. 83.

recommends amending § 157.102(b)(2) to provide intervenors and protestors with the time and opportunity to discover material facts after filing their initial pleadings and the opportunity to file supplemental pleadings bringing such facts to the Commission's attention.

Some petitioners such as UDC request that the Commission amend the rule to require hearings in all cases where a protest is filed. UDC recommends that the Commission provide for full hearings under the procedures set forth in section 17(a) of the Natural Gas Act in all cases involving by-pass of an LDC. In addition, UDC believes that the Commission could provide the states with a meaningful opportunity to participate in assessing the validity of a proposed by-pass by providing a joint hearing procedure under section 17(a).

The Commission need not repeat its extensive discussion from the preamble regarding its responsibility to determine public convenience and necessity. (See 50 FR 42474–42475, October 18, 1985). The Commission reaffirms its conclusion that it is reasonable to presume that the requirements of the NGA have been met (subject to rebuttal) in light of the protection that the rule provides ratepayers. (See § 157.103). The Commission reiterates its intention that the rule is not a substitute for its obligation to determine whether individual applications are required by the public convenience and necessity. In this regard, it is not requiring the protestor to "prove the ultimate issue" as contended by GDIS. Those petitioners who request additional assurances of the opportunity for legal discovery have not demonstrated why the Commission's procedural rules for optional expedited certificates are inadequate to accomplish their perceived need for additional factual information.

Accordingly, the Commission does not believe that it is unreasonable to impose on protestors the burden under § 157.102(b)(2) to identify those issues of fact material to a determination of whether the applicant's certificate is required by the public convenience and necessity. The Commission will consider carefully all protests filed, with the caveat that speculative or unsupported allegations will not be considered a sufficient basis for withholding a certificate or ordering a hearing. (See 50 FR 42476).

Sections 157.10 and 385.214 of the Commission's rules specifically provide for participation of state commissions and regulatory agencies in proceedings before this Commission. In implementing these provisions in conjunction with Subpart E, the Commission will give the states an opportunity to raise any issues affecting their interests prior to approval of any proposal under Subpart E. A substantial record has already been compiled on all aspects of this rulemaking proceeding, however, and the Commission does not believe that additional procedures suggested by some commenters are needed to coordinate the final rule with the states.

B. Distributor By-Pass; State Regulatory Authority

1. Anticompetitive Effects of By-Pass; Unfair Cost Shifting

Each of the LDCs petitioning for rehearing on Optional Expedited Certificates allege that the Commission has not adequately addressed the by-pass issue in the Final Rule. Virtually all the applicants repeat the arguments they made in their comments on the NOPR. In this regard, LDCs specifically object to the establishment of the rebuttable presumption in applications resulting in the bypass of an LDC. They assert that LDCs cannot compete on an equal basis with interstate pipelines.

Consumers Power Company, for example, highlighted some of the economic and competitive circumstances it believes distinguish LDCs from pipelines: (1) LDCs have a greater duty to serve than do pipelines; (2) residential and small commercial customers have no practical alternative; (3) LDCs are limited to geographic service areas and are much less able to replace lost industrial customers; (4) LDCs, unlike pipelines, have not been able to directly influence producer field prices. Other petitioners who generally share this view are Kansas Power and Light Company, Elizabethtown Gas Company, Southern Indiana Gas and Electric Company (SIGECO) and UDC. Accordingly, UDC contends that only large industrial end-users will benefit from the new rule at the expense of commercial and residential customers. Each of these petitioners reasserts the "cost-shifting" arguments previously advanced in the comments to the NORP.

Several petitioners such as Peoples' Gas Light and Coke Company argue that the Commission did not provide standards in Subpart E requiring applicants to show that the proposed service is necessary or would in any way provide a net economic benefit to consumers in comparison with competing services. They contend the rule contains no standards for evaluating the effects of duplication of facilities and cost shifting on core market consumers. AGA states the Commission is required under sections 7(c) and 7(e) of the NGA to determine where the public interest lies and that we cannot evade our statutory duties by effectively delegating this responsibility to the market place. UDC contends that the requirements imposed on certificate applicants are *pro forma* filings amounting to little more than the applicant's agreement to assume "financial accountability" for the proposed service.

Several applicants request that the requirement of non-discriminatory transportation be imposed on optional certificate applications for sales service. Consumers Power Company, Michigan Gas Storage Company and Kansas Power and Light Company complain that a pipeline could use the expedited certificate procedures to by-pass LDCs even without opening its system to non-discriminatory access. (See Technical Corrections, Docket No. RM85–1–000, October 25, 1985, mimeo at pp. 2–3). Similarly, they observe that the pipeline's customers would not have the ability to reduce contract demands or escape full requirements contracts since only transportation by the pipeline under a blanket certificate makes those options available to the LDCs.

Process Gas Consumers Group (PGC) contends that the omission of the non-discriminatory access requirement on optional certificate sales service contradicts the Commission's determination that the availability of non-discriminatory transportation is one of the criteria relevant to the Commission's presumption that an optional certificate is in the public interest. Accordingly, PGC recommends that the Commission condition optional certificates for on-system sales programs on the applicant's applying for and accepting a nondiscriminatory blanket transportation certificate under Order No. 436. They assert that such a modification would be consistent with the Commission's recent decision rejecting an extension of Northern Natural's discriminatory discount rate under Order No. 436. (See Docket No. CP83–14–103, October 25, 1985.)

As the Commission stated in Order No. 436, it is not pursuaded that cost-shifting which may occur as a result of a bypass of an LDC justifies forbidding a bypass to occur. (50 FR 42468.) The petitioners have not raised any new arguments sufficient to reverse the Commission's earlier judgment. Likewise, the petitioners have not demonstrated that the rule will allow pipelines to engage in "unfair" competitive practices. The rule requires actual notice to affected LDCs of any by-pass proposal under an application

for an optional expedited certificate. This will ensure that LDCs have every opportunity to exercise their rights to protest a specific proposal. If the facts of a particular situation subject to the hearing provided for in § 157.104, reveal the existence of, or potential for, unfair practices, the Commission may take appropriate remedial action. As regards the interest of the commercial and residential customers, the affected states have authority to prevent cost-shifting where the LDCs fail to compete aggressively in the absence of "unfair" competition. As stated above, the Commission believes the rule provides protection of the public interest notwithstanding potential by-passing of some LDCs.

With respect to petitioners' concern over non-discrimination in sales authorized under the final rule, the Commission rejects their recommendation to extend the non-discriminatory condition to those sales. It was never the Commission's intention in Order No. 436 to force "merchant" pipelines to become "transporter" pipelines or vice versa. One of the fundamental policies of this new program has been to provide pipelines the election to include transportation as a significant component of the services they offer or to be an exclusive merchant. (*See* NOPR, Mimeo at 8, 29.) Optional certificates are a new tool available to pipelines in a more competitive environment, to seize new opportunities to serve new markets. While the Commission believes transportation services will be an important part of this environment, it believes that pipelines ought to retain substantial discretion as to what services they offer. Discretion justifies the imposition of accountability for the business decisions made by the pipleine. Pipelines may legitimately decide to remain merchant pipelines. The Commission believes it would be poor policy to tie one hand behind the merchant pipeline's back by removing from it the ability to accept financial risk and to move quickly to serve new sales markets. This would be fundamentally inconsistent with the Commission's policy of promoting competition in the natural gas industry.

2. Infringement on State Authority Over Distribution of Gas

Several state public service commissions strongly object to the rules for Optional Expedited Certificates arguing that they effectively pre-empt the judgment of the state commissions. The New York Department of Public Service, for example, contends that the Commission, by allowing by-pass of LDCs, is entering the "thicket" of the retail rate regulation and holding itself out as prepared to make the ultimate determination of how gas is to be delivered to individual end users. Other state commissions such as the Minnesota Public Utilities Commission and the Minnesota Department of Public Service assert that the states are uniquely able to determine the local effects of by-pass transportation to an end-user. Therefore, they request the Commission to remove transportation directly to an end-user from among the services which pipelines may provide under the optional certificate. The Iowa State Commerce Commission requests a broader exclusion by asking the Commission to remove optional authority in any instance to by-pass an LDC. The Kentucky Public Service Commission believes that the Commission is making the ultimate determination as to whether a by-pass is or is not to be authorized, thereby impinging on the retail cost allocation problems which the Natural Gas Act reserves to the states.

The Columbia Gas Distribution Companies (CDC) provide extensive legal arguments that § 157.104 exceeds the jurisdiction of the Commission under the NGA, and trespasses upon legitimate state authority to determine local convenience and necessity. CDC reiterates its position stated in its comments to the NOPR and concludes that the Commission should accept the determinations of the local convenience and necessity by appropriate state bodies, or condition its orders on subsequent approvals by state regulators. One LDC, SIGECO, proposes that state regulatory review and approval of transactions involving LDC by-pass should be required as a condition to engaging in optional certificate transactions.

Most of the petitioners who argue that the rule interferes with state authority rely on the principles set forth in *Panhandle Eastern Pipe Line Co.* v. *Michigan PSC*, 341 U.S. 329 (1951), and *Panhandle Eastern Pipeline Co.* v. *PSC of Indiana*, 332 U.S. 507 (1947). Finally, APGA repeats its recommendation as stated in its comments to the NOPR that the Commission deny certificate authorization in by-pass cases unless (i) the affected LDC consents to the by-pass *or* (ii) the state or local regulatory body issues an order declaring the by-pass to be in the public interest.

It is well established that the Commission's authority over the transportation of gas in interstate commerce includes the authority to issue certificates for the transportation of gas and the construction and operation of facilities from which direct sales are made. The authority to set rates for direct sales lies exclusively with the states. *F.P.C.* v. *Louisiana Power & Light Co.*, 406 U.S. 621 (1972); *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, 232 F.2d 467 (1956).

The Commission has frequently exercised its authority over transportation to authorize pipelines in interstate commerce to construct and operate the facilities necessary to make direct sales, including transactions involving issues of distributor by-pass. In some instances, the Commission denied requests for direct sales that would by-pass a distributor; in others, it approved the proposal, depending on the circumstances of the case and the factors bearing on the public interest. *See, e.g., Panhandle Eastern Pipe Line Company*, Order Denying Request for Rehearing, 31 FERC 61,333 (1985). The final rule does nothing to change this, nor does it alter traditional jurisdictional relationships between state and federal governments or preempt the states' authority to regulate rates for the retail sale of gas.

The Commission notes that the Staff Subcommittee on Gas of the National Association of Regulatory Utility Commissioners (NARUC) has reported to the NARUC Committee on Gas regarding the by-pass issue. In its report, dated November 7, 1985, the Subcommittee concluded and recommended that "The by-pass issue is best handled by a cost-based rate design which provides services on an unbundled basis. The states should not adopt a policy of prohibition of by-pass. . . Sensibly designed transportation rates would substantially eliminate the incentive to by-pass the LDC . . ."[76]

3. Miscellaneous

One pipeline, Transcontinental Gas Pipeline Corporation (Transco), expresses concern that the rule may not provide true incentives which would exist in a free market environment. Transco believes that the Commission has not clearly and unequivocally provided for increased earnings potential for those pipelines willing to take on added risks. The matter of appropriate earnings potential will be considered with other risk factors related to a pipeline's rate of return along with the issue of how to allocate

[76] Staff Subcommittee on Gas, Report to Gas Committee, "Proposed State Regulatory Actions for Implementation of FERC Rules in Docket No. RM85-1-000, NARUC, at 2-3.

the costs of unused capacity, which will be addressed in future rate cases of the participating pipeline.

C. Rate Conditions Under § 157.103

1. Prohibition on Changing Projected Units of Service

Section 157.103(d)(4) provides that any rate for new service must be designed to recover costs on the basis of projected units of service. The units projected for the new service in the initial rates may be increased in a subsequent rate filing, but may not be *decreased.*

Northern Natural (at pp. 16–19) asserts the prohibition against reducing projected levels is unlawful and confiscatory. Such a provision is also claimed to be unjust and unreasonable because it will not allow the pipeline to reallocate costs resulting from the reduction in sales volumes under the new transportation program.

Northern Natural further believes it may be reasonable to impose this condition upon facilities or expenditures directly related to a new service, but not upon any existing system costs or facilities allocated to the new service. It asserts that a pipeline will never have a realistic opportunity to earn a profit (since units of service will always be adjusted upward) but will always assume the costs if the project fails. Northern Natural contends this result violates the principle that public utilities are entitled to a just and reasonable rate of return, as enunciated in *Smyth* v. *Ames,* 169 U.S. 466 (1898), and *Bluefield Water Works & Improvement Co.* v. *Public Service Comm'n of West Virginia,* 262 U.S. 679 (1923).

With regard to this requirement, Natural (at p. 73) points out that projected units of service are generally annualized service levels associated with a particular service or class of service. Natural believes that if an optional service is granted for a specific period with pregranted abandonment, the pipeline should not be precluded from reducing projected levels in a rate case after the service is no longer authorized.

The Commission will not alter the prohibition against decreasing projected levels of service. As it stated in the final rule, the *optional* expedited certificate procedure is a voluntary procedure available to those applicants willing to shoulder the economic risks of a project. Applicants' concerns ignore this fundamental premise by requesting modifications that would allow ratepayers to assume some risk. In deciding whether to seek an optional expedited certificate for a new service, applicants must carefully consider and project the need for the economic feasibility of the new service and the possibility of diminished profit or even losses if the applicants' expectations do not come to fruition. This is common business reality in competitive markets. The knowledge that the costs of unsuccessful projects cannot be recovered ensures pipeline accountability which is necessary in an atmosphere of increased competition. If the facilities are used for system-wide services after the abandonment of an optional expedited certificate, the pipeline may include the costs of those facilities in rates under § 157.103(d)(8).

2. Reservation Fees and Pipeline Risk

Section 157.103(e) of the final rule permits a reservation charge for firm transportation service consistent with the conditions in § 284.8(d), but not for sales service.

By permitting a reservation charge, the rule, CPUC (at p. 4) asserts, will *not* make the pipeline assume the full financial risk of the project, and that customers will thus bear a portion of the fixed costs regardless of their volumetric purchases. Accordingly, CPUC believes the Commission cannot presume that the initial rate is just and reasonable under section 4 of the NGA.

As the Commission explained in the final rule, a reservation fee for transportation, while admittedly assuring some recovery of fixed costs, does not insulate the pipeline from as much risk as a demand charge would. A pipeline must still find customers who will agree to pay a reservation fee to book firm transportation service, and the customer can determine in its negotiations with the pipeline the duration of the service. Additionally, pipelines are not guaranteed the payment of a reservation fee. Customers may have sufficient options available to avoid paying a reservation fee by shifting risk to the pipeline during the negotiation process. Further, the Commission noted, a reservation fee promotes customer accountability by deterring a few customers from overbooking available capacity. The Commission believes the balance should be struck in favor of opening up capacity to as many shippers as possible, even if this shifts some risk from pipelines to customers. On the whole then, the Commission does not agree that permitting a reservation fee where customers agree to it is inconsistent with the rebuttable presumption that a certificate application under these procedures is in the public interest. The applicant would still bear a substantial risk, and the presumption remains subject to rebuttal through the protest procedures.

Northern Natural (at p. 19) states that the rule unreasonably prohibits a reservation charge for a new sales service and unfairly puts pipelines at a competitive disadvantage. The pipeline asserts that competing non-regulated gas suppliers may require reservation charges, minimum bills, and minimum throughput provisions. Northern Natural believes there is no reason for restricting pipelines in competing for new sales services and that this requirement indicates a bias against pipeline sales services and for transportation.

Tennessee argues that the condition of the regulations which prohibits a pipeline from imposing a reservation charge, under the optional certificate procedures, on sales customers is unreasonable and that such a charge is necessary to prevent firm sales customers from overbooking capacity. Northwest Central (at pp. 19–20), Arkla (at pp. 5–7), and BUG (at p. 17) assert that the rule is arbitrary and unfair because, contrary to the Commission's rationalizations, the same need exists to prevent customers from overbooking sales service as well as transportation service. The Commission disagrees.

The optional expedited certificate removes certification as a barrier to entry where the pipeline assumes all the risks. (50 FR 45467). Allowing a pipeline to require a reservation fee for firm sales tends to inappropriately shift the risks away from the pipeline to the customer. As such, permitting pipelines to require a reservation fee for firm sales tends to undercut the basis for granting the optional, expedited certificate. To be sure, § 157.103(d)(3) permits pipelines to charge a reservation fee for firm transportation. But this limited exception to the requirement that the pipeline assume all the risks is necessary because firm transportation is subject to the non-discriminatory access conditions of §§ 284.8 and 284.9. Hence, the pipeline needs to have some means of preventing customers from booking more capacity than they are likely to use. (50 FR 42471.) The reservation fee is that means. Firm sales service provided under an optional expedited certificate, however, is not subject to a first-come, first-served, non-discriminatory access condition. Pipelines have more control in selecting which customers to serve under an expedited sales certificate. Accordingly, there is no need to permit an exception to the general rule under which the optional expedited certificates are granted, namely that, the pipeline assume all the risks. With

respect to Northern Natural's contentions that the lack of a reservation fee puts pipelines at a competitive disadvantage, the Commission believes that the opposite may be true. Customers may well prefer to purchase service without any minimum charge.

D. Other Proposed Limitations

1. Direct Pipeline Sales

Atlanta Gas (at pp. 1, 9–10), Industrial Groups (at pp. 19–21) and Transco (at p. 20 n.3) are unclear whether an interstate pipeline seeking to make direct *sales* to industrial customers under the optional expedited certificate procedures must also provide all customers with non-discriminatory access to *transportation*. Atlanta Gas and Industrial Groups are in favor of open access, whereas Transco asserts that open access to transportation in this situation is an unjustified "additional burden".

The October 24, 1985, Technical Corrections to Order No. 436 removed the words "or sales" from the applicable discussion in the final rule. In this way, the Commission reflected its "intent that *only* optional transportation certificates, *not* optional sales certificates, will be subject to the prerequisite that the applicant has filed for and will accept a new blanket transportation certificate under new § 284.221 . . . "(emphasis in original). (Technical Corrections, Mimeo at pp. 2–4.) This clarification applies to a pipeline's direct sales as well as its sales for resale.

2. Environmental Requirements

Arkla's (at pp. 8–9) second concern relates to the environmental information required by new §157.102(b)(1)(v). Specifically, that section provides that any application filed under Subpart E must contain an environmental report, as sepcified in Appendix B to Part 2 of the Commission's regulations. In the preamble to the final rule, the Commission also states that "the provisions of § 157.7 of Subpart A, which permit abbreviated applications, will be available for applications under Subpart E as well." (Section IV.C. of Order No. 436.) Moreover, § 2.82(a) provides that, in certain situations, applications need not be accompanied by the detailed report specified in Appendix B. From this, Arkla reasons that the detailed environmental report should not be required for abbreviated certificate applications submitted under Subpart E. Accordingly, it requests that § 157.102(b)(1)(v) be revised to exclude such applications.

Arkla, however, has overlooked an important point. The environmental requirements of § 2.82(a) apply only to applications filed under no-longer-effective §§ 157.7(b), (c) and (d) for the construction of budget-type facilities. These budget certificates only permitted the construction of facilities within specified dollar amounts, thus providing a check on potential environmental consequences. Moreover, such budget certificates have been superseded by the blanket certificate program which is subject to Subject F of Part 157 which is subject to § 157.206(d) environmental conditions. As of November 18, 1985, the optional expedited certificates, available under Subpart E of Part 157 were also made subject to the § 157.206(d) conditions. Moreover, there are no similar limits on construction that may occur under Subpart E. Therefore, the Commission does not believe that the requirements for the filing of environmental information should be relaxed in this instance.

3. Entry of Unsafe Pipeline Systems

Under Subpart E of Part 157, an "eligible applicant" is defined at § 157.101(b)(1) as "any natural gas company or person that will be a natural gas company upon completion of any proposed construction or extension of natural gas facilities." California PUC (at p. 15), however, suggests that the Commission narrow the eligibility requirements "to ensure that the public is not endangered through a proliferation of pipelines operated by companies not currently subject to governmental regulations for pipeline operations."

This concern is unfounded. First, California PUC offers no explanation of what restrictions it thinks the Commission should impose to limit entry into the field. Second, once the applicant becomes a natural gas company, it will be subject not only to regulation by the Commission, but also to the safety requirements of the Department of Transportation in its implementation of the Natural Gas Pipeline Safety Act of 1968. In the Commission's view, this constitutes sufficient protection against unsafe systems. Therefore, modification to §157.101(b)(1) is unnecessary.

4. Qualifying Facilities

Another question with respect to Subpart E is raised by Arkla (at pp. 7–8). In particular, Arkla states that qualifying facilities that are constructed pursuant to Subpart E should be available at any time following their construction for the performance of self-implementing blanket transportation transactions under Subparts B and G of Part 284. A "qualifying facility" is defined in § 157.101(b)(3) as "a facility or a portion of a facility that will be used solely to provide new service" and, pursuant to § 157.101(b)(2), "new service" means "a service for which the applicant for a certificate under this subpart does not have certificate authority."

The Commission agrees with Arkla's interpretation of the Commission's optional certificate regulations. The definition of "new service" in § 157.101(b)(2) could be read to imply that facilities built under an optional certificate can only be used to provide a service for which no prior certificate authority existed. The problem with this interpretation comes when considering the interrelationship of this provision with blanket certificate authorizations. Since an applicant for an optional certificate may have already received a blanket certificate, it could be argued that our regulations prohibit blanket transportation through optional certificate facilities since the holder of a blanket transportation already has "certificate authority" to provide service and thus does not fall within the definition of "new service."

The Commission does not adopt this interpretation of its regulations. Section 157.101(b)(2) as written is consistent with Arkla's request that facilities installed under the optional procedure be useful for blanket transportation. The certificate authority granted in a blanket transportation certificate is only valid to the extent certificated capacity exists. Since there is no requirement that additional capacity be constructed (§ 284.8(e)), the blanket certificate authority for transportation is only triggered when the facility is built. Such capacity can be the result of an optional certificate or a traditional certificate. Thus, "new service" cannot be provided by the applicant, under a blanket transportation certificate until, in the case of Arkla's question, the facility is build under the optional procedures.

VII. Discussion of Procedural and Administrative Issues

A. Scope of Notice

1. Notice of Grandfathering Provisions was Adequate

Colorado Interstate, (at p. 28) Intercon Gas (at p. 6) and Cascade Natural (at pp. 13–15) argue that they had insufficient notice and opportunity to comment on the specific rules for determining whether particular pre-existing transportation services are grandfathered. Texas Eastern Transmission also argues that the NOPR was inadequate in setting out criteria for

grandfathering section 311 transactions, since the NOPR failed to mention how transactions existing before Order No. 436 would be treated in the final rule. Similarly, AGA argues that the abrupt termination of existing and important transportation programs was not indicated in the NOPR, and thus the industry was without notice and opportunity for comment on this aspect of the final rule.

The Commission believes that the public was provided with sufficient notice and opportunity to comment on the extent that existing programs would be allowed to continue, without subjecting the pipeline to the requirements and regulations promulgated by Order No. 436. Specifically, the NOPR proposed extensive revisions to the then existing authority of interstate and intrastate pipelines to transport gas under NGPA section 311. By proposing to revise the requirements under which existing NGPA section 311 transactions are authorized for a maximum of two years and to substitute new requirements for all NGPA section 311 transactions of indefinite term, the Commission raised for comment the issues of when the new requirements would apply and when the old requirements would no longer apply. The Commission's resolutions are logical and integral parts of implementing the overall proposal. The Commission believes that the transitional provisions address inevitable implementational concerns about which requirements would apply effective on November 1, 1985, and which requirements would apply for any transaction authorized and commenced on or before October 9, 1985. See §§ 284.105 and 284.125.

Identical issues were also raised in the NOPR, to the extent that the requirements for the then-existing blanket certificate programs were revised. In fact, the proposed rule specifically provided that existing blanket certificate authority for transportation under former § 157.209(a)(1) would continue until the end of the term originally authorized. Section 284.223(f) provided that new blanket certificates would not provide for continued transportation under former § 157.209, beyond the date authorized by the certificate issued under that section. At the expiration of that authorization, however, a new authorization would be available under the proposed new blanket certificate regulations (50 FR 24146). In addition, specific transitional provisions were proposed for transportation for low-priority end users under former § 157.209(e), because the United States Court of Appeals for the District of Columbia had mandated that all transportation under that section must end by October 31, 1985.

The Commission also proposed to eliminate particular programs, including Order No. 60 arrangements, by revising § 284.221 which authorized these arrangements. (50 FR 24143.) Five year and 10-year automatic transportation authorization for high-priority end users would be eliminated prospectively for transactions commencing after a date certain. (50 FR 24145.) Finally Order No. 63 transactions would be abolished by making them subject to the same access and rate conditions that apply to intrastate pipelines. (50 FR 24146). The Commission's exploration of these issues was relatively detailed.

2. Expedited Producer Abandonment Policy and the Scope of the Notice of Proposed Rulemaking

In Order No. 436, the Commission affirmed its policy of granting abandoment authorizations on an expedited basis by means of existing procedures if: (1) The producer is subject to substantially reduced takes without payment; (2) the producer and pipeline have engaged in a "buy-out" as contemplated by the Commission's policy statement (§ 2.76); or (3) the underlying contract has expired.

Northwest Central (at p. 12) argues that implementation of the Commission's policy concerning expedited producer abandonments is not supported by substantial evidence and that it is procedurely defective, since the Commission failed to provide parties sufficient notice and a fair opportunity to comment on an aspect of the final rule that is tied to and a part of the new transportation program. Similarly, AGA (Appendix A at pp. 4–5) complains that the Commission reaffirmed and modified its prior statement of policy on take-or-pay (§ 2.76) without notice or an opportunity for comment, with no consideration of the public policy interest of maintaining reliable gas supplies, and with no consideration or provision for the financial impact of this new provision on pipeline buyers. Consolidated Natural and United Distribution Companies (at pp. 52–54) note that the NOPR requested comment on what, if anything, the Commission should do to expedite producer abandonment (50 FR 24145), but argues that the issuance of entirely new provisions for abandonment of gas dedicated to the interstate market is plainly unlawful. The commenters complain that no proposals were made in reference to: (1) The scope or terms of expedited abandonment; (2) the categories of gas affected; or (3) the protest procedures that would be available. In contrast, Peoples Gas recognizes that the Commission's policy statement on producer abandonments does not have the legal force and effect of a substantive rule and that pipelines and producers must support their applications on a case-by-case basis. This commenter nevertheless argues that the Commission must permit an opportunity for comment on this policy, because an expression of intent to expedite this type of proceeding in a quick and possibly truncated procedure, lends a certain general presumption of validity to these applications.

The Commission believes that commenters had notice that it was intending to address the issue of expedited producer abandonments in the final rule. As noted by Consolidated and UDC, the Commission specifically requested comment on what procedural changes to the producer abandonment and certificate regulations are needed to allow efficient implementation of transportation arrangements under the regulations permitting transportation by interstate pipelines on behalf of shippers other than other interstate pipelines. (50 FR 24145).

The Commission also believes that the applicants have misconstrued the substantive and procedural requirements that must be followed to promulgate and support implementation of a statement of policy. Specifically, the Administrative Procedure Act (5 U.S.C. 553 (1982)) does not require the Commission to provide notice and opportunity for comment before expressing its tentative intentions in a statement of policy.[78] Similarly, the Commission is not required to support a policy statement with substantial evidence or an analysis of the effects from the implementation of its policy at the time the policy statement is promulgated, because any application of a policy to an individual case must be supported by the fact and record in the case.[79] Consequently, an opportunity to

[78] The Administrative Procedure Act does not require an agency to publish a general notice of proposed rulemaking in the **Federal Register** before it promulgates a statement of policy, 5 U.S.C. 553(d)(A) (1982).

[79] *See* Pacific Gas & Electric Co. V. FPC, 506 F. 2d 33, 36–40 (D.C. Cir. 1974); American Bus Association v. United States, 627 F.2d 525, 527–31 (D.C. Cir. 1980); Amrep Corp. v. FTC, 768 F.2d 1171, 1177–78 (10th Cir. 1985).

present views on the fairness and the effect of the policy statement are afforded affected parties during individual cases, when a policy may be applied.

3. Application of Non-discriminatory Access to all Part 284 Transactions and the Scope of the Notice of Proposed Rulemaking

Natural Gas argues (at p. 56) that the Commission failed to give proper notice, as required by the Administrative Procedure Act (5 U.S.C. 553), of its intent to subject section 311 or Order No. 60 arrangements to additional access conditions.

The Commission believes that it provided sufficient notice of its intent to impose additional access conditions on section 311 and Order No. 60 arrangements. In particular, §§ 284.104(b), 284.124(b) and 284.221(c)(1) of the proposed regulations contained a new non-discriminatory access provision applicable to interstate and intrastate pipelines transporting under NGPA section 311. (50 FR 24 142–43.) Similarly, the NOPR proposed to substantially revise the regulations that permitted Order No. 60 arrangements to consolidate this blanket certificate with the blanket transportation authorization proposed by the NOPR. In fact, the NOPR proposed to amend the regulations that authorized Order No. 60 transactions to establish the general terms and conditions for these blanket certificates. (50 FR 24,143).

4. The Notice of Proposed Rulemaking Provided Insufficient Notice to Abolish all Minimum Commodity Bills

In the final rule, the Commission denied commenters' requests to abolish all minimum commodity bills. The Commission reasoned that these proposals went considerably beyond its original proposal. The final rule, however, requires reductions of certain minimum commodity bills by an amount proportionate to the reduction in the firm sale entitlement. Similarly, it requires a pipeline to credit against a minimum commodity bill any obligations for firm sale entitlements that are converted to firm transportation entitlements.

The reductions in, and credits to, minimum commodity bills are consistent with and implement the goal of freeing up unwanted firm capacity and providing flexibility for customers. Under new § 284.106, the Commission will facilitate the reduction in firm sales entitlements and encourage conversions to firm transportation. In essence, these reductions and credits are a logical outgrowth and an appropriate extension of the Commission's original proposal to permit any firm sales customer of an interstate pipeline that becomes an open transporter to reduce contract demand for firm sales service from that pipeline.

Although recommending that the Commission issue a notice and request comment on the issue of eliminating minimum commodity bills, Columbia nevertheless argues that the issues raised by the elimination of minimum commodity bills are within the scope of this rulemaking. In particular, Columbia argues that eliminating minimum commodity bills would advance three basic objectives of the final rule by eliminating the distortions in gas costs to consumers, permitting purchasers an effective choice of supply and permitting pipelines to compete on a "level playing field."

The Commission still believes that eliminating all minimum commodity bills, including those of pipelines that decide not to take advantage of the programs established by Order No. 436, is considerbly beyond the scope of this rulemaking. As discussed above, the reductions and credits permitted in the final rule implement the reduction and conversion of firm sales entitlement by firm sales customers. In contrast, the Commission did not propose to eliminate all minimum commodity bills on a generic basis. The commission does not believe that it is necessary to eliminate all minimum commodity bills in order to implement the final rule. In addition, elimination of minimum commodity bills could have adverse effects that are not now apparent. For these reasons, the Commission will continue to examine fixed cost minimum bills on a case-by-case basis.[80]

B. Allegedly Unlawful Use of Rulemaking Authority: Reduction/ Conversion Options

Panhandle Eastern and Texas Eastern claim that Order No. 436 represents an unlawful exercise of the Commission's generic rulemaking authority.

Texas Eastern asserts that the rule abrogates its resale contracts and service agreements without considering the specific facts and circumstances surrounding each contract and without making the necessary findings based on substantial record evidence. Panhandle Eastern maintains that, because it does not resolve pipeline take-or-pay obligations, the rule is not a comprehensive package, and the initial justification for conducting generic rulemaking no longer exists.

The Commission has broad discretion to proceed through a generic rulemaking or on a case-by-case basis.[81] Through Order No. 436 the Commission furthers comprehensive regulatory goals in a manner that it could not accomplish effectively through case-by-case determinations. The Commission proposed the rule after it concluded from five months of extensive inquiry that the regulatory framework for the natural gas transmission industry has not sufficiently adjusted to economic changes to promote the public interest in the evolving market. The goal of the rule is to ensure that natural gas markets are sufficiently competitive to provide consumers with natural gas at the lowest reasonable rates consistent with reliable, long term service. The Commission's choice not to adopt a new policy or rule but to reaffirm its previous Statement of Policy does not alter the comprehensive nature of Order No. 436. In any event, the validity of any generic rulemaking depends not on whether it comprehends all aspects of a problem but, rather, on whether it is a reasonable response to the issues it does address.

C. Legality of Technical Corrections

On October 24, 1985, the Commission issued technical corrections to certain provisions of Order No. 436.

Among other things, the document corrected the eligibility dates in §§ 284.105, 284.125 and 284.223(g) for permitting the continuation of existing transportation arrangements during the initial implementation of Order No. 436.[82] The corrections also made clear that the transactions eligible to be "grandfathered" for a limited term and, in some cases, subject to new conditions are only those services actually being provided on or before October 9, 1985.[83]

AGA, ANR, Cascade, Florida Gas, Oklahoma Natural, Teepak and Texas Eastern variously claim that, by correcting Order No. 436, the Commission undertook substantive changes in the rule and therefore violated their 5th Amendment due process rights and contravened the notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553. Additionally, AGA, Cascade, Consolidated Fuel Supp., Florida Gas and Teepak characterize the issuance of

[80] Transwestern, 32 FERC ¶ 61,009 (1985).

[81] *See* SEC v. Chenery Corp., 332 U.S. 194, 202–3 (1947); Permian Basin Area Rate Cases, 390 U.S. 747, 790 (1968); Wisconsin Gas Co. v. FERC, 770 F.2d 1144, 1166 (1985).

[82] *See* Section II.C. *supra*.

[83] The Commission subsequently allowed very limited exceptions to this restriction. See Transcontinental Pipeline Company clarification, Section II.D., *supra*.

such technical corrections as retroactive rulemaking.

Petitioners assert that the correction of the dates in all three sections will have a material effect on the natural gas industry. Petitioners' concerns with respect to the changes in §§ 284.105 and 284.125 can be summarized by the position taken by Florida Gas that such corrections could operate to force interstate pipelines to become a "transporter by default" if, in reliance on Order No. 436 it contracted for and/or commenced service pursuant to a section 311 transportation agreement after October 9, 1985, but before October 24, 1985.

Most of the petitioners request that the Commission restore the "effective dates" in Order No. 436.[84] AGA asks that the Commission grandfather any transaction authorized before November 1, 1985, or alternatively, grant a rehearing on the new effective date. Cascade requests that the Commission withdraw the new date or extend the grandfather provisions to cover any Section 311 service commenced on or before October 24, 1985, the date of the Technical Corrections rule.

The Commission's corrections of October 24, 1985, were "technical" in the sense that they codified the Commission's intent incorrectly stated in Order No. 436. The Commission recognizes its obligation under the Administrative Procedures Act to provide adequate public procedures before substantively amending its regulations. The October 24 changes conform to those obligations in two ways. First, they do not represent a departure from the scope or intent of Order No. 436, as issued on October 9, 1985, with regard to the appropriate treatment of existing self-implementing (NGPA section 311) or blanket certificate transactions. These transactions which would have terminated at some time under new regulations, in any event. Participants in the proceeding had ample opportunity to present their views on how this transition should occur after November 1, 1985. Second, the corrections issued before the effective date of the rule and were promulgated before the end of the Commission's statutory opportunity to modify its orders.[85]

After issuance of Order No. 436, it was discovered that the Commission had inadvertently provided a "window" in the provisions of §§ 284.105, 284.125, and 284.223(c) within which parties could negotiate new transactions or activate transportation arrangements that had existed only on paper with the single purpose of avoiding having to make a serious choice about participating in the new program and, in some cases, about providing non-discriminatory access to pipeline transportation services. This result was plainly contrary to the goals of the order and action was taken quickly to clarify the Commission's original intent.[86] The Commission could have delayed action on these changes but did not do so for reasons of fairness. It determined that parties to existing section 311 and blanket certificate transactions could not be expected to wait for a rehearing order to be told of the entirety of a Commission decision that affects the continuance or discontinuance of ongoing gas supply arrangements. The Commission chose to act quickly.

The Commission recognizes that, because transactions authorized or commenced after October 9, 1985, may not be continued under the former rules, some sellers and purchasers of gas were caught unaware. The Commission does not believe, however, that the final result was entirely unexpected by these persons or that the impact of the change in dates has been inordinately harsh. The position of these parties, including the applicants, is obviously no different than it would have been if Order No. 436 as originally issued had specified the dates announced in the Technical Corrections. More importantly, the parties to these transactions had little reason, in light of the breadth of the Commission's proposal, to depend on the indefinite continuation of existing transactions.

Finally, as stated above, the Commission is unpersuaded by the claims of retroactive rulemaking presuppose that the Commission acted to amend or reverse the prior rule and policy in disregard of the impacts that such action would have on those who relied on Order No. 436, as issued.[87] The claim by Florida Gas that the Commission's correction could have made it a "transporter by default," *i.e.*, subject unintentionally to non-discriminatory access, reflects a misunderstanding. No transaction begun before November 1, 1985, except those originally authorized under the Commission's Order No. 234-B, are now or would have been subject to the open access condition after November 1, 1985. The Commission's swift issuance of corrections was aimed at averting misunderstandings and detrimental reliance.

D. Postponing Consideration of Part D

In the NOPR, the Commission proposed a package of four parts: Part A included a comprehensive transportation program; Part B included a program to alleviate the problem of take-or-pay; Part C included an optional expedited certificate program under NGA section 7; and Part D included a new billing procedure. In response to the written and oral comments, the Commission issued in Order No. 436 Parts A through C and requested supplemental oral and written comments on Part D.

Many applicants, including pipelines such as Transco, Panhandle, Northwest, Northwest Central and Natural, distributors such as Columbia Gas Distribution, NI-Gas, SoCal, Washington; North Carolina, and UDC, two trade associations (APGA and INGAA) and the California PUC criticize the Commission's decision to extend the public procedures for Part D, Block Billing procedures, rather than adopt a final rule on that subject. They point out that the Commission argued in the NOPR that the four parts of the NOPR were interrelated, interdependent portions of one rule. Therefore, they conclude that the Commission should not have issued Parts A, B and C separately.

UDC argues that the Commission's piecemeal action conflicts with its policy concerns that it issue an integrated comprehensive program to address the marketing problems in the natural gas industry. Citing *ITT World Communications v. FCC*, 725 F.2d 732, 754 (D.C. Cir. 1984), Northwest Central argues that it is clear that "an agency does not act rationally when it chooses and implements one policy and decides to consider the merits of a potentially inconsistent policy in the very near future."

Other applicants raise two practical problems for the Commission's failure to issue Part D. The California PUC argues that, without block billing, producers of high-cost gas will rely on rolled-in pricing which will make distributors and pipelines uncertain whether to participate in the Commission's transportation programs. The California PUC concludes that gas consumers will therefore not obtain a needed reduction

[84] Consolidated Fuel Supply and Teepak ask that the Commission only consider their requests for rehearing in the event that the Commission adversely disposes of their Joint Emergency Request for Clarification, filed November 6, 1984, in which they seek clarification that their present transportation arrangements may continue after November 1, 1985.

[85] *See* section 19(a) of the Natural Gas Act.

[86] That intent is made clear today by the Commission's formal ratification of those changes in this order.

[87] *See* Note 11, *supra*.

in the cost of high-cost gas to market-clearing levels.

Similarly, Panhandle and Transco argue that, without immediate final action in Part D and continued rolled-in pricing, pipelines cannot adequately compete in the spot market. Panhandle argues that because the Commission has failed to define the billing changes, it is uncertain how a pipeline will try to market its gas supplies and recover its gas costs.

Several LDCs, NI-Gas, Washington, Columbia Dist., North Carolina and SoCal, and a pipeline company, Northwest, argue that it is impossible for LDCs to ascertain whether to convert their firm purchase entitlement to transportation because, until block billing is adopted, it is impossible to determine at what price the pipeline would sell gas to compete with non-regulated markets. As a possible solution, NI-Gas suggests that a decision to convert or reduce CD either should be made reversible, or made effective within 150 days of final determination of Order No. 436 or Part D.

In the request for supplemental comments on Part D, the Commission reviewed extensively the arguments for and against postponing final action on block billing, while issuing final regulations in the other three parts. 50 FR 42373–375. Briefly, the Commission discussed the numerous motions from every segment of the industry and requests from members of Congress who asked that the Commission acquire additional information on the overall affects of Part D on the industry. A petition filed by ANR Pipeline and supported by 21 other persons on August 14, 1985, requested the Commission to issue an interim rule in Part A and to renotice Part D. The Commission received responses to ANR's petition which argued for and against issuing separate parts of the rule. The majority of the applicants requested that the Commission delay action in order to acquire additional information.

The Commission also received numerous comments that raised specific issues relating to implementation of final regulations. These commenters offered alternatives to the proposal. The commenters raised serious questions that convinced the Commission that it had to acquire additional information before issuing a final rule.

For the renotice, the Commission revised the block billing procedures based on proposals raised by commenters. The request for supplemental comments discusses the proposed revisions. Recognizing the critical importance of addressing the billing issues, the Commission nevertheless does not believe that severing Part D creates inevitable inconsistencies with Order No. 436. Arguments based on the *ITT World Communication* case therefore provide no useful guidance on the issue of whether the Commission is dealing appropriately with Part D. The Commission's objective, regardless of the nature of its final action on Part D, is to develop a comprehensive regulatory scheme for gas transportation and pricing that will enhance the economic efficiency of the market. Assessment of any "potential inconsistency" must await the Commission's final rule in Part D.

The Commission's further examination of these issues can only benefit the industry. There is no justification for delaying the effect of the other parts of the rule.

VIII. Further Clarification and Denial of Petition for Stay

A. Request by INGAA for Clarification

Following issuance of Order No. 436, the Commission received numerous petitions requesting clarification of the final rule or some other special relief from application of the rule. The following discussion is part of the Commission's series of responses but addresses the generic or hypothetical situations presented to it by a major trade association.

On October 31, 1985, the Interstate Natural Gas Association of America (INGAA) filed a request for clarification of Order No. 436. INGAA's request raises a number of issues regarding the transition period provided by Order No. 436.[88]

Question. Concerning contracts amended between October 9, 1985, and November 1, 1985, to provide for transportation extension periods beginning after October 9, 1985, do § 284.105 and 284.125 provide for interstate pipelines and intrastate pipelines, respectively, to transport after October 31, 1985, pursuant to such extension agreements?

Answer. No. In order for the transitional transportation authority under § 284.105 or 284.125 to apply, the extension period must have been contractually provided for on or prior to October 9, 1985, and otherwise authorized under the Commission's regulations.[89]

Question. Concerning an interstate pipeline that (1) continues any blanket certificate transportation authorized under previously effective § 157.209(e) (Order No. 234–B transportation[90] after October 31, 1985, but (2) does not apply under § 284.221 before December 15, 1985, for a new blanket certificate, and (3) ceases all Order No. 234–B transportation as of that date: After December 15, 1985, will the pipeline remain subject to the open-access and rate conditions of Order No. 436 by reason of having continued its Order No. 234–B transportation after October 31, 1985, and therefore be required to accept requests for either blanket certificate or NGPA section 311 transportation received after December 15, 1985?

Answer. An interstate pipeline will not be required pursuant to the non-discriminatory access conditions of §§ 284.8 and 284.9 to provide blanket certificate transportation in response to transportation requests received after December 15, 1985, if by that date the pipeline ceases all Order No. 234–B transportation and all new blanket certificate transportation commenced during the period November 1, 1985, to December 15, 1985.

An interstate pipeline that continues any blanket certificate transportation after October 31, 1985, is deemed to be still transporting under authority of its original blanket certificate issued under previously-effective § 157.209, since a new certificate may not have been issued under § 284.221 as revised by Order No. 436 by that time. Further, a pipeline's continued exercise of its original blanket certificate transportation authority and reliance on new § 284.223(g)(2) to maintain its Order No. 234–B transportation arrangements will, as provided in § 284.223(g)(2), subject the pipeline to the non-discriminatory access conditions of Order No. 436. Therefore, the pipeline will be required to accept, under its old blanket certificate, new requests for transportation that the pipeline is authorized to provide under the revised blanket certificate regulations.

If an interstate piepline does not apply under § 284.221 by December 15, 1985, for a new blanket certificate, the pipelines authority under its old blanket certificate will be deemed to cease to the extent that it provided for (1) the continuation of Order No. 234–B transportation and (2) the performance of new blanket certificate transportation required, pursuant to §284.223(g)(2), to

[88] 33 FERC ¶61,007 (1985), 50 FR 42408 (October 18, 1985).

[89] Similar clarification requests were filed by El Paso Natural Gas Company on October 22, 1985, and Panhandle Eastern Pipe Line Company on October 21, 1985. The Commission responded to these requests in its orders issued in this docket on October 30, 1985.

[90] 48 FR 34875 (Aug. 1, 1983).

be undertaken during the period from November 1, 1985, to December 15, 1985. Accordingly, if an interstate pipeline does not apply by December 15, 1985, for a new blanket certificate, it must by that date cease *all* blanket certificate transportation under Part 157 *except* its Order No. 319 transportation initially authorized under previously-effective § 157.209(a)(1) which is permitted to continue under new § 284.223(g)(1). However, by ceasing all blanket certificate transportation except that which qualifies under § 284.223(g)(1) on a non-discriminatory basis by December 15, 1985, or any other date certain, the pipeline will shield itself from the requirement to honor requests after that date for blanket certificate transportation.

If an interstate pipeline that has filed a statement of notification in accordance with § 284.223(g)(2)(i) does apply under § 284.221 prior to December 15, 1985 for a new blanket certificate, the pipeline's transportation authority under its old blanket certificate to continue its Order No. 234–B transportation and to undertake new blanket certificate transportation will remain in effect (subject to the conditions of §§ 284.223(g) (1) and (2), as applicable) until the pipeline's new blanket certificate is issued and a reasonable time for the pipeline to accept the certificate has elapsed. Further, if an interstate pipeline applies by December 15, 1985, for a new blanket certificate, thereby providing for the full transportation authority under its old blanket certificate to be extended until the new certificate is issued, the requirement under § 284.223(g)(2) that the pipeline provide additional blanket certificate transportation on a non-discriminatory basis, upon request, will continue during such period following December 15, 1985.

Acceptance of a new blanket certificate by an interstate pipeline will simultaneously extinguish the pipeline's transportation authority under the old certificate, place all existing blanket certificate transportation under the new blanket certificate, and continue the pipeline's non-discriminatory access obligations under §§ 284.8 and 284.9. Upon acceptance of a new blanket certificate, a pipeline will be subject to the open-access conditions of §§ 294.8 and 284.9 by operation of § 284.221(c), which is applicable to all blanket certificates issued after November 1, 1985, for the entire periods that they are in effect, as opposed to § 284.223(g)(2), which relates only to the transition period.

An interstate pipeline will not be required to provide any NGPA section 311 transportation by reason of a blanket certificate, including transportation under Order No. 234–B continued under § 284.223(g)(2), even if such transportation is continued beyond December 15, 1985. A pipeline is required under §§ 284.8 and 284.9 to provide additional NGPA section 311 transportation only if the pipeline has already undertaken new NGPA section 311 transportation after October 31, 1985. That is, the *first* new NGPA section 311 transportation undertaken by a pipeline after October 31, 1985, is entirely within the pipeline's discretion. However, the pipeline's choice to accept its first new NGPA section 311 transportation arrangement after October 31, 1985, makes the pipeline subject to the non-discriminatory access conditions. Further, the Commission wishes to make a clarification regarding pipeline that commenced or extended NGPA section 311 or blanket certificate transportation arrangements during the period October 9, 1985, to November 1, 1985. Regardless of the purported expectation of the pipelines, if a transportation arrangement did not qualify for continued transportation under § 284.105 or § 284.223(g)(1), the continuation of such transportation on and after November 1, 1985, constitutes the commencement of new transportation on November 1, 1985, and thus makes the pipeline subject to the non-discriminatory access conditions of Order No. 436.

A pipeline will be required under § 284.7(b)(2) to file new rates to be effective by July 1, 1986, only for those transportation arrangements that will still be in effect on July 1, 1986. Therefore, for example, if the pipeline ceases all Order No. 234–B transportation by December 15, 1985, the pipeline is not required to file for such transactions rates to be effective July 1, 1986. However, rates charged prior to December 15, 1985, will be subject to refund if it is determined that they were not consistent with the interim rate conditions in § 284.7(b)(1).

Question. Concerning an interstate pipeline that begins a new NGPA section 311 transportation arrangement prior to December 15, 1985, pursuant to the non-discriminatory access conditions that will attach if Order No. 234–B transportation is continued after October 31, 1985; must the new NGPA section 311 transportation arrangement end on December 15, 1985, if the pipeline has not filed an application for a new blanket certificate as of that time?

Answer. INGAA's question in this regard indicates a misunderstanding of the operation of the non-discriminatory access conditions in the context of the transitional provisions of § 284.223(g)(2). An interstate pipeline that continues Order No. 234–B transportation after October 31, 1985, is not required by reason of such Order No. 234–B transportation to provide NGPA section 311 transportation service. The December 15, 1985, date in § 284.233(g)(2) is relevant only to blanket certificate transportation continued under authority of, or required to be commenced pursuant to, that section. If a pipeline begins any new NGPA section 311 transportation, such transportation may continue after December 15, 1985, subject to the non-discriminatory access condition and the other Part 284 conditions, until the expiration of its underlying contractual terms, as provided by §§ 284.102 or 284.122, as applicable. But, as the Commission stated elsewhere, if a pipeline stops all NGPA section 311 transportation on a non-discriminatory basis, the pipeline is no longer subject to the non-discriminatory access provisions applicable to NGPA section 311 transportation.

Question. If an interstate pipeline commences new NGPA section 311 service because it is subject to the open-access conditions of Order No. 436 by reason of its Order No. 234–B transportation, will the pipeline be subject to the open-access conditions with respect to all requests for transportation that the pipeline would be authorized to provide under NGPA section 311?

Answer. Again, as explained above, an interstate pipeline is not required to agree to additional transportation under NGPA section 311 because it chooses to continue its Order No. 234–B transportation. A pipeline, including an intrastate pipeline, is required by the non-discriminatory access conditions of Order No. 436 to provide additional NGPA section 311 transportation only once the pipeline, in its sole discretion, has already begun its first new NGPA section 311 transportation arrangement on or after October 9, 1985.

While the non-discriminatory access conditions will not apply to an interstate pipeline after December 15, 1985, if by that date the pipeline has ceased (1) all blanket certificate transportation begun or extended during the period October 9, 1985, to December 15, 1985, (2) all Order No. 234–B transportation, and (3) all NGPA section 311 self-implementing transportation commenced on or after October 9, 1985, the rate conditions of

§ 284.7 will apply to all Order No. 319 blanket certificate and NGPA section 311 transportation arrangements commenced prior to October 9, 1985, that are still in effect after December 15, 1985.

Question. If an interstate pipeline ceases all Order No. 234-B transportation by December 15, 1985, and does not accept a new blanket certificate by that date, will the pipeline be required under the open-access conditions to accept requests received after December 15, 1985, for NGA section 7 transportation?

Answer. It is unclear whether INGAA's reference to section 7 transportation means only blanket certificate transportation or all section 7 transportation, including that under traditional section 7 certificates. In either case, however, if an interstate pipeline has ceased all blanket certificate transportation other than Order No. 319 transportation continued under § 284.223(g)(1) by December 15, 1985 and has not *applied* for a new blanket certificate by that date, the interstate pipeline will not be required after December 15, 1985, by reason of the open-access conditions of Order No. 436, to accept service requests that require utilization of either blanket certificate or traditional NGA section 7 authority. Further, in such cases, the interstate pipeline will not be required pursuant to the open-access conditions to enter into new transportation arrangements after December 15, 1985, even if the interstate pipeline began new blanket certificate transportation during the period November 1, 1985, to December 15, 1985. That is because these arrangements, even if commenced solely because of the non-discriminatory access conditions in § 284.233(g)(2), must also cease on December 15, 1985, if the interstate pipeline has not filed for a new blanket certificate. As explained above, the pipeline's failure to apply for a new certificate will result in the extinction of the pipeline's authority under its old certificate to provide any blanket certificate transportation except transportation authorized under other terms of Order No. 436 (including Order No. 319 transportation continued under § 284.223(g)(1).)

Question. If a pipeline enters new blanket certificate transportation arrangements after December 15, 1985, may it ever terminate its obligation to provide such transportation?

Answer. Yes. A pipeline may determine that it will not accept new transportation requests and will not agree to extensions of service for NGPA section 311 transportation as of any given time. If so, however, the pipeline must first seek to surrender its blanket certificate and abandon transportation thereunder pursuant to § 157.18 of the Commission's Regulations. *See* 50 FR 42434 (1985). A pipeline's obligation to accept new transportation requests will cease under its blanket certificate when it receives such abandonment approval. If such transportations are covered by the pre-granted abandonment under § 284.221(d), the blanket certificate must still be surrendered. A pipeline may terminate its obligation to transport gas under NGPA section 311, as long as it ceases or discontinues all such transportation, except transportation authorized to continue under § 284.105 or § 284.125, on a non-discriminatory basis. However, the undertaking thereafter of any new blanket certificate or NGPA section 311 transportation will cause the pipeline to again become subject to the non-discriminatory access conditions. Further, as explained in Order No. 436,[91] a pipeline may not decide that it will provide no further self-implementing blanket certificate transportation and then again start accepting new customers in a manner that has the effect of discrimination against shippers that sought transportation during the pipeline's period of "retirement".

Question. Concerning a pipeline that continues an NGPA section 311 transportation arrangement that was commenced prior to October 9, 1985, (1) only until the earlier of October 9, 1987, or the expiration date of the contractual primary term or extension period, as applicable, that was in effect on October 9, 1985, or (2) after the expiration date of the primary term or extension period that was in effect on October 9, 1985; does such transportation in either case make the pipeline subject to the non-discriminatory access conditions of Order No. 436, if the pipeline has not applied for a blanket certificate?

Answer. Regardless of whether an interstate pipeline accepts a new blanket certificate, it is required to provide non-discriminatory access to NGPA section 311 transportation only if it undertakes new NGPA section 311 transportation service after October 31, 1985, or agrees to an extension of an NGPA section 311 arrangement so that transportation will continue beyond the expiration of the primary term or extension period that was in effect on October 9, 1985.

Question. If a pipeline commences new NGPA section 311 transportation after October 31, 1985, will the pipeline be required, pursuant to the non-discriminatory access conditions of Order No. 436, to provide:

(1) NGPA section 311 transportation for other shippers seeking service?

Answer. Yes, on a non-discriminatory basis subject to the terms and conditions in Order No. 436.

(2) NGPA section 311 transportation for shippers seeking extensions of such service that was commenced prior to October 9, 1985?

Answer. Yes, on a non-discriminatory basis subject to the terms and conditions in Order No. 436.

(3) Blanket certificate transportation?

Answer. Not by reason of the new non-discriminatory access condition applicable to new NGPA section 311 transportation service.

Question. If, after October 31, 1985, an interstate pipeline enters a new blanket certificate arrangement to transport gas under § 284.222 on behalf of another interstate pipeline, will the transporting interstate pipeline be required, by reason of such transportation and the open-access conditions of §§ 284.8 and 284.9, to provide

(1) NGPA section 311 transportation under Subpart B of Part 284?

Answer. Not by reason of the transportation on behalf of an interstate pipeline under § 284.222 and the non-discriminatory access condition applicable thereto. However, since LDCs are covered by the blanket certificate as eligible shippers, the question of whether a pipeline must provide the transportation to LDCs under section 311 is largely irrelevant.

(2) Blanket certificate transportation under § 284.222 for interstate pipelines that request extensions of service that was commenced prior to October 9, 1985, under the provisions of previously effective § 284.221?

Answer. Yes.

(3) Blanket certificate transportation under § 284.223 for shippers other than interstate pipelines?

Answer. Yes.

Question. If, after October 31, 1985, an interstate pipeline offers to provide NGPA section 311 transportation under Subpart B of Part 284 on behalf of local distribution companies and intrastate pipelines, must the interstate pipeline also offer, in order to avoid undue discrimination against customers of other classes (*e.g.*, end users that are not or cannot be costrued to be "intrastate pipelines"), to provide blanket certificate transportation under Subpart G of Part 284?

Answer. No.

Question. Concerning blanket certificate and NGPA section 311 transportation arrangements authorized

[91] 50 FR 42408, 42434 (October 18, 1985).

and commenced prior to October 9, 1985, where the contracts for such service are amended on or after October 9, 1985, (1) to allow natural gas to be received from, or delivered to, points other than those permitted under the contract prior to such amendment, or (2) to allow additional volumes of natural gas to be transported; will such amendments to the service contract remove the transportation arrangement from the scope of § 284.223(g) or § 284.105, as applicable, and thus cause the transporting pipeline to be subject to the open-access conditions of §§ 284.8 and 284.9?

Answer. Yes.[92]

Question. Under what circumstances is transportation deemed to constitute agreement by an interstate pipeline to offer its customers the right to reduce their firm sales entitlements and convert such entitlements to firm transportation service?

Answer. If an interstate pipeline (1) commences a new NGPA section 311 transportation arrangement under authority of § 284.102 or § 284.243, after February 15, 1986, or (2) accepts a blanket certificate issued under § 284.221, the interstate pipeline is deemed to have agreed to offer its firm sales customers the contract demand reduction and purchase-to-transportation conversion rights specified in §§ 284.10(c) and (d), respectively. The change in dates is accomplished by this rehearing order.

A transportation "arrangement" is an agreement providing for the transportation of natural gas. A transportation arrangement is "commenced" when a pipeline first takes receipt of any natural gas purusant to the transportation agreement. A "new" transportation arrangement is a transportation arrangement under which the initial or primary transportation term or an extension commences on or after December 15, 1985.

B. Petition for Stay

The City of Willcox, Arizona, and the Arizona Electric Power Cooperative (Willcox) request that the Commission stay the effective date of the regulations promulgated by Order No. 436 until the day after the Commission issues a rehearing order in this proceeding.[93] In support of its petition, Willcox contends that it will be irreparably harmed if the final rule is not stayed because it will be unable to finalize arrangements for the purchase, transportation, and sale of gas. Willcox is particularly concerned about the transportation arrangement. It asserts that it has been informed by its pipeline supplier, El Paso Natural Gas Company (El Paso), that the pipeline will not participate in the Order No. 436 transportation program. Willcox claims that, if the Commission grants a stay it will be able to negotiate the purchase of gas with a producer and finalize the arrangements with its customer before the new effective date of the regulations and that its transportation arrangements would then be grandfathered for two years.

Willcox' petition for a stay is denied. Section 705 of the Administrative Procedure Act authorizes the Commission to postpone the effective date of action taken when it finds that justice so requires. The Commission is unable to make that finding here. First, the Commission does not believe that staying the effectiveness of Order No. 436 would be in the public interest. As the Commission has indicated in this order, the final rule will benefit consumers by stimulating competition in natural gas markets. Second, Willcox has not demonstrated that implementation of the regulations will cause it imminent irreparable harm. Willcox's allegation that it will not be able to secure a new customer is unsustantiated. Moreover, even if the allegation is true, it would not constitute irreparable harm. The regulations do not deprive the customer or service available under the Natural Gas Act. The new program provides alternative means by which natural gas service may be supplied.

IX. Changes to the Regulations

As discussed above in this order, the following revisions to the regulations promulgated in Order No. 436.

A. Notice of Filing of Application in § 2.77

The Commission received numerous comments that argue that the 51-day notice period provided for abandonment and certificate applications under § 2.77 is too short to afford them sufficient opportunity to review the application and to file comments. In this order, the Commission clarifies that it intended that the 15-day period begin after publication of the notice of the application in the **Federal Register.** The amendment to the regulation reflects that clarification of its general policy.

B. Report to the Commission of Change in Discount Rate Under § 284.7(d)(5)(iv)

Under § 284.7(d)(5)(iv), a pipeline is required to file within 45 days of the close of the billing period any change in its discount rate under § 284.7 Several applicants argue that 45 days does not provide them with timely notice. The Commission agrees with the applicants and is changing the requirement to 15 days.

C. Rate Adjustment Under § 284.10(g)

The Commission is eliminating the requirement of § 284.10(g) that the pipeline file a change to rates every time there is a change in the customer's firm sales entitlement. Under § 284.7, a pipeline that provides transportation under Subparts B, G, and H is required to file a rate for such transportation. The Commission believes that the initial filing under § 284.7 is sufficient. Of course, pieplines may file subsequent rate changes at their discretion.

D. Requiring Interstate Pipeline to Keep a Log of Requests for Transportation

The Commission is amending its regulations to require interstate pipelines that transport under Subparts B, G, or H to keep a log of all transportation requests. This log is intended to provided interested persons with the information they need to determine whether the pipeline is operating an a non-discriminatory basis. The log is to be kept available for public inspection at the company's corporation headquarters during the company's normal business hours.

The pipeline is required to begin keeping the log within 30 days after it begins to transport under the Commission's programs. The log must show the date of the transportation request, the name of the person requesting the transportation, and the volume of gas to be transported.

The Commission believes that this requirement is consistent with the purposes of its new transportation program and its responsibilities under the NGA and that it is not unduly burdensome. Pipelines already keep this information in the normal course of business. Furthermore, the benefit to interested persons to provide them with this type of information that is available only to the pipeline outweighs the inconvenience to the pipeline. Moreover, the Commission is also interested in the information in the log and may request that the pipeline provide the

[92] A similar clarification was included in the Commission's October 30, 1985 order in response to Panhandle Eastern's Pipe Line Company's Request for Clarification filed October 21, 1985.

[93] Although styled as a motion, Willcox's pleading is treated as a petition because there are no motions in rulemakings. 18 CFR Part 385.

Commission with data from it for information purposes.[94]

E. Filing by Intrastate Pipelines of Their Operating Conditions

The Commission is adding a new paragraph (e) to § 284.123 to require an interstate pipeline that participates in the Commission's transportation program to file a one-time statement that describes how it will operate under the program. This statement should contain the pipeline's conditions, including quality standards and financial viability of the shipper. The pipeline is required to file any amendments to this statement within 30 days of commencement of the change. If a pipeline has already elected to participate in the program, the filing is due no later than Feburary, 1, 1985. If a pipeline decides to transport under the new program in the future, it must file the statement within 30 days of commencement of the new service.

F. Changes to the Commission's Delegations of Authority

The Commission is amending its regulations in § 375.307 in order to authorize the Director of the Office of Pipeline and Producer Regulation to pass on uncontested applications for blanket certificates by Hinshaw pipelines and LDCs served by interstate pipelines. At the same time, the Commission is consolidating redundant sections relating to the Director's delegated authority to pass on uncontested blanket certificate applications.

G. Notice of LDC By-Pass

The Commission is amending its regulations relating to new service provided under either section 311 of the NGPA or under the optional expedited certificate procedures in Order No. 436 to assure that LDCs and their apprporiate state regulatory agencies are notified in writing prior to the commencement of such services to a customer that is located in the service area of the LDC. *See*, new §§ 284.106(a)(4), 284.126(a)(6), and 157.102(b)(iv).

H. Phase-In Schedule of CD Reduction/ Conversion Condition

The Commission is revising § 284.10, the CD reduction/conversion condition, in three respects.

First, § 284.10(a) is modified to allow new transportation arrangements under section 311 of the NGPA to be commenced or continued for a transitional period through February 15, 1986, without triggering the CD reduction/conversion conditions. The purpose of this change is to extend through the major portion of the 1985–1986 winter heating season the transition period intended by Order No. 436. This transition period is intended to permit different segments of the industry to adjust their commercial arrangements to take advantage of the new opportunities under Order No. 436, without unduly disrupting transportation during the winter heating season.

Because the bulk of self-help transportation services are those implemented under section 311 and because Order No. 436 provides pipelines new flexibility to provide section 311 services to local distribution systems for both system supply and direct end-uses, the change to § 284.10(a) would extend the CD reduction/conversion "trigger" date for new section 311 arrangements from December 15, 1985, to February 15, 1986. However, all other Order No. 436 conditions applicable to such 311 services, such as the non-discriminatory access conditon, would continue to apply as required by Order No. 436.

Under this change, all segments of the industry more readily will be able to adjust their commercial relationships, while at the same time meeting Order No. 436's overall goal of permitting pipelines and their customers to maximize the movement of gas on a non-discriminatory basis in response to competitive conditions.

Second, § 284.10(c)(2) is modified to establish more certain notice deadlines and effective dates for customers to exercise their CD reduction options. Under § 284.10(c)(1), the "trigger" date for the availability of the CD reduction option is the date the pipeline first commences or continues a new section 311 arrangement after February 15, 1986, or accepts a new blanket certificate. Section 284.10(c)(2), as modified, would require that, unless the pipeline agrees otherwise, a customer wishing to exercise its CD reduction option the first year it is available, must give the pipeline written notice of the level of its first year reduction not later than 45 days following the "trigger" date established under § 284.10(a). This 45-day notice requirement is only applicable to firm sales customers in the first year the CD reduction option is available. Because § 284.10(c)(1) establishes a single date for first year reductions to take effect, the 45-day notice requirement is intended to provide customers adequate time to decide their first reduction elections under § 284.10.

In addition, § 284.10(c)(2) requires that, in the first year, all such customer reductions take effect 150 days following the close of the required 45-day customer notice period. This will assure that all customers enjoy the same 45-day period to make their CD reduction elections, and that all such CD reduction elections will take effect on the same day the first year. The Commission intends this modification to provide pipelines and their customers with the certainty and predictability necessary to plan their first service agreement modifications and tariff filings under Order No. 436.

In subsequent years, § 284.10(c)(2) is modified to permit a pipeline to establish a single effective date for all CD reductions to take effect, as long as the pipeline provides its customers with 180 days written notice prior to such date. This change would permit pipelines the flexibility to change the effective date for CD reductions in subsequent years, as long as the changed effective date is no later than the "anniversary" date of their customers' last such reduction, and as long as their customers are provided prior notice of the changed effective date. In this way, a pipeline may choose to require that all CD reductions take effect on a single date, and customers will be assured that such effective date is no later than 12 months following the effective date of their last such reductions.

Third, in response to rehearing requests concerning the ability of pipelines and their customers to adjust to the CD reduction and conversion options during an orderly transition period, § 284.10(c) and § 284.10(d) are modified to extend the 4-year phase-in schedule for such options to 5-years. This modification would also clarify that the phase-in schedule runs for the five-year period beginning when the pipeline first commences or continues a new section 311 arrangement after February 15, 1986, or accepts a new blanket certificate. Finally, the modification would clarify that the reduction/ conversion options are cumulative; that is, any customer that does not elect to reduce or convert its firm sales entitlements in the full amount in any given year, may in subsequent years reduce or convert the full, cumulative amount eligible to be reduced or converted in that and all previous years. The cumulative nature of the CD reduction/conversion option is intended to assure firm sales customers maximum

[94] Consistent with its findings in Order No. 436, the Commission believes these changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612 (1982).

choices for transportation services regardless of whether they choose to exercise those options to their full extent from year to year.

Thus, under the revised 5-year phase-in schedule, subject to the notice and effective date requirements in § 284.10 (c)(2) and (d)(2), a customer would be permitted to convert/reduce up to 15 percent during the first year, up to 30 percent the second year, up to 50 percent the third year, up to 75 percent the fourth year, and up to 100 percent the fifth year and thereafter.

The purpose of this more gradual, 5-year phase-in schedule is intended to enable pipelines to accommodate their customers' CD adjustments in a more orderly and smooth manner. Pipelines and their customers will benefit from a more gradual program to the extent it ensures a more predictable transition and mitigates potential cost-shifting.[95]

I. Change in Transition Date

Under the old transitional provisions, the authorization for certain transportation under § 157.209(e)(1) ceased on December 15, 1985 unless the pipeline files for a blanket certificate under § 284.221 before that date. Since December 15 is a Sunday, the Commission extends this date to 11:59 p.m. on December 16, 1985 to permit pipelines and their customers an additional working day to adjust their commercial arrangements in light of the changes made by this order.[96]

[95] Generally, a rule becomes effective not less than 30 days after it is published in the **Federal Register**. A rule may become effective sooner if it is an interpretive rule or policy statement, if it relieves a restriction or grants an exemption, or if the agency finds there is good cause to do so. 5 U.S.C. 553(d) (1982).

The Commission finds good cause to make the changes to §§ 284.10(a) and 284.223(g)(3)(i) effective upon issuance. Section 284.10(a) originally vested rights in pipeline's sales customers to reduce or convert the level of those customers' firm sales entitlements, if their pipeline is providing new transportation service after December 15, 1985. The revisions to § 284.10(a) postpone the date on which these rights may vest until after the winter heating season and avoids the uncertainty in the gas industry that may have been likely under the old rules. In addition, this change can be effective immediately without affecting any ongoing transactions or contractual arrangements, because customers could not have exercised any reduction or conversion rights under the old rules until February 1, 1985, as a practical matter. See note 96, infra.

[96] The Commission finds good cause under the Administrative Procedure Act, 5 U.S.C. 553(d) (1982) to extend this date to 11:59 p.m. on December 16, 1985, to permit pipelines and their customers an additional working day to adjust their commercial arrangements in light of the changes made by this order by amending § 284.223(g)(3)(i). In addition, this minor change in the regulations primarily relieves a restriction on pipelines and their customers by permitting transportation authority to continue one additional day.

X. Effective Date and Paperwork Reduction Act Statement

The changes to the Commission's regulations contained in this order are effective January 22, 1986, unless otherwise stated in this order. The effectiveness of new data collection provisions are subject to approval by the Office of Management and Budget.

The new information collection and retention provisions in this order will be submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3502 (1982) and OMB's regulations, 5 CFR 1320.12 (1984). Interested persons can obtain information on these provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. (Attention: Ellen Brown, (202) 357–8272). Comments on these provision can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Regulatory Commission).

XI. Commission Order

In consideration of the foregoing, the Commission:

A. Denies in part the applications for rehearing of Order No. 436, as specified in this order;

B. Grants in part the applications for rehearing of Order No. 436, as specified in this order, and amends accordingly Chapter 1, Title 18 of the *Code of Federal Regulations*, as set forth below, effective January 22, 1986, unless made effective immediately as stated in this order;

C. Denies the petition for stay of Order No. 436 filed by the City of Willcox, Arizona and the Arizona Electric Power Cooperative.

By the Commission. Chairman O'Connor concurred in part and dissented in part. Commission Stalon concurred in part and dissented in part and will have a separate statement to be issued later.

Kenneth F. Plumb,

Secretary.

PART 2—[AMENDED]

1. The authority citation for Part 2 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); and the National Environmental Policy Act, 16 U.S.C. 4321–4361 (1978), unless otherwise indicated.

2. In § 2.77, paragraph (b)(1) is revised to read as follows:

§ 2.77 Policy on expedite producer abandonment.

* * * * *

(b) *Procedures.*

(1) Applications will be noticed promptly and a period not to exceed 15 days after publication of the notice in the **Federal Register** will be provided for comments or interventions.

* * * * *

PART 157—[AMENDED]

3. The authority citation for Part 157 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978).

4. In § 157.102, paragraph (b)(1)(iv) is revised to read as follows:

§ 157.102 Contents of application and other pleadings.

* * * * *

(b) *Specific contents.* (1) Any application under this subpart must contain:

* * * * *

(iv) If the proposed new service would be provided to a customer that is located in the service area of a local distribution company, a statement that the applicant has served a copy of this application on that local distribution company and the local distribution companmy's appropriate state regulatory agency;

* * * * *

PART 284—[AMENDED]

5. The authority citation for Part 284 continues to read as follows

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978).

§ 284.7 [Amended]

6. In § 284.7(d)(5)(iv), the number "45" is removed and the number "15" is added in lieu thereof.

7. In § 284.10, paragraph (g) is removed, and paragraphs (a), (c)(1), (c)(2), (c)(3), (d)(1), (d)(3), and (e) are revised to read as follows:

§ 284.10 Reductions in firm sales entitlements and conversions to firm transportation.

(a) *Agreement to offer reduction and conversion options.* An interstate

pipeline is deemed to have agreed to offer its firm sales customers the options set out in paragraphs (c) and (d) of this section, if it:

(1) Commences or continues a new transportation arrangement under authority of § 284.102 or § 284.243 of this chapter after February 15, 1986; or

(2) Accepts a certificate issued under § 284.221 of this chapter.

* * * * *

(c) *Option to reduce certain firm purchase obligations*—(1) *Customer option.* An interstate pipeline subject to this section agrees to offer, and is deemed to offer, every firm sales customer the option to reduce the level of the customer's firm sales entitlements under any eligible firm sales service agreement with that pipeline.

(2) *Notice by Customer*—(i) *Initial year.* (A) Unless the pipeline agrees otherwise, a customer of a pipeline that wishes to exercise its option under this paragraph during the first twelve-month period after the pipeline becomes subject to this section must provide the pipeline written notice of the level of any first year reduction not later than 45 days following the date the pipeline becomes subject to the provisions of this section.

(B) Such reductions will take effect 150 days following the close of the 45-day period provided in paragraph (c)(2)(i)(A) of this section.

(ii) *Subsequent years.* (A) During each twelve-month period after the date on which customer reductions took effect under paragraph (c)(2)(i)(B) of this section, the pipeline may establish a single effective date for later reductions in accordance with paragraph (c)(3) of this section, provided:

(*1*) The pipeline provides its firm sales customers 180 days written notice prior to such a date; and

(*2*) Such date is not later than the date such reductions took effect in the previous year.

(B) Unless the pipeline agrees otherwise, a customer of a pipeline that wishes to exercise its option under this paragraph must provide the pipeline written notice of the level of the reduction not later than 150 days before the effective date.

(3) *Level of reduction.* (i) A customer of a pipeline subject to this section may elect to reduce the level of its existing firm sales entitlements under any eligible firm sales service agreement with that pipeline, in accordance with the following schedule:

(A) During the first twelve-month period after the pipeline first becomes subject to this section, up to 15 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline;

(B) During the second twelve-month period after the pipeline first becomes subject to this section, up to 30 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline;

(C) During the third twelve-month period after the pipeline first becomes subject to this section, up to 50 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline;

(D) During the fourth twelve-month period after the pipeline first becomes subject to this section, up to 75 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline; and

(E) Beginning the fifth twelve-month period after the pipeline first becomes subject to this section, up to 100 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline;

(ii) A pipeline subject to this section may, at any time, permit a firm sales customer to reduce its firm sales entitlements by more than the amount provided in the schedule in paragraph (c)(3)(i) of this section.

* * * * *

(d) *Option to convert to firm transportation.*—(1) *Customer option.* An interstate pipeline subject to this section agrees to offer, and is deemed to offer, every firm sales customer the option, under this paragraph, to convert a portion of its firm sales entitlements under any eligible firm sales service agreement to a volumetrically equal amount of firm transportation service.

* * * * *

(3) *Level of Conversion.* (i) A customer of a pipeline subject to this section may convert to firm transportation its existing firm sales entitlements under any eligible firm sales service agreement with that pipeline, in accordance with the following schedule:

(A) During the first twelve-month period after the pipeline first becomes subject to this section, up to 15 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline;

(B) During the second twelve-month period after the pipeline first becomes subject to this section, up to 30 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline;

(C) During the third twelve-month period after the pipeline first becomes subject to this section, up to 50 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline;

(D) During the fourth twelve-month period after the pipeline first becomes subject to this section, up to 75 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline; and

(E) Beginning the fifth twelve-month period after the pipeline first becomes subject to this section, up to 100 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline.

(ii) A pipeline subject to this section may, at any time, permit a firm sales customer to convert to firm transportation by more than the amount provided in the schedule in paragraph (d)(3)(i) of this section.

* * * * *

(e) *Limitation.* Reductions of firm sales entitlements under paragraph (c) of this section and conversions of firm sales entitlements under paragraph (d) of this section may not, in combination, without the consent of the pipeline, affect more than 15 percent of a customer's eligible firm sales entitlements during the first 12-month period subsequent to the date on which customer reductions took effect under paragraph (c)(2)(i)(A) of this section; more than 30 percent during the second 12-month period subsequent to such date; more than 50 percent during the third 12-month period subsequent to such date; more than 75 percent during the fourth 12-month period subsequent to such date; or more than 100 percent after the fourth 12-month period subsequent to such date.

* * * * *

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS ACT AND THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

8. The table of contents for Part 284 is amended by adding under Subpart A a new § 284.13 to read as follows:

Subpart A—General Provision and Conditions

Sec.

* * * * *

284.13 Recordkeeping requirement.

* * * * *

9. Part 284 is amended by adding new § 284.13 to read as follows:

§ 284.13 Recordkeeping requirement.

(a) Within 30 days after commencement of any transportation arrangement under Subpart B, G, or H of this part, the interstate pipeline that provides such service must keep a log of the request for such service that, at a minimum, includes:

(1) The date of the request;

(2) The name of the person requesting transportation; and

(3) The volume of gas to be transported.

(b) The log required under this section must be available for public inspection at the company's corporate headquarters during the company's normal business hours.

10. In § 284.106, a new paragraph (a)(4) is added to read as follows:

§ 284.106 Reporting requirements.

(a) * * *

(4) If such transportation is provided to a customer that is located in the service area of a local distribution company, a statement that the interstate pipeline has notified the local distribution company and the local distribution company's appropriate regulatory agency in writing of the proposed transportation prior to comments.

* * * * *

11. In § 284.123, a new paragraph (e) is added to read as follows:

§ 284.123 Rates and charges.

* * * * *

(e) *Filing requirements.*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, within 30 days of commencement of new service, any intrastate pipeline that engages in transportation arrangements under this subpart must file with the Commission a one-time statement that describes how the pipeline will engage in these transportation arrangements, including operating conditions, such as, quality standards and financial viability of the shipper. If the pipeline changes its operations under this subpart, it must amend the statement and file such amendments not later than 30 days after commencement of the change in operations.

(2) *Exception.* Any intrastate pipeline that engages in transportation arrangements authorized under this subpart before December 15, 1985, must file the statement described in paragraph (e)(1) not later than February 1, 1985. Any amendments to this statement must be filed in accordance with paragraph (e)(1).

12. In § 284.126, a new paragraph (a)(6) is added to read as follows:

§ 284.126 Reporting requirements.

(a) * * *

(6) If such transportation is provided to a customer that is located in the service area of a local distribution company, a statement that the intrastate pipeline has notified the local distribution company and the local distribution company's appropriate state regulatory agency in writing of the proposed transportation prior to commencement.

* * * * *

13. In § 284.223, paragraph (g)(3) is revised to read as follows:

§ 284.223 Transportation by interstate pipelines on behalf of shippers other than interstate pipelines.

* * * * *

(g) *Transitional rule for transportation arrangements*

* * * * *

(3) Authorization for transportation service under paragraph (g)(2) of this section;

(i) Ceases at 11:59 p.m. December 16, 1985, unless the pipeline files for a blanket certificate under § 284.221 before that time; and

(ii) Is subject to compliance with the requirements of § 284.8(b), or § 284.9(b), as appropriate and § 284.7.

* * * * *

PART 375—[AMENDED]

14. The authority citation for Part 375 continues to read as follows:

Authority: Department of Energy Organization Act 42 U.S.C. 7101–7352 (1982), Executive Order 12009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 553 (1982).

§ 375.307 [Amended]

15. Section 375.307(a)(7) is amended by removing the term "§ 284.222," and inserting in lieu thereof the term "§ 284.224."

16. Section 375.307(a)(15) is amended by removing the phrase "Subpart G of Part 284 and" before the term "Subpart F of Part 157."

17. In § 375.307, paragraph (w) is removed.

Appendix A

Note.—Appendix A will not appear in the Code of Federal Regulations.

In the Matter of: RM85-1-000—*Request for Rehearing*

Mobil Oil Exploration and Producing Southeast Inc's 001
Hadson Gas Systems, Inc 002
Orange and Rockland Utilities 007
Bridgeline Gas Distribution Company 008
Michigan Consolidated Gas Company 009
CP National Corporation's 011
Oklahoma Natural Gas Company, Division of ONEOK Inc., and ONG Transmission Company 012
Mobil Gas Service Corporation, Mississippi Valley Gas Company, and Clarke-Mobile Counties Gas District 013
Public Service Electric and Gas Company 014
Pacific Gas and Electric Company 015
Illinois Commerce Commission 016
Frito-Lay, Inc 017
Monetery Pipeline Company 018
Louisiana State Gas Corporation 019
Fertilizer Institute 020
Northern Natural Gas Company 021
National Fuel Gas Supply Corporation 022
Peoples Gas and Light and Coke Company and North Shore Gas Company 023
Southern Indiana Gas and Electric Company 024
Elizabethtown Gas Company 025
Foothills Pipe Lines 026
Westcoast Transmission Company Limited 027
Pan-Alberta Gas Ltd. 028
Southern Natural Gas Company 029
Indicated Producers 030
Mississippi River Transmission Corporation 031
Natural Gas Pipeline Company of America 032
Valero Transmission Company 033
Interstate Natural Gas Association of America 034
Public Utilities Commission of the State of California 035
Baltimore Gas and Electric Company 036
Panhandle Producer and Royalty Owners Association and Independent Petroleum Association of Mountain States 037
Kansas Power and Light Company 038
Tenngasco Corporation 040
Corpus Christi Gas Gathering, Inc. 041
Consumers Power Company and Michigan Gas Storage Company 042
Hadson Gas Systems, Inc. 043
Mesa Petroleum Company 044
Iowa State Commerce Commission 045
Laclede Gas Company 046
Pacific Gas Transmission Company 048

Minnesota Department of Public Service and the Energy Issues Intervention Office of the Minnesota Department of Public Service ... 049
Florida Gas Transmission Company ... 050
Northwest Natural Gas Company ... 051
Houston Pipe Line Company ... 052
Transwestern Pipeline Company ... 053
Columbia Gas Transmission Corporation ... 054
ANR Pipeline Company ... 055
Columbia Gas Distribution Companies ... 056
Northern Illinois Gas Company ... 057
Coastal Oil and Gas Corporation ... 058
Tenngasco Corporation ... 059
Tenneco Oil Company ... 060
Tennessee Gas Pipeline Company, Division of Tenneco ... 061
The Brooklyn Union Gas Company ... 062
Alabama-Tennessee Natural Gas Company ... 063
America Council on Education ... 064
Consolidated Natural Gas Company ... 065
National Association of Regulatory Utility Commissioners ... 066
United Gas Pipe Line Company ... 067
The Petrochemical Energy Group ... 068
The Independent Oil & Gas Producers of West Virginia ... 069
Loeffler, Tom; Member of Congress ... 070
Indicated Industrial Associations and Individual Industrial Users of Natural Gas ... 071
Amoco Gas Company ... 073
Amoco Production Company ... 074
Colorado Interstate Gas Company ... 075
The Maryland People's counsel ... 076
Ashland Exploration, Inc. ... 077
The Wisconsin Distributors Group ... 078
The Association of Texas Intrastate Natural Gas Pipelines ... 079
The Association of Texas Intrastate Natural Gas Pipelines ... 080
Southern Union Gathering Company ... 081
Huffco Petroleum Corporation, Norse Petroleum (U.S.) Incorporated, Texas Crude Exploration, Inc. and Total Petroleum, Inc. ... 082
Atlanta Gas Light Company ... 083
Tennessee SGS Customer Group ... 084
Louisiana Intrastate Gas Corporation ... 085
Louisiana Resources Company ... 086
Pennzoil Producing Company ... 087
Northwest Pipeline Corporation ... 088
North Carolina Natural Gas Corporation and Public Service Corporation of North Carolina, Inc. ... 089
Northwest Central Pipeline Corporation ... 090
El Paso Natural Gas Company ... 091
Northern Border Pipeline Company ... 092
The Department of Energy ... 093
United Distribution Companies ... 094
Algonquin Gas Transmission Company ... 095
Howell Petroleum Corporation ... 096
American Paper Institute ... 097
Natural Gas Pipeline Company of America ... 098
Air Products and Chemicals, Inc. ... 099
The City of Willcox, Arizona and Arizona Electric Power Cooperative, Inc. ... 100
Southern California Gas Company and Pacific Lighting Gas Supply Company ... 102
Producer's Gas Company and PGC Pipeline ... 103
The American Public Gas Association ... 104
Seagull Energy Corporation ... 105
Texas Eastern Transmission Corporation ... 106
Consolidated Edison Company of New York ... 107
The Process Gas Consumers Group, et al. ... 108
Panhandle Eastern Pipe Line Company, Trunkline Gas Company and Trunkline LNG Company ... 109
Teepak, Inc. ... 110
Consolidated Fuel Supply, Inc. ... 111
Washington Natural Gas Company ... 112
Texas Gas Transmission Corporation ... 113
Transcontinental Gas Line Corporation ... 114
Memphis Light, Gas and Water Division ... 115
The Gas Distributors Information Service ... 116
Southern Union Gas Company ... 117
McMoRan ... 118
Associated Gas Distributors ... 119
The State of Louisiana ... 120
Central Illinis Light Company ... 121
Permac Energy Company ... 122
Yankee Resources, Inc. ... 123
Arkla, Inc. ... 124
Cascade Natural Gas Association ... 125
The American Gas Association ... 127
The Public Service Commission of The Commonwealth of Kentucky ... 128
The Department of Public Service of The State of New York ... 129
Energas Company ... 130
Methanol Production Corporation ... 131
Ohio Oil & Gas Association ... 132
Citizens Energy Corporation ... 133
Entex Inc. ... 136

Appendix B

Note.—Appendix B will not appear in the Code of Federal Regulations.

In the Matter of: RM85-1-000—*Request for Clarification*

Panhandle Eastern Pipeline Line Company ... 000
El Paso Natural Gas Company, comments supporting applicants were filed by: Public Utilities Commission of the State of California; Pacific Gas and Electric Company; Southern California Gas Company; National Council of Senior Citizens; California State Grange ... 000
Northwest Pipeline Corporation, comments supporting applicants were filed by: Washington, Water Power Company; Northwest Natural Gas Company; Gilmore Steel Corporation; Washington Natural Gas Company ... 000
American Paper Institute Inc.'s ... 000
Consolidated Fuel Supply, Inc ... 000
Midwest Solvents Company ... 000
Energy Marketing Exchange, Inc ... 000
Transcontinental Gas Pipe Line Corporation, comments supporting applicants were filed by: Lynchburg Gas Company ... 000
Exxon Corporation ... 000
Elizabethtown Gas Company ... 000
Southern Edison Company ... 000
California Edison Company ... 000
Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company ... 000
Texas Eastern Gas Pipeline Company ... 000
Frito-Lay Inc. ... 000
Process Gas Consumers Group, American Iron and Steel Institute, Chemical Manufacturers Association, Association of Businesses Advocating Tariff Equality and Georgia Industrial Group ... 000
Orange and Rockland Utilities, Inc. ... 000
Exxon Corporation ... 000
Algonquin Gas Transmission Company ... 000
Battle Creek Gas Company, comments supporting applicants were filed by: Panhandle Eastern Pipe Line Company ... 000
Southern Natural Gas Company, comments supporting applicants were filed by: Columbia Nitrogen Corporation ... 000
Michigan Gas Utilities Company, comments supporting applicants were filed by: Panhandle Eastern Pipe Line Company ... 000
Lynchburg Gas Company ... 000
Southern Gas Pipeline Company ... 000
Columbia Gas Transmission Corporation, comments supporting applicants were filed by: Mountaineer Gas Company ... 000
Northwest Central Pipeline Corporation, comments supporting applicants were filed by: Diamond Shamrock Exploration Company; Reese Exploration Incorporated; Mickey DeBernard and Associates; Vanguard Pipeline Corporation; Simco Petroleum and Caporale Energy Corporation; Answer of Jerry Lutz; Triple-T Pipelines Inc.; Bill Schuette, US House of Representatives ... 000
Teepak, Inc. and Consolidated Fuel Supply, Inc., comments supporting applicants were filed by: Panhandle Eastern Pipe Line Company ... 000
Carnegie Natural Gas Company ... 000
Kellog Company ... 000
UGI Corporation ... 000
Hadson Gas Systems, Inc. ... 000
Specified Producers ... 000
McMoran ... 000
Kansas Pipeline Company ... 000
Natual Gas Pipeline Company of America ... 000
Entrade Corporation ... 000
J.R. Simplot Company ... 000
GGSI Gathering and Processing Company and Power-Tex ... 000
Midwestern Gas Transmission Company ... 000
FPM Operating Company comments supporting applicants were filed by: McMoran Oil & Gas Inc. ... 000
Texas Gas Transmission Corporation ... 000
Southern Natural Gas Company ... 000
Power-Tex ... 000

Methanol Production Corporation, comments supporting applicants were filed by: West Texas Gas Inc.; Harper, Charles E.; Caddo Management, Inc.; Jernigan, E.D.; King, Julius W.; Gas Research Institute; Creole Gas Pipeline Corporation; Mountain Fuel Resources, Inc.; Pride Energy Pipeline of Kentucky Corporation 000
Intercon Gas Inc. 003
Natural Gas Pipeline Company of America 006

[FR Doc. 85-29967 Filed 12-20 85; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 19 and 21

Conflict of Interest; Protection of Privacy

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for conflict of interest to update references to organization designations. In addition, FDA is amending the regulations for protection of privacy to update references to organization designations and to be consistent with changes made in the Privacy Act Record System.

EFFECTIVE DATE: December 23, 1985.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 10, 1985 (50 FR 1278), an FDA reorganization retitled the Division of Personnel Management as the Division of Human Resources Management and retitled the Policy Management Staff as the Division of Ethics and Program Integrity. This document changes these titles wherever they appear in 21 CFR Parts 19 and 21. FDA is also updating its regulations under Part 21 to be consistent with changes made in the Privacy Act Record System. In addition, FDA is revising § 21.31 to reflect the establishment of the National Archives and Records Administration (see 50 FR 15722; April 19, 1985).

List of Subjects

21 CFR Part 19

Conflict of interests.

21 CFR Part 21

Privacy.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Parts 19 and 21 are amended as follows:

PART 19—STANDARDS OF CONDUCT AND CONFLICTS OF INTEREST

1. The authority citation for 21 CFR Part 19 is revised to read as set forth below and the authority citations following 21 CFR 19.10 and 19.21 are removed.

Authority: Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)); 21 CFR 5.10.

§ 19.10 [Amended]

2. Section 19.10 *Food and Drug Administration Conflict of Interest Review Board* is amended in paragraph (a) by revising "Division of Personnel Management" to read "Division of Human Resources Management."

§ 19.21 [Amended]

3. Section 19.21 *Duty to report violations* is amended in paragraphs (a), (b), and (c) by revising "Policy Management Staff" to read "Division of Ethics and Program Integrity."

PART 21—PROTECTION OF PRIVACY

4. The authority citation for 21 CFR Part 21 is revised to read as set forth below and the authority citations following 21 CFR 21.1, 21.20, 21.32, 21.40, 21.41, 21.42, 21.43, 21.50, 21.51, and 21.61 are removed.

Authority: Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)); 5 U.S.C. 552a; 21 CFR 5.10.

§ 21.1 [Amended]

5. Section 21.1 *Scope* is amended in paragraph (b)(4) by revising "Division of Personnel Management" to read "Division of Human Resources Management."

§ 21.31 [Amended]

6. Section 21.31 is amended by revising the section heading to read "§ 21.31 *Records stored by the National Archives and Records Administration*" and in paragraph (a) by revising "General Services Administration" to read "National Archives and Records Administration".

§ 21.32 [Amended]

7. Section 21.32 *Personnel records* is amended in paragraphs (b) (1)(ii) and (2), (c), and (d)(5) by revising "Division of Personnel Management" to read "Division of Human Resources Management."

§ 21.40 [Amended]

8. Section 21.40 *Procedures for submitting requests for notification and access* is amended by removing paragraph (g).

9. Section 21.52 is amended by revising pararaph (a), to read as follows:

§ 21.52 Administrative appeals of refusals to amend records.

(a) If an individual disagrees with a refusal under § 21.51(a)(2) to amend a record, he or she may appeal that refusal to the Commissioner of Food and Drugs, Rm. 14-71, 5600 Fishers Lane, Rockville, MD 20857.

* * * * *

10. Section 21.61 is amended by removing paragraph (b)(4) and by revising paragraph (b)(1) and the first sentence in paragraph (c), to read as follows:

§ 21.61 Exempt systems.

* * * * *

(b) * * *

(1) Bio-research Monitoring Information System—HHS/FDA/09-10-0010.

* * * * *

(c) The system described in paragraph (b)(3) of this section includes investigatory records compiled solely for the purpose of determining suitability, eligibility, or qualification for Federal civilian employment, military service, Federal contracts, and access to classified information. * * *

11. Section 21.71 is amended by revising paragraph (a) (1) through (9) and by adding new paragaph (a) (10), (11), and (12), to read as follows:

§ 21.71 Disclosure of records in Privacy Act Record Systems; accounting required.

(a) * * *

(1) To those officers and employees of the agency which maintains the record who have a need for the record in the perfomance of their duties;

(2) Required under section 552 of the Freedom of Information Act;

(3) For a routine use as described in the routine use section of each specific system notice;

(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and that the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or to the Archivist of the United States or his or her designee for evaluation to determine whether the record has such value;

(7) To another agency or to an instrumentality of any government jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of his or her authorized representatives in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d)). (This "Special Disclosure" statement does not apply to any FDA system of records.)

* * * * *

Dated: December 13, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-30202 Filed 12-20-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 178

[Docket No. 81F-0154]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,3,5-tris(4-*tert*-butyl-3-hydroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione as an antioxidant for olefin polymers used in the manufacture of articles or components of articles intended for use in contact with food. This action responds to a petition filed by the American Cyanamid Co.

DATES: Effective December 23, 1985; objections by January 22, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 5, 1981 (46 FR 30197), FDA announced that a petition (FAP 1B3548) had been filed by the American Cyanamid Co., One Cyanamid Plaza, Wayne, NJ 07470, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 1,3,5-tris(4-*tert*-butyl-3-hydroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione as an antioxidant in polypropylene and high-density polyethylene, without limitation regarding the condition of use.

In an amended notice published in the **Federal Register** of Octobr 10, 1985 (50 FR 41411), FDA announced that the petitioner had amended this petition to provide for the use of this additive in all olefin polymers, including polypropylene and high-density polyethylene, without limitation regarding the conditions of use.

FDA has evaluated data in the petition and other relevant material. It concludes that the additive is safe for use in all olefin polymers, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before January 22, 1986, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.2010(b) by revising limitation 1 for the item "1,3,5-Tris(4-*tert*-butyl-3-hydroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * *
1,3,5-Tris(4-*tert*-butyl-3-hydroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione (CAS Reg. No. 40601-76-1).	For use only: 1. At levels not to exceed 0.1 percent by weight of olefin polymers complying with § 177.1520 of this chapter, under conditions of use A through H described in table 2 of § 176.170(c) of this chapter.
* * *	* * *

Dated: December 12, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-30201 Filed 12-20-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 20

[Docket No. R-85-1240; FR-1349]

Rules of the Board of Contract Appeals

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of announcement of effective date for final rule.

SUMMARY: This notice announces the effective date for the final rule published in the **Federal Register** on November 5, 1985 (50 FR 45910) that revised the procedures of the Department of Housing and Urban Development Board of Contract Appeals. This rule adopted, in substantial part, the Uniform Rules of Procedure for Board of Contract Appeals issued by the Office of Federal Procurement Policy.

The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register**. Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the final rule published November 5, 1985 (50 FR 45910), is December 16, 1985.

FOR FURTHER INFORMATION CONTACT: David T. Anderson, Chairman, Board of Contract Appeals, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-0132. (This is not a toll-free number.)

Dated: December 17, 1985.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 85-30230 Filed 12-20-85; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 990

[Docket No. R-85-1170; FR-1834]

Modification to the Performance Funding System; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; correction.

SUMMARY: On June 24, 1985, we published an interim rule (50 FR 25951), which added a new paragraph (x) to the definitions section of Part 990, § 990.102. On November 18, 1985, we published a final rule (50 FR 47368), for which an effective date has not yet been announced, which also purported to add a new paragraph (x). This document corrects the latter rule to preserve the definition added by the June rule, to remove the lettered paragraph designations of the definitions, to place the definitions in alphabetical order, and to correct cross references.

In addition, the rule published on November 18, 1985 contained a few references to effectiveness of the revisions for PHA fiscal years commencing January 1, 1986. Because of the Department's statutory obligation to delay effectiveness of its final rules until after 30 continuous days of a session of Congress and the adjournment of Congress in 1985 before the necessary time period, the rule cannot be made effective January 1, 1986. The references to January 1, 1986 are being changed to April 1, 1986, the next date on which PHA fiscal years begin.

DATES: Effective date: The effective date of the rule published on November 18, 1985 (50 FR 47368) as corrected by this document, is April 1, 1986.

FOR FURTHER INFORMATION CONTACT: Sally Warner Watts, Regulations Division, Office of General Counsel, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500, telephone (202) 755-7084. (This is not a toll-free number.)

PART 990—[CORRECTED]

Accordingly, 24 CFR Part 990 is corrected as follows:

1. Section 990.102 is corrected to read as follows:

§ 990.102 Definitions.

Allowable Expense Level (AEL). The per unit per month dollar amount of expenses (excluding Utilities and expenses allowed under § 990.108) computed in accordance with § 990.105, which is used to compute the amount of operating subsidy.

Allowable Utilities Consumption Level (AUCL). The amount of Utilities expected to be consumed per unit per month by the PHA during the Requested Budget Year, which is equal to the average amount consumed per unit per month during the Rolling Base Period. After the end of the Requested Budget Year, the AUCL of the utility(ies) used for space hearing will be adjusted by a Change Factor, defined in this section.

Base Year. The PHA's fiscal year immediately preceding its first fiscal year under PFS.

Base Year Expense Level. The expense level (excluding Utilities, audits and certain other items) for the Base Year, computed as provided in § 990.105.

Change Factor. The ratio of the affected PHA fiscal year heating degree days (HDD) divided by the average annual HDD of the Rolling Base Period. (Affected year HDD divided by Rolling Base Period average HDD.)

Current Budget Year. The fiscal year in which the PHA is currently operating.

Formula. The revised formula derived from the actual expenses of the PFS sample group of PHAs, which is used in PFS, as provided in § 990.105, to determine the Formula Expense Level and the Range of each PHA. HUD plans to update the Formula each year to reflect actual costs experienced by the sample group of PHAs.

Formula Expense Level. The per unit per month dollar amount of expenses (excluding Utilities and audits)

computed under the Formula, in accordance with § 990.105.

Heating Degree Days. The annual arithmetic sum of the positive difference (those under 65 degrees) of the average of the lowest and highest daily outside temperatures in degrees Fahrenheit, subtracted from 65 degrees Fahrenheit.

HUD Field Office. The HUD Field Office that has been delegated authority under the United States Housing Act of 1937 to perform functions pertaining to this subpart for the area in which the PHA is located.

Interim Formula. The HUD system, which has been replaced by PFS, for determining the amount of operating subsidy that applied to PHA fiscal years which commenced on or after October 1, 1972, and before April 1, 1975.

Local Inflation Factor. The weighted average percentage increase in local government wages and salaries for the area in which the PHA is located and non-wage expenses based upon the Implicit Price Deflator for State and Local Government Purchases of Goods and Services. This weighted average percentage will be supplied by HUD. HUD anticipates that it will update the Local Inflation Factor each year. This revised Local Inflation Factor is applicable to PHA fiscal years beginning January 1, 1982, and for all fiscal years thereafter.

Operating Budget. The PHA's operating budget and all related documents, as required by HUD, to be submitted in accordance with the Annual Contributions Contract.

Other Income. Income other than dwelling rental income and income from investments, except the following items are excluded: grants and gifts for operations, other than for utility expenses, received from Federal, State and local governments, individuals, or private organizations; amounts charged to tenants for repairs for which the PHA incurs an offsetting expense; and legal fees in connection with eviction proceedings, when those fees are lawfully charged to tenants.

Project. Each project under an Annual Contributions Contract to which PFS is applicable, as provided in § 990.103.

Project Units. All dwelling units of a PHA's Projects.

Projected Operating Income Level. The per unit per month dollar amount of dwelling rental income plus nondwelling income, computed as provided in § 990.109.

Range. $10.31 below to $10.31 above the PHA's Formula Expense Level for the Base Year. The dollar amount is subject to change from time to time by HUD in connection with updating of the Formula. The Range is used in connection with determination of the Allowable Expense Level, as provided in § 990.105, the qualification for transition funding, as provided in § 990.106, and in consideration of requests for adjustments of the Base Year Expense Level under § 990.110.

Requested Budget Year. The budget year (fiscal year) of a PHA following the Current Budget Year.

Rolling Base Period. The 36-month period that ends 12 months before the beginning of the PHA Requested Budget Year, which is used to determine the Allowable Utilities Consumption Level used to compute the Utilities Expense Level.

Transition Funding. Funding for excessively high-cost PHAs, as provided in § 990.106.

Unit Approved for Deprogramming. (a) A dwelling unit for which HUD has approved the PHA's formal request for removal from the PHA's inventory and the Annual Contributions Contract, but for which removal, i.e., deprogramming has not yet been completed, or (b) a nondwelling structure or a dwelling unit used for nondwelling purposes that the PHA has determined will no longer be used for PHA purposes and for which HUD has approved removal from the PHA's inventory and Annual Contributions Contract.

Unit Months Available. Project Units multiplied by the number of months the Project Units are available for occupancy during a given PHA fiscal year. Except as provided in the following sentence, for purposes of this part, a unit is considered available for occupancy from the date on which the End of the Initial Operating Period for the Project is established until the time it is approved by HUD for deprogramming and is vacated or is approved for nondwelling use. On or after July 1, 1991, a unit is not considered available for occupancy in any PHA Requested Budget Year if the unit is located in a vacant building in a project that HUD has determined is nonviable.

Utilities. Electricity, gas, heating fuel, water and sewerage service.

Utilities Expense Level. The per unit per month dollar amount of Utilities expense, computed as provided in §990.107.

§ 990.105 [Corrected]

2. Section 990.105(e)(4) is corrected by removing the phrases "in calendar year 1985" and "in 1985" each time they appear, and adding in their place the phrase "before April 1, 1986".

3. Section 990.105(e)(5) is corrected by removing the phrase "in calendar year 1986 and thereafter" each time it appears, and adding in its place the phrase "on or after April 1, 1986".

(42 U.S.C. 1437g)

Dated: December 17, 1985.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 30231 Filed 12-20-85; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8063]

Income Taxes; Temporary Regulations Relating to the Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations concerning the taxation and valuation of fringe benefits and exclusions from gross income for certain fringe benefits. Changes to the applicable law were made by the Tax Reform Act of 1984 (98 Stat. 877). The regulations affect any person providing or receiving fringe benefits. The regulations provide these persons with the guidance necessary to comply with the law.

DATE: The regulations are effective as of January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service, (202-566-3918, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the taxation and valuation of fringe benefits and exclusions from gross income for certain fringe benefits. Section 61 of the Internal Revenue Code of 1954 (Code) was amended, and section 132 was added to the Code, by section 531 of the Tax Reform Act of 1984 (98 Stat. 877). Temporary and proposed regulations were published in the **Federal Register** for January 7, 1985 (50 FR 747, 836). These regulations were later amended in part in the **Federal Register** for February 20, 1985 (50 FR 7038, 7073).

Subsequently, Pub. L. 99-44 (Repeal of Contemporaneous Recordkeeping Requirements) affected the proposed

and temporary regulations published in February. To implement the provisions of Pub. L. 99–44, the Service withdrew the affected proposed and temporary regulations published in February 1985 (50 FR 46004, 46086, Nov. 6, 1985) and published new proposed and temporary regulations on November 6, 1985 (50 FR 46006, 46087).

Many comments were received from the public concerning the provisions in the proposed and temporary regulations previously published in 1985. In addition, on April 16, 17, and 18, 1985, the Internal Revenue Service (Service) held public hearings on the proposed regulations. In response to the comments and the statements made at the public hearings, the regulations have been amended. Due to the extent of the amendments, the Service is issuing the regulations in temporary rather than final form and is providing a cross-reference notice of proposed rulemaking (see the Proposed Rules section of this issue of the **Federal Register**). This will provide the public with an opportunity to comment on the revised provisions of the regulations before they become final. The Service expects to hold public hearings on the regulations early next year.

The regulations contain general rules relating to valuation of fringe benefits and special rules that may be used to value certain fringe benefits, including the availability of employer-provided automobiles, the use of employer-provided vehicles for personal purposes or for commuting only, flights on employer-provided aircraft, and taxable flights on commercial airlines.

Summary of Comments and Explanation of Provisions

In General

All of the regulations issued in January, February, and November of 1985 under sections 61 and 132 (the "proposed regulations") were removed and are replaced by these revised temporary regulations (the "new temporary regulations"). Many of the provisions contained in the proposed regulations were revised in response to comments received. The explanation of provisions describes the changes made to the proposed regulations and the reasons that certain comments are not reflected in the new temporary regulations. Many of the comments received are not included in this summary because they suggested changes that were contrary to the statutory amendments or the legislative intent evidenced in committee reports accompanying the legislation.

In addition to revised rules, the new temporary regulations contain rules relating to areas not addressed in the proposed regulations. For example, the regulations contain a special rule that may be used to value meals provided at an employer-operated eating facility for employees. This section contains an explanation of many of these new rules.

Valuation of Employer-Provided Vehicles Determination of Fair Market Value

The proposed regulations provided that the Annual Lease Value is determined by reference to the fair market value of the employer-provided automobile made available to the employee. Many commentators suggested that the regulations provide additional guidance concerning determination of the fair market value of the automobile. In response, the new temporary regulations provide fair market value safe harbor rules. Many commentators requested that the proposed regulations allow the use of an automobile pricing guide to determine fair market value. Other commentators suggested that the cost of purchasing the automobile may be treated as the fair market value of the automobile, either with or without an adjustment reflecting any group or volume discount secured by the employer. In response, the new temporary regulations provide that for an automobile owned by an employer, the employer's cost of purchasing the automobile be treated as the fair market value of the automobile, provided the purchase is made at arm's length. For an automobile that is leased or revalued by an employer, the retail value provided in any nationally recognized publication that regularly reports retail automobile values may be treated as the fair market value of the automobile, provided the value is reasonable with respect to the automobile.

Many commentators suggested that the regulations provide that the fair market value of an automobile be reduced by the value of special equipment contained in the automobile. In response, the new temporary regulations provide that the fair market value of an automobile does not include the fair market value of any specialized equipment that is added to or carried in the automobile if the presence of the equipment is necessitated by, and attributable solely to, the business needs of the employer. This rule does not apply to equipment susceptible to personal use.

First-Average Valuation Rule

The proposed regulations provided that the Annual Lease Value of each automobile must be determined based on its fair market value. Commentators suggested that this rule would be difficult to administer when an employer has a large fleet of automobiles. The new temporary regulations provide that employers may determine a fleet-average value of the automobiles in the fleet that may be used to determine an Annual Lease Value for all the automobiles in the fleet. The rule is available for an automobile the value of which does not exceed $16,500 and that is regularly used in the employer's business.

Provisions of Fuel in Kind

The proposed regulations provided that the provision of fuel in kind may be valued at 5.5 cents-per-mile. Commentators indicated that employers with large fleets of automobiles need a special rule to value fuel where fuel is not provided from a company pump but the cost is reimbursed by or charged to the employer. In response to this comment, the new temporary regulations provide that an employer may value the provision of fuel for automobiles eligible for the fleet-average valuation rule by reference to average fuel costs and miles-per-gallon rates determined by sampling the greater of 10 percent of the automobiles in the fleet or 20 automobiles.

Redetermination of Annual Lease Value

The Annual Lease Values contained in the proposed regulations are based on a four-year, level-payment lease. Thus, the proposed regulations provided that the Annual Lease Value amount must generally be used for the period beginning on the day the special rule is first used and ending on December 31 of the fourth full year following that date. A number of commentators stated that the Annual Lease Value amount should be redetermined more frequently than every four years. Because the Annual Lease Values are based on a four-year, level-payment lease, however, it would be inappropriate to redetermine the Annual Lease Value more frequently. An alternative would be to base the Annual Lease Values on a shorter lease period. This alternative would require an increase in the Annual Lease Values to reflect the shorter lease term.

Use of Daily Lease Value

The proposed regulations provided that a pro-rated Annual Lease Value may be used when the automobile is available to an employee for at least 30

days. If the automobile is available for less than 30 days, the availability of the automobile may be valued by applying the Daily Lease Value to the number of days the automobile is available to the employee. Alternatively, the availability may be valued by deeming the automobile available to the employee for at least 30 days. Some commentators suggested that the regulations provide that a pro-rated Annual Lease Value be used regardless of the number of days of availability. This suggestion was not adopted because the Daily Lease Value amount was based on an approximation of the lowest fair market rental values. The lessors' charge is higher for leases for shorter periods. The Service's market analysis indicated that a daily lease value is typically 700 percent of the daily pro-rated four-year lease rate in the proposed regulation. Consequently, the new temporary regulations retain the rules regarding Daily Lease Values.

Vehicle cents-per-mile Special Rule

The proposed regulations provided that the availability of an automobile cannot be determined by reference to a cents-per-mile rate multiplied by the number of miles driven. This rule was provided because automobiles are generally not leased on a cents-per-mile basis, but rather on the basis of the amount of time the automobile is available to the lessee.

Many commentators suggested that the regulations allow the use of a cents-per-mile rate, such as the standard mileage rate, to determine the value of the personal use of employer-provided automobiles. In response, the new temporary regulations provide that the standard mileage rate (21 cents-per-mile in 1985) may be used to determine the value of the personal use of an employer-provided vehicle (including an automobile) that is (1) reasonably expected to be regularly used in the employer's business or (2) actually driven (primarily by employees) at least 10,000 miles in a calendar year. This rule may be used for any vehicle the value of which in the calendar year in which it is first made available to an employee for personal use, or, if later, January 1, 1985, does not exceed the sum of the maximum recovery deductions allowable under section 280F(a)(2) for the first three taxable years in the recovery period for an automobile first placed in service during that calendar year. For 1985, that value is $12,800.

The reason for the regularly used in the employer's business requirement (and the alternative mileage rule) is that the vehicle cents-per-mile rule assumes that at least a fixed number of personal miles will be driven in a year (i.e., 15,000). Therefore, unlimited use of the special vehicle cents-per-mile rule would result in a significantly lower valuation for the use of an employer-provided vehicle in certain circumstances. For example, an employee who drives an employer-provided automobile valued at $12,000 for 5,000 miles (all personal) in a year, but who is not provided fuel by his employer, will include $775 in income. Under the Annual Lease Value table, which generally reflects the market value of the availability of an automobile for a year, the employee would include $3,600 in income. Because the valuation distortion is so great, use of the vehicle cents-per-mile rule is permitted only if the vehicle satisfies the regularly used in business requirement or the alternative mileage rule. The alternative mileage rule is intended to provide a mechanical alternative to the more general concept of "regularly used in business." The reason that the mileage must be primarily by employees, rather than, for example, by employees' families, is precisely because the mileage rule is intended as a mechanical alternative to the business use rule.

It should also be noted that in certain situations use of the cents-per-mile rule will result in a higher inclusion than will the automobile lease valuation rule.

Commuting Special Valuation Rule

The proposed regulations provided that the value of the commuting use of an employer-provided vehicle may be valued at $3.00 per one-way or round-trip commute. The new temporary regulations clarify that the value of the commuting use is $1.50 per one-way commute. In the case where more than one employee commutes in an employer-provided vehicle, such as in the case of an employer-sponsored car pool, the value of the commuting use is $1.50 per one-way commute per employee.

The proposed regulations provided that the commuting special rule may not be used to value the commuting use of an employer-provided vehicle by an officer or a five-percent owner of the employer. Many commentators requested that the regulations define an officer, especially for government employees. The new temporary regulations provide that, for commuting that occurs after 1985, the special rule cannot be used to value the commuting use of an employer-provided vehicle by a "control employee". This term (which is defined differently for other purposes) includes certain officers, directors, and owners and is defined in the regulations for both government and non-government employers. The new temporary regulations provide that the officer component of the control employee definition may be applied to define an officer in 1985.

Valuation of Flights on Employer-Provided Aircraft

The proposed regulations provided a special rule that may be used to value certain flights on employer-provided airplanes. The value determined under the special rule depended on the purpose of the trip by the airplane and on whether the employee receiving the fringe benefit was a "key employee".

Many commentators stated that the values provided under the special rule were excessive and that the rule was complicated and too "fact-sensitive" to administer. In response to taxpayer and congressional concerns, the Treasury Department indicated in a letter to Senator Robert Dole (131 Cong. Rec. S6369 (daily ed. May 16, 1985)) that the regulations would be amended. The new temporary regulations adopt the provisions set out in that letter. Accordingly, under the new temporary regulations, the value of a flight under the special rule depends on the weight of the aircraft and whether the employee receiving the benefit is a control employee (defined separately for government and non-government employers).

Generally, the value of a flight determined under the new temporary regulations is lower than the value of a flight determined under the proposed regulations. Under certain circumstances, however, the value of a flight determined under the proposed regulations would be lower than the value of a flight determined under the new temporary regulations. Therefore, the new temporary regulations provide that the value of a flight taken in 1985 may be valued at the lower of the value determined under the proposed regulations or the value determined under the new temporary regulations.

The new temporary regulations retain the use of the Standard Industry Fare Level (SIFL) rates to determine the value of flights on employer-provided aircraft. The regulations provide the new SIFL rates that may be used to determine the value of flights taken during the last six months of 1985. As in the proposed regulations, the multiples used are intended to approximate coach and first-class fares on commercial airlines (e.g., 125 percent of the SIFL rates approximates coach fare and 200 percent of the SIFL rates approximates first-class fare).

The proposed regulations provided that the special valuation rule may only

be used to value flights on employer-provided airplanes, rather than all aircraft (such as helicopters). The new temporary regulations provide that the special rule may be used to value flights on all employer-provided aircraft.

The proposed regulations also provided that the special valuation rule may not be used to value international flights. The new temporary regulations remove this restriction.

Many commentators noted that if an aircraft makes a certain flight for a business purpose, there is no additional cost incurred by the employer in allowing other persons to fly for personal purposes on such trip. They argued, therefore, that no income should be imputed to those persons who fly for personal purposes under such circumstances. Whether the employer incurs an additional cost, however, is not relevant to whether an employee receives a benefit. Certainly, those employees who are allowed to fly for personal purposes place some value on the flight provided.

It should be noted, however, that the proposed regulations provide that where at least 50 percent of the regular seating capacity of an aircraft is occupied by individuals whose flights are primarily for the employer's business (and whose flights are excludable as working condition fringes), the value of flights provided to employees (and certain others) will be considered to be zero. The inclusion of this special rule in the proposed regulations is intended to be a limited provision and is not to be interpreted as an exception to the general valuation principles which the Service will continue to apply outside the scope of this rule.

Valuation of Taxable Flights on Commercial Airlines

The proposed regulations provided a special valuation rule under which certain taxable flights on commercial airlines (i.e., stand-by or space-available flights) may be valued at 50 percent of the highest unrestricted coach fare of the flight taken. Many commentators protested that the 50 percent value was excessive in light of the restrictions imposed on the persons taking the flights, such as the lack of a guaranteed seat. The commentators submitted relevant data and suggested that 25 percent of the highest unrestricted coach fare is a more appropriate value of the benefit received. In response, the new temporary regulations provide that stand-by or space-available flights on commercial airlines may be valued at 25 percent of the highest unrestricted coach fare.

Valuation of Meals Provided at Employer-Operated Eating Facilities for Employees

The new temporary regulations contain a special valuation rule that may be used to value meals provided at employer-operated eating facilities for employees. Pursuant to the special rule, the fair market value of all meals provided at the facility (the "total meal value") will be deemed to equal 150 percent of the facility's direct operating costs. This total meal value, less the actual gross receipts of the facility (the "total meal subsidy"), may then be allocated among employees in any manner reasonable under the circumstances. Alternatively, the employer may determine the fair market value of the taxable part of meals provided to a particular employee under a special "individual meal subsidy" rule.

Section 132 Regulations

In General

The new temporary regulations provide rules relating to the exclusion from gross income for certain fringe benefits. Section 132 provides that certain fringe benefits, such as no-additional-cost services, qualified employee discounts, working condition fringes, and de minimis fringes may be excludable from the income of employees receiving the benefits. The regulations provide that, for purposes of the no-additional-cost service and qualified employee discount exclusions, the term "employee" means any individual who is currently employed by the employer, who was employed by the employer but separated from service by reason of retirement or disability, or who is a widow or widower of an employee. The regulations provide that a partner who performs services for a partnership is considered employed by the partnership.

The regulations provide that any individual listed above who could exclude from income no-additional-cost services or qualified employee discounts may exclude from income working condition fringes. In addition, solely for purposes of administrative convenience, the regulations provide that directors of the employer and independent contractors who perform services for the employer may generally exclude from income working condition fringes. This special rule is only available when, as set forth in Rev. Rul. 84–151, any amount included in income would also be deductible as an ordinary and necessary business expense. Therefore, this special rule does not apply, for example, to exclude from the income of an independent contractor or a director as a working condition fringe the value of the use of consumer goods under a product testing program. Directors and independent contractors are not treated as employees for any other purposes.

There is no limitation under section 132 as to who may exclude a de minimis fringe from income. Therefore, the regulations provide that any recipient may exclude a de minimis fringe from income.

Line of Business Limitation

No-additional-cost services and qualified employee discounts are available to employees of the line of business providing discounts or services. The regulations define a line of business based on the Enterprise Standard Industrial Classification Manual (ESIC Manual) prepared by the Statistical Policy Division of the U.S. Office of Management and Budget. An employer is generally considered to have more than one line of business if the employer offers for sale to customers property or services in more than one two-digit classification referred to in the ESIC Manual. Examples of two-digit classifications are general retail merchandise stores; hotels and other lodging places; and auto repair, services, and garages.

The regulations also provide special rules under which an employer's separate lines of business will be aggregated. Under one rule, if it is uncommon in the employer's industry for any of the separate lines of business to be operated without the others, the separate lines of business are treated as one line of business. Under another rule, separate lines of business are aggregated if it is common for a substantial number of employees (other than those employees who work at the headquarters or main office of the employer) to perform substantial services for more than one line of business of the employer so that any determination of which employees perform substantial services for which lines of business would be difficult. Under another aggregation rule, separate retail lines of business located on the same premises are generally treated as the same line of business.

Working Condition Fringes

Employer-Provided Transportation for Security Reasons

The proposed regulations provide that the value of transportation provided by the employer for security reasons may be excludable as a working condition fringe to the extent a deduction under section 162 or 167 would be allowable to

the employee had the employee paid for the transportation. Many commentators requested that the Service provide additional guidance concerning the appropriateness and amount of any working condition fringe exclusion for the value of security provided for bona fide business-oriented security reasons. In response, the new temporary regulations provide rules concerning the existence of bona fide business-oriented security reasons and the effect of an independent security study particular to the employer and its employees. The new temporary regulations also contain several examples of the application of the rules.

Product Testing

The regulations provide that the value of the use of consumer goods may be excludable as a working condition fringe if certain conditions are met. This portion of the regulations is based on the legislative history of section 531 of the Tax Reform Act of 1984. The exclusion for product testing is limited so as to permit employers to have the benefit of product testing programs without allowing a major deviation from the general overall legislative intent of taxation of nonstatutory fringe benefits.

Qualified Automobile Demonstration Use

The value of qualified automobile demonstration use is excludable from income as a working condition fringe. The regulations provide guidance concerning when the exclusion is available. In addition, the regulations provide a safe harbor rule that defines the sales area in which an automobile dealership is located.

Parking

The value of parking may be excluded as a working condition fringe. The regulations provide rules relating to when the exclusion is available.

Employer-Operated Athletic Facilities

Under a special rule, the value of the use of employer-operated athletic facilities may be excluded from income. The regulations provide rules concerning the definition of an employer-operated athletic facility and when the exclusion is available.

Nondiscrimination Rules

No-additional-cost services, qualified employee discounts, and meals provided at employer-operated eating facilities for employees are only excludable from the income of an employee who is an officer, owner, or highly compensated employee (i.e., a member of the "prohibited group") if the benefits are offered on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of the members of the prohibited group. Many commentators suggested that the definitions of owner and highly compensated employee contained in the proposed regulations were arbitrary and mechanical. The definitions were not amended in the new temporary regulations because, based on data submitted by commentators, the Service believes that the definitions comprise a reasonable and appropriate framework for identifying employees as members of the prohibited group. In addition, many commentators requested that the Service retain definitions that provide certainty.

The regulations provide that a classification is nondiscriminatory under section 132 if the classification would be nondiscriminatory under the rules provided in the qualified plan area (section 410(b)(1)(B) of the Code and the regulations thereunder).

Employer-Operated Eating Facilities for Employees

The value of meals provided at employer-operated eating facilities for employees are excludable from income as de minimis fringes if the revenues from the facility equal or exceed the direct operating costs of the facility and the nondiscrimination requirements of section 132 are satisfied. In response to comments, direct operating costs are narrowly defined as the cost of food and beverages and the cost of labor for personnel whose services relating to the facility are performed primarily on the premises of the eating facility. If meals provided at an eating facility are not excludable because, for example, the direct operating costs of the facility exceed revenues from the facility, the special meal valuation rule provided in the regulations under section 61 (described above) may be used to value the meals provided at the facility.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB. Control number [1545-0771].

Drafting Information

The principal author of these regulations is Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.61-1—281.4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendment to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * 1.61-2T, 1.132-1T, 1.132-2T, 1.132-3T, 1.132-4T, 1.132-5T, 1.132-6T, 1.132-7T, and 1.132-8T also issued under 26 U.S.C. 132.

Par. 2. Section 1.61-2T is removed and a new § 1.61-2T is added in its place, as follows:

§ 1.61-2T Taxation of fringe benefits (Temporary).

(a) *Fringe benefits*—(1) *In general.* Section 61(a)(1) provides that, except as otherwise provided in subtitle A, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items. Examples of fringe benefits include: an employer-provided automobile, a flight on an employer-provided aircraft, an employer-provided free or discounted commercial airline flight, an employer-provided vacation, and employer-provided discount on property or services, and emkployer-provided membership in a country club or other social club, and an employer-provided ticket to an entertainment or sporting event.

(2) *Fringe benefits excluded from income.* To the extent that a particular fringe benefit is specifically excluded from gross income pursuant to another section of subtitle A, that section shall govern the treatment of the fringe benefit. Thus, if the requirements of the governing section are satisfied, the fringe benefits may be excludable from gross income. Examples of excludable fringe benefits are qualified tuition reductions provided to an employee (section 177(d)); meals and lodging furnished to an employee for the convenience of the employer (section 119); and benefits provided under a dependent care assistance program (section 129). Similarly, the value of the use by an employee of an employer-provided vehicle or a flight provided to an employee on an employer-provided aircraft may be excludable from income under section 105 (because, for example, the trnsportation is provided for medical reasons) if and to the extent that the requirements of that section are satisfied. Section 61 and the regulations thereunder shall apply, however, to the extent that they are not inconsistent with such other section. For example, many fringe benefits specifically addressed in other sections of subtitle A are excluded from gross income only to the extent that they do not exceed specific dollar or percentage limits, or only if certain other requirements are met. If the limits are exceeded or the requirements are not met, some or all of the fringe benefit may be includible in gross income. See paragraph (b)(3) of this section.

(3) *Compensation for services.* A fringe benefit provided in connection with the performance of services shall be considered to have been provided as compensation for servcies. Refraining from the performance of services (such as pursuant to a covenant not to compete) is deemed to be the performance of services for purposes of this section.

(4) *Recipient of a fringe benefit*—(i) *Definition.* A fringe benefit is included in the income of the "recipient" of the fringe benefit. The recipient of a fringe benefit is the person performing the services in connection with which the fringe benefit is provided. Thus, a person may be considered to be a recipient, even though that person did not actually receive the fringe benefit. For example, a fringe benefit provided to any person is connection with the performance of services by another person is considered to have been provided to the person who performs the services and not the person who receives the fringe benefit. In addition, if a fringe benefit is provided to a person, but taxable to a second person as the recipient, such benefit is referred to as provided to the second person and use by the first person is considered use by the second person. For example, provision of an automobile to an employee's spouse by the employer is taxable to the employee as the recipient. The automobile is referred to as available to the employee and use by the employee's spouse is considered use by the employee.

(ii) *Recipient may be other than an employee.* The recipient of a fringe benefit need not be an employee of the provider of the fringe benefit, but may be a partner, director, or an independent contractor. For convenience, the term "employee" includes a reference to any recipient of a fringe benefit, unless otherwise specifically provided in this section.

(5) *Provider of a fringe benefit.* The "provider" of a fringe benefit is that person for whom the services are performed, regardless of whether that person actually provides the fringe benefit to the recipient. The provider of a fringe benefit need not be the employer of the recipient of the fringe benefit, but may be, for example, a client or customer of an independent contractor. For convenience, the term "employer" includes a reference to any provider of a fringe benefit, unless otherwise specifically provided in this section.

(6) *Effective date.* This section is effective as of January 1, 1985. No inference may be drawn from the promulgation or terms of this section concerning the application of law in effect prior to January 1, 1985.

(b) *Valuation of fringe benefits*—(1) *In general.* An employee must include in gross income the amount by which the fair market value of the fringe benefit exceeds the sum of (i) the amount, if any, paid for the benefit, and (ii) the amount, if any, specifically excluded from gross income by some other section of subtitle A. Therefore, for example, if the employee pays fair market value for what is received, no amount is includible in the gross income of the employee.

(2) *Fair market value.* In general, fair market value is determined on the basis of all the facts and circumstances. Specifically, the fair market value of a fringe benefit is that amount a (hypothetical person would have to pay a hypothetical third party to obtain (i.e., purchase or lease) the particular fringe benefit. Thus, for example, the effect of any special relationship that may exist between the employer and the employee must be disregarded. This also means that an employee's subjective perception of the value of a fringe benefit is not relevant to the determination of a fringe benefit's fair market value. In addition, the cost incurred by the employer is not determinative of the fair market value of the fringe benefit. For special rules relating to the valuation of certain fringe benefits, see paragraph (c) of this section.

(3) *Exclusion from income based on cost.* If a statutory exclusion phrased in terms of cost applies to the provision of a fringe benefit, section 61 does not require the inclusion in the recipient's gross income of the difference between the fair market value and the excludable cost of that fringe benefit. For example, section 129 provides an exclusion from an employee's gross income for amounts paid or incurred by an employer to provide dependent care assistance to employees. Even if the fair market value of the dependent care assistance exceeds the employer's cost, the excess is not subject to inclusion under section 61 and this section. If the statutory cost exclusion is a limited amount, however, then the fair market value of the fringe benefit attributable to any excess cost is subject to inclusion.

(4) *Fair market value of the availability of an employer-provided vehicle.* If the vehicle special valuation rules of paragraph (d), (e), or (f) of this section are not used by a taxpayer entitled to use such rules, the value of the availability of an employer-provided vehicle is determined under the general valuation principles set forth in this section. In general, such valuation must be determined by reference to the cost to a hypothetical person of leasing from a hypothetical third party the same or comparable vehicle on the same or comparable terms in the geographic area in which the vehicle is available for use. Unless the employee can substantiate that the same or comparable vehicle could have been leased on a cents-per-mile basis, the value of the availability of the vehicle cannot be determined by reference to a cents-per-mile rate applied to the number of miles the vehicle is driven. An example of a comparable lease term is the amount of time that the vehicle is available to the employee for use, e.g., a one-year period.

(5) *Fair market value of a flight on an employer-provided aircraft.* If the non-commercial flight special valuation rule of paragraph (g) of this section is not used (or is not properly used) by a taxpayer entitled to use such rule, the value of a flight on an employer-provided aircraft is determined under the general valuation principles set forth

in this section. An example of how the general valuation principles would apply is that if an employee whose flight is primarily personal controls the use of an aircraft with respect to such flight, such flight is valued by reference to how much it would cost a hypothetical person to charter the same or comparable aircraft for the same or comparable flight. The cost to charter the aircraft must be allocated among all employees on board the aircraft based on all the facts and circumstances, including which employees controlled the use of the aircraft. Notwithstanding the allocation required by the preceding sentence, no additional amount shall be included in the income of any employee whose flight is properly valued under the special valuation rule of paragraph (g) of this section.

(c) *Special valuation rules*—(1) *In general.* Paragraphs (d) through (j) of this section provide special valuation rules that may be used under certain circumstances for certain commonly provided fringe benefits. Paragraph (d) provides a lease valuation rule relating to employer-provided automobiles. Paragraph (e) provides a cents-per-mile valuation rule relating to employer-provided vehicles. Paragraph (f) provides a commuting valuation rule relating to employer-provided vehicles. Paragraph (g) provides a flight valuation rule relating to flights on employer-provided aircraft. Paragraph (h) provides a flight valuation rule relating to flights on commercial airlines. Paragraph(i) is reserved. Paragraph (j) provides a meal valuation rule relating to employer-operated eating facilities for employees. For general rules relating to the valuation of fringe benefits not eligible for valuation under the special valuation rules, see paragraph (d) of this section.

(2) *Use of the special valuation rules—(i) In general.* The Special valuation rules may be used for income, employment tax, and reporting purposes. Use of any of the special valuation rules is optional. An employer need not use the same vehicle special valuation rule for all vehicles provided to all employees. For example, an employer may use the automobile lease valuation rule for automobiles provided to some employees, and the commuting and vehicle cents-per-mile valuation rules for automobiles provided to other employees. Except as otherwise provided, however, if either the commercial flight valuation rule or the noncommercial flight valuation rule is used, such rule must be used by an employer to value all flights taken by employees in a calendar year. Effective January 1, 1986, if an employer uses one of the special rules to value the benefit provided to an employee, the employee may not use another special rule to value that benefit. The employee may, however, use general valuation rules based on facts and circumstances (see paragraph (b) of this section). Effective January 1, 1986, an employee may only use a special valuation rule if the employer uses the rule. If a special rule is used, it must be used for all purposes. If an employer properly uses a special rule and the employee uses the special rule, the employee must include in gross income the amount determined by the employer under the special rule less any amount reimbursed by the employee to the employer. The employer and the employee may use the special rules to determine the amount of the reimbursement due the employer by the employee. If an employer properly uses a special rule and properly determines the amount of an employee's working condition fringe under section 132 and § 1.132–1T (under the general rule or under a special rule), and the employee uses the special valuation rule, the employee must include in gross income the amount determined by the employer less any amount reimbursed by the employee to the employer.

(ii) *Transitional rules*—(A) *Use of vehicle special valuation rules for 1985 and 1986.* For purposes of valuing the use or availability of a vehicle, the consistency rules provided in paragraphs (d)(6) and (e)(5) of this section (relating to the automobile lease valuation rule and the vehicle cents-per-mile valuation rule, respectively) apply for 1987 and thereafter. Therefore, for 1985 and 1986 an employer (and employee, subject to paragraph (c)(2)(i) of this section) may use any applicable special valuation rule (or no special valuation rule) to value the use or availability of a vehicle, subject to paragraph (c)(2)(ii)(B) of this section.

(B) *Consistency Rules for 1985 and 1986.* If an employer uses the automobile lease valuation rule of paragraph (d) of this section in 1985 or 1986 with respect to an automobile, such rule must be used for the entire calendar year with respect to the automobile except for any period during which the commuting valuation rule of paragraph (f) of this section is properly used. If an employer uses the vehicle cents-per-mile valuation rule of pararaph (e) of this section in 1985 or 1986 with respect to a vehicle, such rule must be used for the entire calendar year with respect to the vehicle except for any period during which the commuting valuation rule of paragraph (f) of this section is properly used. The rules of this paragraph (c)(2)(ii)(B) also apply to employees using the special valuation rules of paragraphs (d) or (e) of this section.

(C) *Employee's use of special valuation rules for 1985.* An employee may use a special valuation rule (other than the rule in paragraph (e) of this section relating to the vehicle cents-per-mile valuation rule) during 1985 even if the employer does not use the same special valuation rule during 1985. An employee's use of a special valuation rule in 1986 and thereafter must be consistent with his employer's use of the rule as required under paragraph (c)(2)(i) of this section.

(D) *Examples.* The following examples illustrate the rules of paragraph (c)(2)(ii) of this section:

Example (1). Assume that an employer properly uses the automobile lease valuation rule in 1985. The employer may use the vehicle cents-per-mile valuation rule in 1986 if the requirements of the vehicle cents-per-mile valuation rule are satisfied.

Example (2). Assume that an employer does not use a special valuation rule to value the availability of an automobile in 1985. The employer may use any of the special valuation rules in 1986 if the requirements of the rule chosen are satisfied. The same applies for 1987.

Example (3). Assume that an employer properly uses the vehicle cents-per-mile valuation rule in 1985. The employer may continue to use to the rule or use any of the other special valuation rules to value the benefit provided in 1986 if the requirements of the rule chosen are satisfied. Alternatively, the employer may use none of the special valuation rules in 1986 but use any of the rules in 1987 if the requirements of the rule chosen are satisfied.

Example (4). Assume that an employee properly uses the automobile lease valuation rule in 1985. In 1986 and thereafter the employee may use a special valuation rule only if the employee's employer uses the same special valuation rule. The employee may use general valuation principles to value the benefit provided in 1986 and thereafter.

(3) *Election to use the special valuation rules*—(i) *In general.* A particular special valuation rule is deemed to have been elected by the employer (and, if applicable, by the employee), if the employer (and, if applicable, the employee) determines the value of the fringe benefit provided by applying the special valuation rule and treats such value as the fair market value of the fringe benefit for income, employment tax, and reporting purposes. Neither the employer nor the employee is required to notify the Internal Revenue Service of the election.

(ii) *Notification to employee.* Effective January 1, 1987, an employer who elects to use a special valuation rule must

notify the employee of the election by the later January 31 of the calendar year for which the election is to apply or 30 days after the employer first provides the benefit to the employee. An employer who elects to use a special valuation rule with respect to 1986 must notify the employee of the election by the later of March 31, 1986, or 30 days after the employer first provides the benefit to the employee. An employer who elects to use a special valuation rule with respect to 1985 need not provide notification of this election to the employee.

(4) *Application of section 414 to employers.* For purposes of paragraphs (c) through (j) of this section, except as otherwise provided therein, the term "employer" includes all entities required to be treated as a single employer under section 414 (b), (c), or (m).

(5) *Valuation formulas contained in the special valuation rules.* The valuation formulas contained in the special valuation rules are provided only for use in connection with such rules. Thus, when a special valuation rule is properly applied to a fringe benefit, the Commissioner will accept the value calculated pursuant to the rule as the fair market value of that fringe benefit. However, when a special valuation rule is not properly applied to a fringe benefit (see, for example, paragraph (g)(11) of this section), or when a special valuation rule is not used to value a fringe benefit by a taxpayer entitled to use the rule, the fair market value of that fringe benefit may not be determined by reference to any value calculated under any special valuation rule. Under the circumstances described in the preceding sentence, the fair market value of the fringe benefit must be determined pursuant to paragraph (b) of this section.

(6) *Modification of the special valuation rules.* The Commissioner may, if he deems it necessary, add, delete, or modify the special valuation rules, including the valuation formulas contained herein, on a prospective basis.

(7) *Special Accounting Period.* If the employer is using the special accounting rule provided in Announcement 85-113 (1985-31 I.R.B., August 5, 1985) (relating to the reporting of and withholding on the value of noncash fringe benefits), benefits which are deemed provided in a subsequent calendar year pursuant to such rule are considered as provided in such subsequent calendar year for purposes of the special valuation rules. Thus, if a particular special valuation rule is in effect for a calendar year, it applies to benefits deemed provided during such calendar year under the special accounting rule.

(d) *Automobile lease valuation rule*—(1) *In general*—(i) *Annual Lease Value.* Under the special valuation rule of this paragraph (d), if an employer provides an employee with an automobile that is available to the employee for an entire calendar year, the value of the benefit provided in the Annual Lease Value (determined under paragraph (d)(2) of this section) of that automobile. Except as otherwise provided, for an automobile that is available to an employee for less than an entire calendar year, the value of the benefit provided is either a pro-rated Annual Lease Value or the Daily Lease Value (as defined in paragraph (d)(4) of this section), whichever is applicable. Absent any statutory exclusion relating to the employer-provided automobile (see, for example, section 132(a)(3) and § 1.132-5T(b)), the amount of the Annual Lease Value (or a pro-rated Annual Lease Value or the Daily Lease Value, as applicable) is included in the gross income of the employee.

(ii) *Definition of automobile.* For purposes of this paragraph (d), the term "automobile" means any four-wheeled vehicle manufactured primarily for use on public streets, roads, and highways.

(2) *Calculation of Annual Lease Value*—(i) *In general.* The Annual Lease Value of a particular automobile is calculated as follows:

(A) Determine the fair market value of the automobile as of the first date on which the automobile is made available to any employee of the employer for personal use. For an automobile first made available to any employee for personal use prior to January 1, 1985, determine the fair market value as of January 1, 1985. For rules relating to determination of the fair market value of an automobile for purposes of this paragraph (d), see paragraph (d)(5) of this section.

(B) Select the dollar range in column 1 of the Annual Lease Value Table, set forth in paragraph (d)(2)(iii) of this section, corresponding to the fair market value of the automobile. Except as otherwise provided in paragraphs (d)(2)(iv) and (v) of this section, the Annual Lease Value for each year of availability of the automobile is the corresponding amount in column 2 of the Table.

(ii) *Use by employee only in 1985.* If the employee, but not the employer, is using the special rule of this paragraph (d), the employee may calculate the Annual Lease Value in the same manner as described in paragraph (d)(2)(i)(A) of this section, except that the fair market value of the automobile is determined as of the first date on which the automobile is made available to the employee for personal use or, for an automobile made available to the employee for personal use prior to January 1, 1985, by determining the fair market value as of January 1, 1985. If the employer is also using the special rule of this paragraph (d), however, then the employee to whom the automobile is made available must use the special rule, if at all, by using the Annual Lease Value calculated by the employer. The rules of this paragraph (d)(2)(ii) apply only for 1985.

(iii) *Annual Lease Value Table.*

Automobile fair market value (1)	Annual lease value (2)
$0 to $999	$600
$1,000 to $1,999	850
$2,000 to $2,999	1,100
$3,000 to $3,999	1,350
$4,000 to $4,999	1,600
$5,000 to $5,999	1,850
$6,000 to $6,999	2,100
$7,000 to $7,999	2,350
$8,000 to $8,999	2,600
$9,000 to $9,999	2,850
$10,000 to $10,999	3,100
$11,000 to $11,999	3,350
$12,000 to $12,999	3,600
$13,000 to $13,999	3,850
$14,000 to $14,999	4,100
$15,000 to $15,999	4,350
$16,000 to $16,999	4,600
$17,000 to $17,999	4,850
$18,000 to $18,999	5,100
$19,000 to $19,999	5,350
$20,000 to $20,999	5,600
$21,000 to $21,999	5,580
$22,000 to $22,999	6,100
$23,000 to $23,999	6,350
$24,000 to $24,999	6,600
$25,000 to $25,999	6,850
$26,000 to $27,999	7,250
$28,000 to $29,999	7,750
$30,000 to $31,999	8,250
$32,000 to $33,999	8,750
$34,000 to $35,999	9,250
$36,000 to $37,999	9,750
$38,000 to $39,999	10,250
$40,000 to $41,999	10,750
$42,000 to $43,999	11,250
$44,000 to $45,999	11,750
$46,000 to $47,999	12,250
$48,000 to $49,999	12,750
$50,000 to $51,999	13,250
$52,000 to $53,999	13,750
$54,000 to $55,999	14,250
$56,000 to $57,999	14,750
$58,000 to $59,999	15,250

For vehicles having a fair market value in excess of $59,999, the Annual Lease Value is equal to: (.25 X the fair market value of the automobile) + $500.

(iv) *Recalculation of Annual Lease Value.* The Annual Lease Values determined under the rules of this paragraph (d) are based on a four-year lease term. Therefore, except as otherwise provided in paragraph (d)(2)(v) of this section, the Annual Lease Value calculated by applying paragraph (d)(2) (i) or (ii) of this section shall remain in effect for the period that begins with the first date the special valuation rule of paragraph (d) of this section is applied by the employer to the automobile and ends on December 31 of the fourth full calendar year following

that date. The Annual Lease Value for each subsequent four-year period is calculated by determining the fair market value of the automobile as of the January 1 following the period described in the previous sentence and selecting the amount in column 2 of the Annual Lease Value Table corresponding to the appropriate dollar range in column 1 of the Table. If, however, the employer is using the special accounting rule provided in Announcement 85–113 (1985–31 I.R.B., August 5, 1985) (relating to the reporting of and withholding on the value of noncash fringe benefits), the employer may calculate the Annual Lease Value for each subsequent four-year period as of the beginning of the special accounting period that begins immediately prior to the January 1 described in the previous sentence. For example, assume that pursuant to Announcement 85–113, an employer uses the special accounting rule. Assume further that beginning on November 1, 1985, the special accounting period is November 1 to October 31 and that the employer elects to use the special valuation rule of this paragraph (d) as of January 1, 1985. The employer may recalculate the Annual Lease Value as of November 1, 1988, rather than as of January 1, 1989.

(v) *Transfer of the automobile to another employee.* Unless the primary purpose of the transfer is to reduce Federal taxes, if an employer transfers an automobile from one employee to another employee, the employer may recalculate the Annual Lease Value based on the fair market value of the automobile as of January 1 of the year of transfer. If, however, the employer is using the special accounting rule provided in Announcement 85–113 (1985–31 I.R.B., August 5, 1985) (relating to the reporting of and withholding on the value of noncash fringe benefits), the employer may recalculate the Annual Lease Value based on the fair market value of the automobile as of the beginning of the special accounting period in which the transfer occurs. If the employer does not recalculate the Annual Lease Value, and the employee to whom the automobile is transferred uses the special valuation rule, the employee may not recalculate the Annual Lease Value.

(3) *Services included in, or excluded from, the Annual Lease Value Table*—(i) *Maintenance and insurance included.* The Annual Lease Values contained in the Annual Lease Value Table include the fair market value of maintenance of, and insurance for, the automobile. Neither an employer nor an employee may reduce the Annual Lease Value by the fair market value of any service included in the Annual Lease Value that is not provided by the employer, such as reducing the Annual Lease Value by the fair market value of a maintenance service contract or insurance. An employer or employee may take into account the services actually provided with respect to the automobile by valuing the availability of the automobile under the general valuation rules of paragraph (b) of this section.

(ii) *Fuel excluded*—(A) *In general.* The Annual Lease Values do not include the fair market value of fuel provided by the employer, regardless of whether fuel is provided in kind or its cost is reimbursed by or charged to the employer.

(B) *Valuation of fuel provided in kind.* The provision of fuel in kind may be valued at fair market value based on all the facts and circumstances or, in the alternative, it may be valued at 5.5 cents per mile for all miles driven by the employee. However, the provision of fuel in kind may not be valued at 5.5 cents per mile for miles driven outside the United States, Canada, and Mexico. For purposes of this section, the United States includes the United States and its territories.

(C) *Valuation of fuel where cost reimbursed by or charged to employer.* The fair market value of fuel, the cost of which is reimbursed by or charged to an employer, is generally the amount of the actual reimbursement or the amount charged, provided the purchase of the fuel is at arm's length. If an employer with a fleet of at least 20 automobiles that meet the requirements of paragraph (d)(5)(v)(C) of this section reimburses employees for the cost of fuel or allows employees to charge the employer for the cost of the fuel, however, the fair market value of fuel provided to those automobiles may be determined by reference to the employer's fleet-average cents-per-mile fuel cost. The fleet-average cents-per-mile fuel cost in equal to the fleet-average per-gallon fuel cost divided by the fleet-average miles-per-gallon rate. The averages described in the preceding sentence must be determined by averaging the per-gallon fuel costs and miles-per-gallon rates of a representative sample of the automobiles in the fleet equal to the greater of ten percent of the automobiles in the fleet or 20 automobiles for a representative period, such as a two month period.

(iii) *All other services excluded.* The fair market value of any service not specifically identified in paragraph (d)(3)(i) of this section that is provided by the employer with respect to an automobile (such as the services of a chauffeur) must be added to the Annual Lease Value of the automobile in determining the fair market value of the benefit provided.

(4) *Availability of an automobile for less than an entire calendar year*—(i) *Pro-rated Annual Lease Value used for continuous availability of 30 or more days.* Except as otherwise provided in paragraph (d)(4)(iv) of this section, for periods of continuous availability of 30 or more days, but less than an entire calendar year, the value of the availability of the employer-provided automobile is the pro-rated Annual Lease Value. The pro-rated Annual Lease Value is calculated by multiplying the applicable Annual Lease Value by a fraction, the numerator of which is the number of days of availability and the denominator of which is 365.

(ii) *Daily Lease Value used for continuous availability of less than 30 days.* Except as otherwise provided in paragraph (d)(4)(iii) of this section, for periods of continuous availability of one or more but less than 30 days, the value of the availability of the employer-provided automobile is the Daily Lease Value. The Daily Lease Value is calculated by multiplying the applicable Annual Lease Value by a fraction, the numerator of which is four times the number of days of availability and the denominator of which is 365.

(iii) *Election to treat all periods as periods of at least 30 days.* A pro-rated Annual Lease Value may be applied with respect to a period of continuous availability of less than 30 days, by treating the automobile as if it had been available for 30 days, if to do so would result in a lower valuation than applying the Daily Lease Value to the shorter period of actual availability.

(iv) *Periods of unavailability*—(A) *General rule.* In general, a pro-rated Annual Lease Value (as provided in paragraph (d)(4)(i) of this section) is used to value the availability of an employer-provided automobile when the automobile is available to an employee for a period of continuous availability of at least 30 days but less than the entire calendar year. Neither an employer nor an employee may use a pro-rated Annual Lease Value when the reduction of Federal taxes is the primary reason the automobile is unavailable to an employee during the calendar year.

(B) *Unavailability for personal reasons of the employee.* If an automobile is unavailable to an employee because of personal reasons of the employee, such as while the employee is on vacation, a pro-rated Annual Lease Value may not be used.

For example, assume an automobile is available to an employee during the first five months of the year and during the last five months of the year. Assume further that the period of unavailability occurs because the employee is on vacation. The Annual Lease Value, if it is applied, must be applied with respect to the entire 12 month period. The Annual Lease Value may not be prorated to take into account the two-month period of unavailability.

(5) *Fair market value*—(i) *In general.* For purposes of determining the Annual Lease Value of an automobile under the Annual Lease Value Table, the fair market value of an automobile is that amount a hypothetical person would have to pay a hypothetical third party to purchase the particular automobile provided. Thus, for example, any special relationship that may exist between the employee and the employer must be disregarded. Also, the employee's subjective perception of the value of the automobile is not relevant to the determination of the automobile's fair market value. In addition, except as provided in paragraph (d)(5) (ii) of this section, the cost incurred by the employer of either purchasing of leasing the automobile is not determinative of the fair market value of the automobile.

(ii) *Safe-harbor valuation rule.* For purposes of calculating the Annual Lease Value of an automobile under this paragraph (d), the safe-harbor value of the automobile may be used as the fair market value of the automobile For an automobile owned by the employer, the safe-harbor value of the automobile is the employer's cost of purchasing the automobile, provided the purchase is made at arm's length. For an automobile leased by the employer, the safe-harbor value of the automobile is the value determined under paragraph (d)(5)(iii) of this section.

(iii) *Use of nationally recognized pricing guides.* The fair market value of an automobile that is (A) provided to an employee prior to January 1, 1985, (B) being revalued pursuant to paragraphs (d)(2) (iv) or (v) of this section, or (C) is a leased automobile being valued pursuant to paragraph (d)(5)(ii) of this section, may be determined by using the retail value of such automobile as reported in a nationally recognized publication that regularly reports new or used automobile retail values, whichever is applicable. The values contained in (and obtained from) the publication must be reasonable with respect to the automobile being valued.

(iv) *Fair market value of special equipment*—(A) *Certain equipment excluded.* The fair market value of an automobile does not include the fair market value of any telephone or any specialized equipment that is added to or carried in the automobile if the presence of such equipment is necessitated by, and attributable to, the business needs of the employer.

(B) *Use of specialized equipment outside of employer's business.* The value of specialized equipment must be included, however, if the employee to whom the automobile is available uses the specialized equipment in a trade of business of the employee other than the employee's trade or business of being an employee of the employer.

(C) *Equipment susceptible to personal use.* The exclusion rule provided in this paragraph (d)(5)(iv) does not apply to specialized equipment susceptible to personal use.

(v) *Fleet-average valuation rule*—(A) *In general.* An employer with a fleet of 20 or more automobiles may use a fleet-average value for purposes of calculating the Annual Lease Values of the automobiles in the fleet. The fleet-average value is the average of the fair market values of each automobile in the fleet. The fair market value of each automobile in the fleet shall be determined, pursuant to the rules of paragraphs (d)(5) (i) through (iv) of this section, as of the later of January 1, 1985, or the first date on which the automobile is made available to any employee of the employer for personal use.

(B) *Period for use of rule.* The fleet-average valuation rule of this paragraph (d)(5)(v) may be used by an employer as of January 1 of any calendar year following the calendar year in which the employer acquires a fleet of 20 or more automobiles. The Annual Lease Value calculated for the automobiles in the fleet, based on the fleet-average value, shall remain in effect for the period that begins with the first January 1 the fleet-average valuation rule of this paragraph (d)(5)(v) is applied by the employer to the automobiles in the fleet and ends on December 31 of the subsequent calendar year. The Annual Lease Value for each subsequent two year period is calculated by determining the fleet-average value of the automobiles in the fleet as of the first January 1 of such period. An employer may cease using the fleet-average valuation rule as of any January 1. The fleet-average valuation rule does not apply as of January 1 of the year in which the number of automobiles in the employer's fleet declines to fewer than 20. If, however, the employer is using the special accounting rule provided in Announcement 85-113 (I.R.B. No. 31, August 5, 1985), the employer may apply the rules of this paragraph (d)(5)(v)(B) on the basis of the special accounting period rather than the calendar year. (This is accomplished by substituting (1) the beginning of the special accounting period that begins immediately prior to the January 1 described in this paragraph (d)(5)(v)(B) for January 1 wherever it appears in this paragraph (d)(5)(v)(B) and (2) the end of such accounting period for December 31.) The revaluation rules of paragraph (d)(2) (iv) and (v) of this section do not apply to automobiles valued under this paragraph (d)(5)(v).

(C) *Limitations on use of fleet-average rule.* The rule provided in this paragraph (d)(5)(v) may not be used for any automobile whose fair market value (determined pursuant to paragraphs (d)(5) (i) through (iv) of this section as of either the first date on which the automobile is made available to any employee of the employer for personal use or, if later, January 1, 1985) exceeds $16,500. In addition, the rule provided in this paragraph (d)(5)(v) may only be used for automobiles that the employer reasonably expects will regularly be used in the employer's trade or business. Infrequent use of the vehicle, such as for trips to the airport or between the employer's multiple business premises, does not constitute regular use of the vehicle in the employer's trade or business.

(D) *Additional automobiles added to the fleet.* If the rule provided in this paragraph (d)(5)(v) is used by an employer, it must be used for every automobile included in or added to the fleet that meets the requirements of paragraph (d)(5)(v)(C) of this section. The fleet-average value in effect at the time an automobile is added to the fleet is treated as the fair market value of the automobile for purposes of determining the Annual Lease Value of the automobile until the fleet-average value changes pursuant to paragraph (d)(5)(v)(B) of this section.

(E) *Use of the fleet-average rule by employees.* An employee can only use the fleet-average value if it is used by the employer. If an employer uses the fleet-average value, and the employee uses the special valuation rule of paragraph (d) of this section, the employee must use the fleet-average value.

(6) *Consistency rules*—(i) *Use of the automobile lease valuation rule by an employer.* Except as provided in paragraph (d)(5) (v)(B) of this section, an employer may adopt the automobile lease valuation rule of this paragraph (d) for an automobile only if the rule is adopted with respect to the later of the period that begins on January 1, 1987, or the first period in which the automobile

is made available to an employee of the employer for personal use or, if the commuting valuation rule of paragraph (f) of this section is used when the automobile is first made available to an employee of the employer for personal use, the first period in which the commuting valuation rule is not used.

(ii) *An employer must use the automobile lease valuation rule for all subsequent periods.* Once the automobile lease valuation rule has been adopted for an automobile by an employer, the rule must be used by the employer for all subsequent periods in which the employer makes the automobile available to any employee, except that the employer may, for any period during which use of the automobile qualifies for the commuting valuation rule of paragraph (f) of this section, use the commuting valuation rule with respect to the automobile.

(iii) *Use of the automobile lease valuation rule by an employee.* Except as provided in paragraph (c)(2)(ii)(C) of this section, an employee may adopt the automobile lease valuation rule for an automobile only if the rule is adopted (A) by the employer and (B) with respect to the first period in which the automobile for which the employer (consistent with paragraph (d)(6)(i) of this section) adopted the rule is made available to that employee for personal use, or, if the commuting valuation rule of paragraph (f) of this section is used when the automobile is first made available to that employee for personal use, the first period in which the commuting valuation rule is not used.

(iv) *An employee must use the automobile lease valuation rule for all subsequent periods.* Once the automobile lease valuation rule has been adopted for an automobile by an employee, the rule must be used by the employee for all subsequent periods in which the automobile for which the rule is used is available to the employee, except that the employee may, for any period during which use of the automobile qualifies for use of the commuting valuation rule of paragraph (f) of this section and for which the employer uses the rule, use the commuting valuation rule with respect to the automobile.

(v) *Replacement automobiles.* Notwithstanding anything in this paragraph (D)(6) to the contrary, if the automobile lease valuation rule is used by an employer, or by an employer and an employee, with respect to a particular automobile, and a replacement automobile is provided to the employee for the primary purpose of reducing Federal taxes, then the employer, or the employer and the employee, using the rule must continue to use the rule with respect to the replacement automobile.

(e) *Vehicle cents-per-mile valuation rule*—(1) *In general*—(i) *General rule.* Under the vehicle cents-per-mile valuation rule of this paragraph (e), if an employer provides an employee with the use of a vehicle that (A) the employer reasonably expects will be regularly used in the employer's trade or business throughout the calendar year (or such shorter period as the vehicle may be owned or leased by the employer) or (B) satisfies the requirements of paragraph (e)(1)(ii) of this section, the value of the benefit provided in the calendar year is the standard mileage rate provided in the applicable Revenue Ruling or Revenue Procedure ("cents-per-mile rate") multiplied by the total number of miles the vehicle is driven by the employee for personal purposes. For 1985, the standard mileage rate is 21 cents per mile for the first 15,000 miles and 11 cents per mile for all miles over 15,000. See Rev. Proc. 85-49. The standard mileage rate must be applied to personal miles independent of business miles. Thus, for example, if an employee drives 20,000 personal miles and 35,000 business miles in 1985, the value of the personal use of the vehicle is $3,700 (15,000×$.21+5,000×$.11). For purposes of this section, the use of a vehicle for personal purposes is any use of the vehicle other than use in the employee's trade or business of being an employee of the employer. Infrequent use of the vehicle, such as for trips to the airport or between the employer's multiple business premises, does not constitute regular use of the vehicle in the employer's trade or business.

(ii) *Mileage Rule.* A vehicle satisfies the requirements of this paragraph (e)(1)(ii) in a calendar year if (A) it is actually driven at least 10,000 miles in the year, and (B) use of the vehicle during the year is primarily by employees. For example, if a vehicle is used by only one employee during the year and that employee drives a vehicle at least 10,000 miles in a calendar year, such vehicle satisfies the requirements of this paragraph (e)(1)(ii) even if all miles driven by the employee are personal. The requirements of this paragraph (e)(1)(ii), however, will not be satisfied if during the year the vehicle is transferred among employees in such a way which enables an employee whose use was at a rate significantly less that 10,000 miles per year to meet the 10,000 mile threshold. Assume that an employee uses a vehicle for the first six months of the year and drives 2,000 miles, and that vehicle is then used by other employees who drive the vehicle 8,000 miles in the last six months of the year. Because the rate at which miles were driven in the first six months of the year would result in only 4,000 miles being driven in the year, and because the first employee did not use the vehicle during the last six months of the year, the requirements of this paragraph (e)(1)(ii) are not satisfied. The requirement of paragraph (e)(1)(ii)(B) of this section is deemed satisfied if employees use the vehicle on a consistent basis for commuting. If the employer does not own or lease the vehicle during a portion of the year, the 10,000 mile threshold is to be reduced proportionately to reflect the periods when the employer owned or leased the vehicle. For purposes of this paragraph (e)(1)(ii), use of the vehicle by an individual (other than the employee) whose use would be taxed to the employee is not considered use by the employee.

(iii) *Limitation on use of the vehicle cents-per-mile valuation rule.* The value of the use of an automobile (as defined in paragraph (d)(1)(ii) of this section) may not be determined under the vehicle cents-per-mile valuation rule of this paragraph (e) if the fair market value of the automobile (determined pursuant to paragraphs (d)(5) (i) through (iv) of this section as of the later of January 1, 1985, or the first date on which the automobile is made available to any employee of the employer for personal use) exceeds the sum of the maximum recovery deductions allowable under section 280F(a)(2) for the first three taxable years in the recovery period for an automobile first placed in service during that calendar year. For 1985, that value is $12,800.

(2) *Definition of vehicle.* For purposes of this paragraph (e), the term "vehicle" means any motorized wheeled vehicle manufactured primarily for use on public streets, roads, and highways. The term "vehicle" includes an automobile as defined in paragraph (d)(1)(ii) of this section.

(3) *Services included in, or excluded from, the cents-per-mile rate*—(i) *Maintenance and insurance included.* The cents-per-mile rate includes the fair market value of maintenance of, and insurance for, the vehicle. An employer may not reduce the cents-per-mile rate by the fair market value of any service included in the cents-per-mile rate but not provided by the employer. An employer or employee may take into account the services provided with respect to the automobile by valuing the availability of the automobile under the general valuation rules of paragraph (b) of this section.

(ii) *Fuel provided by the employer*—(A) *Miles driven in the United States, Canada, and Mexico.* With respect to miles driven in the United States, Canada, and Mexico, the cents-per-mile rate includes the fair market value of fuel provided by the employer. If fuel is not provided by the employer, the cents-per-mile rate may be reduced by no more than 5.5 cents or the amount specified in any applicable Revenue Ruling or Revenue Procedure. For purposes of this section, the United States includes the United States and its territories.

(B) *Miles driven outside the United States, Canada, and Mexico.* With respect to miles driven outside the United States, Canada, and Mexico, the fair market value of fuel provided by the employer is not reflected in the cents-per-mile rate. Accordingly, the cents-per-mile rate may be reduced but by no more than 5.5 cents or the amount specified in any applicable Revenue Ruling or Revenue Procedure. If the employer provides the fuel in kind, it must be valued based on all the facts and circumstances. If the employer reimburses the employee for the cost of fuel or allows the employee to charge the employer for the cost of fuel, the fair market value of the fuel is generally the amount of the actual reimbursement or the amount charged, provided the purchase of fuel is at arm's length.

(4) *Valuation of personal use only.* The vehicle cents-per-mile valuation rule of this paragraph (e) may only be used to value the miles driven for personal purposes. Thus, the employer must include an amount in an employee's income with respect to the use of a vehicle that is equal to the product of the number of personal miles driven by the employee and the appropriate cents-per-mile rate. The employer may not include in income a greater or lesser amount; for example, the employer may not include in income 100 percent (all business and personal miles) of the value of the use of the vehicle. The term "personal miles" means all miles driven by the employee except miles driven by the employee is the employee's trade or business of being an employee of the employer.

(5) *Consistency rules*—(i) *Use of the vehicle cents-per-mile valuation rule by an employer.* An employer must adopt the vehicle cents-per-mile valuation rule of this paragraph (e) for a vehicle by the later of the period that begins on January 1, 1987, or the first period in which the vehicle is used by an employee of the employer for personal use or, if the commuting valuation rule of paragraph (f) of this section is used when the vehicle is first used by an employee of the employer for personal use, the first period in which the commuting valuation rule is not used.

(ii) *An employer must use the vehicle cents-per-mile valuation rule for all subsequent periods.* Once the vehicle cents-per-mile valuation rule has been adopted for a vehicle by an employer, the rule must be used by the employer for all subsequent periods in which the vehicle qualifies for use of the rule, except that (A) the employer may, for any period during which use of the vehicle qualifies for the commuting valuation rule of paragraph (f) of this section, use the commuting valuation rule with respect to the vehicle, and (B) if the employer elects to use the automobile lease valuation rule of paragraph (d) of this section for a period in which the vehicle does not qualify for use of the vehicle cents-per-mile valuation rule, then the employer must comply with the requirements of paragraph (d)(6) of this section. If the vehicle fails to qualify for use of the vehicle cents-per-mile valuation rule during a subsequent period, the employer may adopt for such subsequent period and thereafter any other special valuation rule for which the vehicle then qualifies. For purposes of paragraph (d)(6) of this section, the first day on which an automobile with respect to which the vehicle cents-per-mile rule had been used fails to qualify for use of the vehicle cents-per-mile valuation rule may be deemed to be the first day on which the automobile is available to an employee of the employer for personal use.

(iii) *Use of the vehicle cents-per-mile valuation rule by an employee.* An employee may adopt the vehicle cents-per-mile valuation rule for a vehicle only if the rule is adopted (A) by the employer and (B) with respect to the first period in which the vehicle for which the employer (consistent with paragraph (e)(5)(i) of this section) adopted the rule is available to that employee for personal use or, if the commuting valuation rule of paragraph (f) of this section is used by both the employer and the employee when the vehicle is first used by an employee for personal use, the first period in which the commuting valuation rule is not used.

(iv) *An employee must use the vehicle cents-per-mile valuation rule for all subsequent periods.* Once the vehicle cents-per-mile valuation rule has been adopted for a vehicle by an employee, the rule must be used by the employee for all subsequent periods of personal use of the vehicle by the employee for which the rule is used by the employer, except that the employee may, for any period during which use of the vehicle qualifies for use of the commuting valuation rule of paragraph (f) of this section and for which such rule is used by the employer, use the commuting valuation rule with respect to the vehicle.

(v) *Replacement vehicles.* Notwithstanding anything in this paragraph (e)(5) to the contrary, if the vehicle cents-per-mile valuation rule is used by an employer, or by an employer and an employee, with respect to a particular vehicle, and a replacement vehicle is provided to the employee for the primary purpose of reducing Federal taxes, then the employer, or the employer and the employee, using the rule must continue to use the rule with respect to the replacement vehicle if the replacement vehicle qualifies for use of the rule.

(f) *Commuting valuation rule*—(1) *In general.* Under the commuting valuation rule of this paragraph (f), the value of the commuting use of an employer-provided vehicle may be determined pursuant to paragraph (f)(3) of this section if the following criteria are met by the employer and employees with respect to the vehicle:

(i) The vehicle is owned or leased by the employer and is provided to one or more employees for use in connection with the employer's trade or business and is used in the employer's trade or business;

(ii) For bona fide noncompensatory business reasons, the employer requires the employee to commute to and/or from work in the vehicle;

(iii) The employer has established a written policy under which the employee may not use the vehicle for personal purposes, other than for commuting or de minimis personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home);

(iv) Except for de minimis personal use, the employee does not use the vehicle for any personal purpose other than commuting; and

(v) The employee required to use the vehicle for commuting is not a control employee of the employer (as defined in paragraphs (f) (5) and (6) of this section).

If the vehicle is a chauffeur-driven vehicle, the commuting valuation rule of this paragraph (f) may not be used to value the commuting use of any passenger who commutes in the vehicle. The rule may be used, however, to value the commuting use of the chauffeur. Personal use of a vehicle is all use of the vehicle by the employee that is not used

in the employee's trade or business of being an employee of the employer.

(2) *Special rules.* Notwithstanding anything in paragraph (f)(1) of this section to the contrary, the following special rules apply—

(i) *Written policy not required in 1985.* The policy described in paragraph (f)(1)(iii) of this section prohibiting personal use need not be written with respect to the commuting use which occurs prior to January 1, 1986;

(ii) *Commuting use during 1985.* For commuting use that occurs after December 31, 1984, but before January 1, 1986, the restrictions of paragraph (f)(1)(v) of this section shall be applied by substituting "an employee who is an officer or a five-percent owner of the employer" in lieu of "a control employee". For purposes of determining who is a five-percent owner, any individual who owns (or is considered as owning) five or more percent of the fair market value of an entity (the "owned entity") is considered a five-percent owner of all entities that would be aggregated with the owned entity under the rules of section 414 (b), (c), or (m). An employee who is an officer of an employer shall be treated as an officer of all entities treated as a single employer pursuant to section 414 (b), (c), or (m). The definitions provided in paragraphs (f)(5)(i) and (f)(6) of this section may be used to define an officer; and

(iii) *Control employee exception.* If the vehicle in which the employee is required to commute is not an automobile as defined in paragraph (d)(1)(ii) of this section, the restrictions of paragraph (f)(1)(v) of this section do not apply.

(3) *Commuting value*—(i) *$1.50 per one-way commute.* If the requirements of this paragraph (f) are satisfied, the value of the commuting use of an employer-provided vehicle is $1.50 per one-way commute (e.g., from home to work or from work to home).

(ii) *Value per employee.* If there is more than one employee who commutes in the vehicle, such as in the case of an employer-sponsored car pool, the amount includible in the income of each employee is $1.50 per one-way commute. Thus, the amount includible for each round-trip commute is $3.00 per employee.

(4) *Definition of vehicle.* For purposes of this paragraph (f), the term "vehicle" means any motorized wheeled vehicle manufactured primarily for use on public streets, roads, and highways. The term "vehicle" includes an automobile as defined in paragraph (d)(1)(ii) of this section.

(5) *Control employee defined—Non-government employer.* For purposes of this paragraph (f), a control employee of a non-government employer is any employee—

(i) Who is a Board- or shareholder-appointed, confirmed, or elected officer of the employer,

(ii) Who is a director of the employer, or

(iii) Who owns a one-percent or greater equity, capital, or profits interest in the employer.

For purposes of determining who is a one-percent owner under paragraph (f)(5)(iii) of this section, any individual who owns (or is considered as owning under section 318(a) or principles similar to section 318(a) for entities other than corporations) one percent or more of the fair market value of an entity (the "owned entity") is considered a one-percent owner of all entities which would be aggregated with the owned entity under the rules of section 414 (b), (c), or (m). An employee who is an officer of an employer shall be treated as an officer of all entities treated as a single employer pursuant to section 414 (b), (c) or (m).

(6) *Control employee defined—Government employer.* For purposes of this paragraph (f), a control employee of a government employer if any—

(i) Elected official,

(ii) Federal employee who is appointed by the President and confirmed by the Senate. In the case of commissioned officers of the United States Armed Forces, an officer is any individual with the rank of brigadier general or above or the rank of rear admiral (lower half) or above; or

(iii) State or local executive officer comparable to the individuals described in paragraph (f)(6) (i) and (ii) of this section.

For purposes of this paragraph (f), the term "government" includes any Federal, state, or local governmental unit, and any agency or instrumentality thereof.

(g) *Non-commercial flight valuation rule*—(1) *In general.* Under the non-commercial flight valuation rule of this paragraph (g), if an employee is provided with a flight on an employer-provided aircraft, the value of the flight is calculated using the aircraft valuation formula provided in paragraph (g)(5) of this section. Except as otherwise provided, for purposes of this paragraph (g), a flight provided to a person whose flight would be taxable to an employee as the recipient is referred to as provided to the employee, and a flight taken by such person is considered a flight taken by the employee.

(2) *Eligible flights and eligible aircraft.* The valuation rule of this paragraph (g) may be used to value flights on all employer-provided aircraft, including helicopters. The valuation rule of this paragraph (g) may be used to value international as well as domestic flights. The valuation rule of this paragraph (g) may not be used to value a flight on any commercial aircraft on which air transportation is sold to the public on a per-seat basis. For a special valuation rule relating to certain flights on commercial aircraft, see paragraph (h) of this section.

(3) *Definition of a flight*—(i) *General rule.* Except as otherwise provided in paragraph (g)(3)(iii) of this section (relating to intermediate stops), for purposes of this paragraph (g), an individual's flight is the distance (in statute miles) between the place at which the individual boards the aircraft and the place at which the individual deplanes.

(ii) *Valuation of each flight.* Under the valuation rule of this paragraph (g), value is determined separately for each flight. Thus, a round-trip is comprised of at least two flights. For example, an employee who takes a personal trip on an employer-provided aircraft from New York, New York to Denver, Colorado, Denver to Los Angeles, California, and Los Angeles to New York has taken three flights and must apply the aircraft valuation formula separately to each flight. The value of a flight must be determined on a passenger-by-passenger basis. For example, if an individual accompanies an employee and the flight taken by the individual would be taxed to the employee, the employee would be taxed on the special rule value of the flight by the employee and by the individual.

(iii) *Intermediate stop.* If the primary purpose of a landing is necessitated by weather conditions, by an emergency, for purposes of refueling or obtaining other services relating to the aircraft, or for purposes of the employer's business unrelated to the employee whose flight is being valued ("an intermediate stop"), the distance between the place at which the trip originates and the place at which the intermediate stop occurs is not considered a flight. For example, assume that an employee's trip originates in St. Louis, Missouri, on route to Seattle, Washington, but, because of weather conditions, the aircraft lands in Denver, Colorado, and the employee stays in Denver overnight. Assume further that the next day the aircraft flies to Seattle where the employee deplanes. The employee's flight is the distance between the airport

in St. Louis and the airport in Seattle. Assume that a trip originates in New York, New York, with five passengers and makes an intermediate stop in Chicago, Illinois, before going on to Los Angeles, California. If one of the five passengers deplanes in Chicago, the distance of that passenger's flight would be the distance between the airport in New York and the airport in Chicago. The intermediate stop is disregarded when measuring the flights taken by each of the other passengers. Their flights would be the distance between the airport in New York and the airport in Los Angeles.

(4) *Personal and non-personal flights*—(i) *In general:* The valuation rule of this paragraph (g) applies to personal flights on employer-provided aircraft. A personal flight is one the value of which is not excludable under another section of subtitle A, such as under section 132(d) (relating to a working condition fringe). However, solely for purposes of paragraphs (g)(4)(ii) and (g)(4)(iii) of this section, references to personal flights do not include flights a portion of which would not be excludable by reason of section 274(c).

(ii) *Trip primarily for employer's business.* If an employee combines, in one trip, personal and business flights on an employer-provided aircraft and the employee's trip is primarily for the employer's business (see § 1.162-2(b)(2)), the employee must include in income the excess of the value of all the flights that comprise the trip over the value of the flights that would have been taken had there been no personal flights but only business flights. For example, assume that an employee flies on an employer-provided aircraft from Chicago, Illinois to Miami, Florida, for the employer's business and that from Miami the employee flies on the employer-provided aircraft to Orlando, Florida, for personal purposes and then flies back to Chicago. Assume further that the primary purpose of the trip is for the employer's business. The amount includible in income is the excess of the value of the three flights (Chicago to Miami, Miami to Orlando, and Orlando to Chicago), over the value of the flights that would have been taken had there been no personal flights but only business flights (Chicago to Miami and Miami to Chicago).

(iii) *Primarily personal trip.* In an employee combines, in one trip, personal and business flights on an employer-provided aircraft and the aircraft's trip is primarily personal (see § 1.162-2(b)(2)), the amount includible in the employee's income is the value of the personal flights that would have been taken had there been no business flights but only personal flights. For example, assume that an employee flies on an employer-provided aircraft from San Francisco, California, to Los Angeles, California, for the employer's business and that from Los Angeles the employee flies on an employer-provided aircraft to Palm Springs, California, primarily for personal reasons and then flies back to San Francisco. Assume further that the primary purpose of the trip is personal. The amount includible in the employee's income is the value of personal flights that would have been taken had there been no business flights but only personal flights (San Francisco to Palm Springs and Palm Springs to San Francisco).

(iv) *Application of section 274(c).* The value of employer-provided travel outside the United States away from home may not be excluded from the employee's gross income as a working condition fringe, by either the employer or the employee, to the extent not deductible by reason of section 274(c). The valuation rule of this paragraph (g) applies to that portion of the value of any flight not excludable by reason of section 274(c). Such value must be included in income in addition to the amounts determined under paragraphs (g)(4)(ii) and (g)(4)(iii) of this section.

(v) *Flight by individuals who are not personal guests.* If an individual who is not an employee of the employer providing the aircraft is on a flight, and the individual is not the personal guest of any employee, the flight by the individual is not taxable to any employee of the employer providing the aircraft. The rule in the preceding sentence applies where the individual is provided the flight by the employer for noncompensatory business reasons of the employer. For example, assume that G, and employee of company Y, accompanies A, an employee of company X, on company X's aircraft for the purpose of inspecting land under consideration for purchase by company X from company Y. The flight by G is not taxable to A.

(5) *Aircraft valuation formula.* Under the valuation rule of this paragraph (g), the value of a flight is determined by multiplying the base aircraft valuation formula for the period during which the flight was taken by the appropriate aircraft multiple (as provided in paragraph (g)(7) of this section) and then adding the applicable terminal charge. The base aircraft valuation formula (also known as the Standard Industry Fare Level formula or SIFL) in effect on June 30, 1985, is as follows: ($.1402 per mile for the first 500 miles, $.1069 per mile for miles between 501 and 1500, and $.1028 per mile for miles over 1500). The terminal charge in effect on June 30, 1985, is $25.62. The SIFL cents-per-mile rates in the formula and the terminal charge are calculated by the Department of Transportation and are revised semi-annually.

(6) *SIFL formula in effect for a particular flight.* For purposes of this paragraph (g), in determining the value of a particular flight during the first six months of a calendar year, the SIFL formula (and terminal charge) in effect on December 31 of the preceding year applies, and in determining the value of a particular flight during the last six months of a calendar year, the SIFL formula (and terminal charge) in effect on June 30 of that year applies. The following is the SIFL formula in effect on December 31, 1984: ($.1480 per mile for the first 500 miles, $.1128 per mile for miles between 501 and 1500, and $.1085 per mile for miles over 1500). The terminal charge in effect on December 31, 1984, is $27.05.

(7) *Aircraft multiples*—(i) *In general.* The aircraft multiples are based on the maximum certified takeoff weight of the aircraft. For purposes of applying the aircraft valuation formula described in paragraph (g)(5) of this section, the aircraft multiples are as follows:

[In percent]

Maximum certified takeoff weight of the aircraft	Aircraft multiple for a—	
	Control employee	Non-control employee
6,000 lbs. or less	62.5	15.6
6,001 to 10,000 lbs	125.0	23.4
10,001 to 25,000 lbs	300.0	31.3
25,001 lbs. or more	400.0	31.3

(ii) *Flights treated as provided a to control employee.* Except as provided in paragraph (g)(10) of this section, any flight provided to an individual whose flight would be taxable to a control employee (as defined in paragraph (g)(8) and (9) of this section) as the recipient shall be valued as if such flight has been provided to that control employee. For example, assume that the chief executive officer of an employer, his spouse, and his two children fly on an employer-provided aircraft for personal purposes. Assume further that the maximum certified takeoff weight of the aircraft is 12,000 lbs. The amount includible in the employee's income is 4 x ((300 percent x base aircraft valuation formula) plus the applicable terminal charge).

(8) *Control employee defined—Nongovernment employer.* For purposes of this paragraph (g), a control employee of a non-government employer is any employee—

(i) Who is a Board- or shareholder-appointed, confirmed, or elected officer of the employer, limited to the lesser of (A) one-percent of all employees (increased to the next highest integer, if not an integer) or (B) ten employees;

(ii) Whose compensation equals or exceeds the compensation of the top one percent most highly-paid employees of the employer (increased to the next highest integer, if not an integer) limited to a maximum of 25 employees;

(iii) Who owns a ten-percent or greater equity, capital or profits interest in the employer; or

(iv) Who is a director of the employer.

For purposes of this paragraph (g), any employee who is a family member (within the meaning of section 267(c)(4)) of a control employee is also a control employee. Pursuant to this paragraph (g)(8), an employee may be a control employee under more than one of the requirements listed in paragraphs (g)(8)(i) through (iv) of this section. For example, an employee may be both an officer under paragraph (g)(8)(i) of this section and a highly-paid employee under paragraph (g)(8)(ii) of this section. In this case, for purposes of the officer limitation rule of paragraph (g)(8)(i) of this section and the highly-paid employee limitation rule of paragraph (g)(8)(ii) of this section, the employee would be counted as reducing both such limitation rules. In no event shall an employee whose compensation is less than $50,000 be a control employee under paragraph (g)(8)(ii) of this section. For purposes of determining who is a ten-percent owner under paragraph (g)(8)(iii) of this section, any individual who owns (or is considered as owning under section 318(a) or principles similar to section 318(a) for entities other than corporations) ten percent or more of the fair market value of an entity (the "owned entity") is considered a ten-percent owner of all entities which would be aggregated with the owned entity under the rules of section 414 (b), (c), or (m). For purposes of determining who is an officer under paragraph (g)(8)(i) of this section, notwithstanding anything in this section to the contrary, if the employer would be aggregated with other employers under the rules of section 414 (b), (c), or (m), the officer definition and the limitations are applied to each separate employer rather than to the aggregated employer. If applicable, the officer limitation rule of paragraph (g)(8)(i) of this section is applied to employees in descending order of their compensation. Thus, if an employer has 11 board-appointed officers, the employee with the least compensation of those officers would not be an officer under paragraph (g)(8)(i) of this section. For purposes of this paragraph (g), the term "compensation" means the amount reported on a Form W-2 as income for the prior calendar year. Compensation includes all amounts received from all entities treated as a single employer under section 414 (b), (c), or (m).

(9) *Control employee defined—Government.* For purposes of this paragraph (g), a control employee of a government employer is any—

(i) Elected officials;

(ii) Federal employee who is appointed by the President and confirmed by the Senate. In the case of commissioned officers of the United States Armed Forces, an officer is any individual with the rank or brigadier general or above or the rank of rear admiral (lower half) or above; or

(iii) State or local executive officer comparable to the individuals in paragraph (g)(9)(i) and (ii) of this section.

For purposes of this paragraph (g), the term "government" includes any Federal, state, or local government unit, and any agency or instrumentality thereof.

(10) *Seating capacity rule*—(i) *In general.* Where 50 percent of more of the regular passenger seating capacity of an aircraft (as used by the employer) is occupied by individuals whose flights are primarily for the employer's business (and whose flights are excludable from income under section 132(d)), the value of a flight on that aircraft by any employee who is not flying primarily for the employer's business (or who is flying primarily for the employer's business but the value of whose flight is not excludable under section 132(d) by reason of section 274(c)) is deemed to be zero. See § 1.132-5T which limits the exclusion under section 132(d) to situations where the employee receives the flight in connection with the performance of services for the employer providing the aircraft. For purposes of this paragraph (g)(10), the term "employee" includes only employees and partners of the employer providing the aircraft and does not include independent contractors and directors of the employer.

For purposes of this paragraph (g)(10), the second sentence of paragraph (g)(1) of this section will not apply. Instead, a flight taken by an individual who is either treated as an employee pursuant to section 132(f)(1) or whose flight is treated as a flight taken by an employee pursuant to section 132(f)(2) is considered a flight taken by an employee. If (A) a flight is considered taken by an individual other than an employee (as defined in this paragraph (g)(10)), (B) the value of that individual's flight is not excludable under section 132(d), and (C) the seating capacity rule of this paragraph (g)(10) otherwise applies, then the value of the flight provided to such an individual is the value of a flight provided to a non-control employee (even if the individual who would be taxed on the value of such individual's flight is a control employee).

(ii) *Application of 50-percent test to multiple flights.* The seating capacity rule of this paragraph (g)(10) must be met both at the time the individual whose flight is being valued boards the aircraft and at the time the individual deplanes. For example, assume that employee A boards an employer-provided aircraft for personal purposes in New York, New York, and that at that time 80 percent of the regular passenger seating capacity of the aircraft is occupied by individuals whose flights are primarily for the employer's business (and whose flights are excludable from income under section 132(d)) ("the business passengers"). If the aircraft flies directly to Hartford, Connecticut where all of the passengers, including A, deplane, the requirements of the seating capacity rule of this paragraph (g)(10) have been satisfied. If instead, some of the passengers, including A, remain on the aircraft in Hartford and the aircraft continues on to Boston, Massachusetts, where they all deplane, the requirements of the seating capacity rule of this paragraph (g)(10) will not be satisfied unless at least 50 percent of the seats comprising the aircraft's regular-passenger seating capacity were occupied by the business passengers at the time A deplanes in Boston.

(iii) *Regular passenger seating capacity.* The regular passenger seating capacity of an aircraft is the maximum number of seats that have at any time been on the aircraft (while owned or leased by the employer). Except to the extent excluded pursuant to paragraph (g)(10)(v) of this section, regular seating capacity includes all seats which may be occupied by members of the flight crew. It is irrelevant that on a particular flight, less than the maximum number of seats are available for use, because, for example, some of the seats are removed. When determining the maximum number of seats, those seats that cannot at any time be legally used during

takeoff and are not any time used during takeoff are not counted.

(iv) *Examples.* The rules of paragraph (g)(10)(iii) of this section are illustrated by the following examples:

Example (1). Employer A and employer B order the same aircraft, except that A orders it with 10 seats and B orders it with eight seats. A always uses its aircraft as a 10-seat aircraft; B always uses its aircraft as an eight-seat aircraft. The regular passenger seating capacity of A's aircraft is 10 and of B's aircraft is eight.

Example (2). Assume the same facts as in example (1), except that whenever A's chief executive officer and spouse use the aircraft eight seats are removed. Even if substantially all of the use of the aircraft is by the chief executive officer and spouse the regular passenger seating capacity of the aircraft is 10.

Example (3). Assume the same facts as in example (1), except that whenever more than eight people want to fly in B's aircraft, two extra seats are added. Even if substantially all of the use of the aircraft occurs with eight seats, the regular passenger seating capacity of the aircraft is 10.

(v) *Seats occupied by flight crew.* When determining the regular passenger seating capacity of an aircraft, any seat occupied by a member of the flight crew (whether or not such individual is an employee of the employer providing the aircraft) shall not be counted, unless the purpose of the flight by such individual is not primarily to serve as a member of the flight crew. If the seat occupied by a member of the flight crew is not counted as a passenger seat pursuant to the previous sentence, such member of the flight crew is disregarded in applying the 50 percent test described in the first sentence of paragraph (g)(10)(i) of this section. For example, assume that, prior to the application of this paragraph (g)(10)(v), the regular passenger seating capacity of an aircraft is two seats.

Assume further that an employee pilots the aircraft and that the employee's flight is not primarily for the employer's business. If the employee's spouse occupies the other seat for personal purposes, the seating capacity rule is not met and the value of both flights must be included in the employee's income. If, however, the employee's flight were primarily for the employer's business (unrelated to serving as a member of the flight crew), then the seating capacity rule is met and the value of the flight for the employee's spouse is deemed to be zero. If the employee's flight were primarily to serve as a member of the flight crew, then the seating capacity rule is not met and the value of a flight by any passenger for primarily personal reasons is not deemed to be zero.

(11) *Erroneous use of the non-commercial flight valuation rule*—(i) *In general.* If the non-commercial flight valuation rule of this paragraph (g) is used by an employer or a control employee, as the case may be, on a return as originally filed, on the grounds that either the control employee is not in fact a control employee, or that the aircraft is within a specific weight classification, and either position is subsequently determined to be erroneous, the valuation rule of this paragraph (g) (including paragraph (g)(13) of this section) is not available to value the flight taken by that control employee by the person or persons taking the erroneous position. With respect to the weight classifications, the previous sentence does not apply if the position taken is that the weight of the aircraft is greater than it is subsequently determined to be. If, with respect to a flight by a control employee, the seating capacity rule of paragraph (g)(10) of this section is used by an employer or the control employee, as the case may be, on a return as originally filed, and it is subsequently determined that the requirements of paragraph (g)(10) of this section were not met, the valuation rule of this paragraph (g) (including paragraph (g)(13) of this section) is not available to value the flight taken by that control employee by the person or persons taking the erroneous position.

(ii) *Value of flight excluded as a working condition fringe.* If either an employer or an employee, on a return as originally filed, excludes from the employee's income or wages the value of a flight on the grounds that the flight was excludable as a working condition fringe under section 132, and that position is subsequently determined to be erroneous, the valuation rule of this paragraph (g) (including paragraph (g)(13) of this section) is not available to value the flight taken by that employee by the person or persons taking the erroneous position.

(12) *Consistency rules*—(i) *Use by the employer.* Except as otherwise provided in paragraphs (g)(11) and (g)(13)(iv) of this section, if the non-commercial flight valuation rule of this paragraph (g) is used by an employer to value flights provided in a calendar year, the rule must be used to value all flights provided in the calendar year.

(ii) *Use by the employee.* Except as otherwise provided in paragraphs (g)(11) and (g)(13)(iv) of this section, if the non-commercial flight valuation rule of this paragraph (g) is used by an employee to value a flight taken in a calendar year, the rule must be used to value all flights taken in the calendar year.

(13) *Transitional valuation rule*—(i) *In general.* If the value of a flight determined under this paragraph (g)(13) is lower than the value of the flight otherwise determined under paragraph (g) of this section, the value of the flight is the lower amount. The transitional valuation rule of this paragraph (g)(13) is available only for flights provided after December 31, 1984, and before January 1, 1986.

(ii) *Transitional valuation rule aircraft multiples.* The appropriate aircraft multiples under the transitional valuation rule are as follows:

(A) 125 percent of the base aircraft valuation formula, plus the applicable terminal charge, for any flight by any employee who is not a key employee (as defined in paragraph (g)(13)(iii) of this section.)

(B) 125 percent of the base aircraft valuation formula, plus the applicable terminal charge, for a flight by a key employee if there is a primary business purpose of the trip by the aircraft. For purposes of this paragraph (g)(13)(ii) (B), entertaining an employee or other individual is not a business purpose.

(C) 600 percent of the base aircraft valuation formula, plus the applicable terminal charge, for a flight by a key employee if there is not primary business for the trip by the aircraft.

Where there is no business purpose for the trip by the aircraft, the alternative valuation rule may not be used to value a flight by a key employee. For purposes of this section, compensating an employee is not a business purpose.

(iii) *Key employee defined.* A "key employee" is any employee who is a five-percent owner or an officer of the employer, or who, with respect to a particular trip by the aircraft, controls the use of the aircraft. For purposes of determining who is a five-percent owner, any individual who owns (or is considered as owning) five or more percent of the fair market value of an entity (the "owned entity") is considered a five-percent owner of all entities that would be aggregated with the owned entity under the rules of section 414(b), (c), or (m).

(iv) *Erroneous use of transitional valuation rule.* If the transitional valuation rule is used by an employer or a key employee, as the case may be, on a return as originally filed, on the grounds that—

(A) The key employee is not in fact a key employee,

(B) An aircraft trip had a primary business purpose, or

(C) An aircraft trip had some business purpose,

and such position is subsequently determined to be erroneous, neither the transitional valuation rule nor the non-commercial flight valuation rule of this paragraph (g) is available to value such flight taken by that key employee by the person or persons taking the erroneous position.

(h) *Commercial flight valuation rule*—(1) *In general.* Under the commercial flight valuation rule of this paragraph (h), the value of a space-available flight (as defined in paragraph (h)(2) of this section) on a commercial aircraft is 25 percent of the actual carrier's highest unrestricted coach fare in effect for the particular flight taken.

(2) *Space-available flight.* The commercial flight valuation rule of this paragraph (h) is available to value a space-available flight. The term "space-available flight" means a flight on a commercial aircraft (i) for which the airline (the acutal carrier) incurs no substantial additional cost (including forgone revenue) determined without regard to any amount paid for the flight and (ii) which is subject to the same types of restrictions customarily associated with flying on an employee "standby" or "space-available" basis. A flight may be a space-available flight even if the airline that is the actual carrier is not the employer of the employee.

(3) *Commercial aircraft.* If the actual carrier does not offer, in the ordinary course of its business, air transportation to customers on a per-seat basis, the commercial flight valuation rule of this paragraph (h) is not available. Thus, if, in the ordinary course of its line of business, the employer only offers air transportation to customers on a charter basis, the commerical flight valuation rule of this paragraph (h) may not be used to value a space-available flight on the employer's aircraft. Similarly, if, in the ordinary course of its line of business, an employer only offers air transportation to customers for the transport of cargo, the commercial flight valuation rule of this paragraph (h) may not be used to value a space-available flight on the employer's aircraft.

(4) *Timing of inclusion.* The date that the flight is taken is the relevant date for purposes of applying section 61(a)(1) and this section to a space-available flight on a commercial aircraft. The date of purchase or issuance of a pass or ticket is not relevant. Thus, this section applies to a flight taken on or after January 1, 1985, regardless of the date on which the pass or ticket for the flight was purchased or issued.

(5) *Consistency rules*—(i) *Use by employer.* If the commercial flight valuation rule of this paragraph (h) is used by an employer to value flights provided in a calendar year, the rule must be used to value all flights provided in the calendar year.

(ii) *Use by employee.* If the commercial flight valuation rule of this paragraph (h) is used by an employee to value a flight taken in a calendar year, the rule must be used to value all flights taken by such employee in the calendar year.

(i) [Reserved[

(j) *Valuation of meals provided at an employer-operated eating facility for employees*—(1) *In general.* The valuation rule of this paragraph (j) may be used to value a meal provided at an employer-operated eating facility for employees (as defined in § 1.132–7T). For rules relating to an exclusion for the value of meals provided at an employer-operated eating facility for employees, see § 1.132–7T.

(2) *Valuation formula*—(i) *In general.* The value of all meals provided at an employer-operated eating facility for employees during a calendar year is 150 percent of the direct operaitng costs of the eating facility ("total meal value"). For purposes of this paragraph (j), the definition of direct operating costs provided in § 1.132–7T applies. The taxable value of meals provided at an eating facility may be determined in two ways. The "individual meal subsidy" may be treated as the taxable value of a meal provided at the eating facility (see paragraph (j) (2) (ii) of this section). Alternatively, the employer may allocate the "total meal subsidy" among employees (see paragraph (j) (2) (iii) of this section).

(ii) *"Individual meal subsidy" defined.* The "individual meal subsidy" is determined by multiplying the price charged for a particular meal by a fraction, the numerator of which is the total meal value and the denominator of which is the gross receipts of the eating facility, and then subtracting the amount paid for the meal. The taxable value of meals provided to a particular employee during a calendar year, therefore, is the sum of the individual meal subsidies provided to the employee during the calendar year.

(iii) *Allocation of "total meal subsidy."* Instead of using the individual meal value method, the employer may allocate the "total meal subsidy" (total meal value less the gross receipts of the facility) among employees in any manner reasonable under the circumstances.

Par. 3. Section 1.132–1T is removed and a new § 1.132–1T is added in its place, as follows:

§ 1.132–1T Exclusion from gross income of certain fringe benefits (Temporary).

(a) *In general.* Gross income does not include any fringe benefit which qualifies as a—

(1) No-additional-cost service,

(2) Qualified employee discount,

(3) Working condition fringe, or

(4) De minimis fringe.

Special rules apply with respect to certain on-premises gyms and other athletic facilities (§ 1.132–1T (e)), demonstration use of employer-provided automobiles by full-time automobile salesmen (§ 1.132–1T (n)), parking provided to an employee on or near the business premises of the employer (§ 1.132–5T (o)), and on-premises eating facilities (§ 1.132–7T).

(b) *Definition of employee*—(1) *No-additional-cost services and qualified employee discounts.* For purposes of section 132 (a) (1) (relating to no-additional-cost services) and section 132 (a) (2) (relating to qualified employee discounts), the term "employee" (with respect to a line of business of an employer) means—

(i) Any individual who is currently employed by the employer in the line of business,

(ii) Any individual who was formerly employed by the employer in the line of business and who separated from service with the employer in the line of business by reason of retirement or disability, and

(iii) Any widow or widower of an individual who died while employed by the employer in the line of business or who separated from service with the employer in the line of business by reason of retirement or disability.

For purposes of this paragraph (b) (1), any partner who performs services for a partnership is considered employed by the partnership. In addition, any use by the spouse or dependent child (as defined in this paragraph (b)) of the employee will be treated as use by the employee.

(2) *Working condition fringes.* For purposes of section 132(a)(2) (relating to working condition fringes), the term "employee" means—

(i) Any individual who is currently employed by the employer,

(ii) Any partner who performs services for the partnership,

(iii) Any director of the employer, and

(iv) Any independent contractor who performs services for the employer.

Notwithstanding anything in this paragraph (b)(2) to the contrary, any independent contractor who performs services for the employer cannot exclude the value of parking or the use

of consumer goods provided pursuant to a product testing program under § 1.132–5T (n); in addition, any director of the employer cannot exclude the value of the use of consumer goods provided pursuant to a product testing program under § 1.132–5T (n).

(3) *De minimis fringe.* For purpose of section 132(a)(4) (relating to de minimis fringes), the term "employee" means any recipient of a fringe benefit.

(4) *Dependent child.* For purposes of this paragraph (b), the term "dependent child" means any son, stepson, daughter or stepdaughter of the employee who is a dependent of the employee, or both of whose parents are deceased. Any child to whom section 152(e) applies will be treated as the dependent of both parents.

(c) *Special rules for employers—Effect of section 414.* All employees treated as employed by a single employer under section 414(b), (c) or (m) will be treated as employed by a single employer for purposes of this section. Thus, employees of one corporation that is part of a controlled group of corporations may under certain circumstances be eligible to receive section 132 benefits from the other corporations that comprise the controlled group. However, the aggregation of employers described in this paragraph (c) does not change the other requirements for an exclusion, such as the line of business requirement. Thus, for example, if a controlled group of corporations consists of two corporations that operate in different lines of business, the corporations are not treated as operating in the same line of business even though the corporations are treated as one employer.

(d) *Customers not to include employees.* For purposes of section 132 and the regulations thereunder, the term "customer" means customers who are not employees. However, the preceding sentence does not apply to section 132(c)(2) (relating to the gross profit percentage for determining a qualified employee discount). Thus, an employer that provides employee discounts cannot exclude sales made to employees in determining the aggregate sales to customers.

(e) *Treatment of on-premises athletic facilities*—(1) *In general.* Gross income does not include the value of any on-premises athletic facility provided by the employer to its employees. For purposes of section 132 and this paragraph (e), the term "on-premises athletic facility" means any gym or other athletic facility (such as a pool, tennis court, or golf course)—

(i) Which is located on the premises of the employer,

(ii) Which is operated by the employer, and

(iii) Where substantially all of the use of which is, during the calendar year, by employees of the employer, their spouses, and their dependent children.

For purposes of this paragraph (e) (1) (iii), the term "dependent children" has the same meaning as the plural of the term "dependent child" in paragraph (b) (4) of this section. The exclusion of this paragraph (e) does not apply to any athletic facility if access to the facility is made available to the general public through the sale of memberships, the rental of the facility, etc.

(2) *Premises of the employer.* The athletic facility need not be located on the employer's business premises. However, the athletic facility must be located on premises of the employer. The exclusion provided in this paragraph (e) applies whether the premises are owned or leased by the employer; in addition, the exclusion is available even if the employer is not a named lesse on the lease so long as the employer pays reasonable rent. The exclusion provided in this paragraph (e) does not apply to any athletic facility that is a facility for residential use. Thus, for example, a resort with accompanying athletic facilities (such as tennis courts, pool, and gym) would not qualify for the exclusion provided in this paragraph (e).

(3) *Application of rules to membership in an athletic facility.* The exclusion provided in this paragraph (e) does not apply to any membership in an athletic facility (including health clubs or country clubs) unless the facility is owned (or leased) and operated by the employer and substantially all the use of the facility is by employees of the employer, their spouses, and their dependent children. Therefore, membership in health club or country club not meeting the rules provided in this paragraph (e) would not quality for the exclusion.

(4) *Operation by the employer.* An employer is considered to operate the athletic facility if the employer itself operates the facility through its own employees, or if the employer contracts out to another to operate the athletic facility. For example, if an employer hires an independent contractor to operate the athletic facility for the employer's employees, the facility is considered to be operated by the employer. In addition, if an athletic facility is operated by more than one employer, it is considered to be operated by each employer. For purposes of paragraph (e) (1) (iii) of this section, substantially all the use of a facility operated by more than one employer must be by employees of all of the employers, their spouses, and their dependent children. Where the facility is operated by more than one employer, an employer that either pays rent directly to the owner of the premises or pays rent to a named lessor of the premises is eligible for the exclusion.

(5) *Nonapplicability of nondiscrimination rules.* The nondiscrimination rules of section 132 and § 1.132–8T do not apply to on-premises athletic facilities.

(f) *Nonapplicability of section 132.* If the tax treatment of a particular fringe benefit is expressely provided for in another section of Chapter 1, section 132 and the applicable regulations (except for section 132 (e) and the regulations thereunder) do not apply to such fringe benefits. For example, since section 129 provides an exclusion from gross income for amounts paid or incurred by the employer for dependent care assistance for an employee, the exclusions under section 132 and this section do not apply to the provision by an employer to an employee of dependent care assistance.

Par. 4. The following new § 1.132–2T is added at the appropriate place:

§ 1.132-2T No-additional-cost service (Temporary).

(a) *In general*—(1) *Definition.* Gross income does not include the value of a no-additional-cost service. The term "no-additional-cost service" means any service provided by an employer to an employee for the employee's personal use if—

(i) The service is offered for sale to customers in the ordinary course of the line of business of the employer in which the employee performs substantial services, and

(ii) The employer incurs no substantial additional cost in providing the service to the employee (including forgone revenue and excluding any amount paid by or on behalf of the employee for the service).

For rules relating to the line of business limitation, see § 1.132–4T.

(2) *Examples.* Services that are eligible for treatment as no-additional-cost services are excess capacity services such as hotel accommodations; transportation by aircraft, train, bus, subway, or cruise line; and telephone services. Services that are not eligible for treatment as no-additonal-cost services are non-excess capacity services such as the facilitation by a stock brokerage firm of the purchase of stock. Employees who receive non-excess capacity services may, however,

be eligible for a qualified employee discount of up to 20 percent of the value of the service provided. See § 1.132-3T.

(3) *Cash rebates.* The exclusion for a no-additional-cost service applies whether the service is provided at no charge or at a reduced price. The exclusion also applies if the benefit is provided through a partial or total cash rebate of an amount paid for the service.

(4) *Applicability of nondiscrimination rules.* The exclusion for a no-additional-cost service applies to officers, owners, and highly compensated employees only if the service is available on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of officers, owners, or highly compensated employees. See § 1.132-8T.

(5) *No substantial additional cost*—(i) *In general.* The exclusion for a non-additional-cost service applies only if the employer does not incur substantial additional cost in providing the service to the employee. For purposes of the preceding sentence, the term "cost" includes revenue that is forgone because the service is provided to an employee rather than a nonemployee. (For purposes of determining whether any revenue is forgone, it is assumed that the employee would not have purchased the service unless it were available to the employee at the actual price charged to the employee.) Whether an employer incurs substantial additional cost must be determined without regard to any amount paid by the employee for the service. Thus, any reimbursement by the employee for the cost of providing the service does not affect the determination of whether the employer incurs substantial additional cost.

(ii) *Labor intensive services.* An employer must include the cost of labor incurred in providing services to employees when determining whether the employer has incurred substantial additional cost. An employer has incurred substantial additional cost. An employer incurs substantial additional cost, whether or not non-labor costs are incurred, if a substantial amount of time is spent by the employer or its employees in providing the service to employees. This would be the result whether or not the time spent by the employer or its employees in providing the services would have been "idle", or if the services were provided outside normal business hours. An employer generally incurs no substantial additional cost, however, if the employee services provided are merely incidental to the primary service being provided by the employer. For example, the in-flight services of a flight attendant provided to airline employees traveling on a space-available basis are merely incidental to the primary service being provided (i.e., air transportation). In addition, the cost of in-flight meals provided to airline employees is not considered substantial in relation to the air transportation being provided.

(b) *Reciprocal agreements.* For purposes of the exclusion for a no-additional-cost service, any service provided by an employer to an employee of another employer shall be treated as provided by the employer of such employee if all of the following requirements are satisfied:

(1) The service is provided pursuant to a written reciprocal agreement between the employers under which a group of employees of each employer, all of whom perform substantial services in the same line of business, may receive no-additional-cost services from the other employer;

(2) The service provided pursuant to the agreement to the employees of both employers is the same type of service provided by the employers to customers both in the line of business in which the employees perform substantial services and the line of business in which the service is provided to customers; and

(3) Neither employer incurs substantial additional cost (including forgone revenue) in providing the service to the employees of the other employer or pursuant to the agreement. If one employer receives a substantial payment from the other employer with respect to the reciprocal agreement, the paying employer will be considered to have incurred a substantial additional cost pursuant to the agreement.

Par. 5. The following § 1.132-3T is added at the appropriate place:

§ 1.132-3T Qualified employee discount (Temporary).

(a) *In general*—(1) *Definition.* Gross income does not include the value of a qualified employee discount. The term "qualified employee discount" means any employee discount with respect to qualified property or services provided by an employer to an employee for the employee's personal use to the extent the discount does not exceed—

(i) The gross profit percentage of the price at which the property is offered to customers, for discounts on property, or

(ii) 20 percent of the price at which the services are offered to customers, for discounts on services.

(2) *Qualified property or services*—(i) *In general.* The term "qualified property or services" means any property or services that are offered for sale to customers in the ordinary course of the line of business of the employer in which the employee performs substantial services. For rules relating to the line of business limitation, see § 1.132-4T.

(ii) *Exception for certain property.* The term "qualified property" does not include real property and it does not include personal property (whether tangible or intangible) of a kind commonly held for investment. Thus, an employee may not exclude from gross income the amount of an employee discount provided on the purchase of either residential or commercial real estate, securities, commodities, or currency, whether or not the particular purchase is made for investment purposes.

(iii) *Property and services not offered in ordinary course of business.* The term "qualified property or services" does not include any property or services of a kind that is not offered for sale to customers in the ordinary course of the line of business of the employer. For example, employee discounts provided on property or services that are offered for sale only to employees and their families (such as merchandise sold at an employee store or through an employer-provided catalog service) may not be excluded from gross income.

(3) *No reciprocal agreement exception.* The exclusion for a qualified employee discount does not apply to property or services provided by another employer pursuant to a written reciprocal agreement that exists between employers to provide discounts on property and services to employees of the other employer.

(4) *Cash or third-party rebates*—(i) *Property or services provided without charge or at a reduced price.* The exclusion for a qualified employee discount applies whether the property or service is provided at no charge (in which case only part of the discount may be excludable as a qualified employee discount) or at a reduced price. The exclusion also applies if the benefit is provided through a partial or total cash rebate of an amount paid for the property or service.

(ii) *Property or services provided directly by the employer or indirectly through a third party.* A qualified employee discount may be provided either directly by the employer or indirectly through a third party. For example, an employee of an appliance manufacturer may receive a qualified employee discount on the manufacturer's appliances purchased at a retail store that offers such appliances for sale to customers. The employee may exclude the amount of the qualified

employee discount whether the employee is provided the appliance at no charge or purchases it at a reduced price, or whether the employee receives a partial or total cash rebate from either the employer-manufacturer or the retailer. If an employee receives additional rights associated with the property that are not provided by the employee's employer to customers in the ordinary course of the line of business in which the employee performs substantial services (such as the right to return or exchange the property or special warranty rights), the employee may only receive a qualified employee discount with respect to the property and not the additional rights. Receipt of such additional rights may occur, for example, when an employee of a manufacturer purchases property manufactured by the employee's employer at a retail outlet.

(5) *Applicability of nondiscrimination rules.* The exclusion for a qualified employee discount applies to officers, owners, and highly compensated employees only if the discount is available on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of officers, owners, or highly compensated employees. See § 1.132-8T.

(b) *Employee discount*—(1) *Definition.* The term "employee discount" means the excess of—

(i) The price at which the property or service is being offered by the employer for sale to customers, over

(ii) The price at which the property or service is provided by the employer to an employee for use by the employee.

A transfer of property by an employee without consideration is considered use by the employee for purposes of this section. Thus, for example, if an employee receives a discount on property offered for sale by his employer to customers and the employee makes a gift of the property to his parent, the property will be considered to be provided for use by the employee, thus enabling the discount to be eligible for exclusion as a qualified employee discount.

(2) *Price to customers*—(i) *Determined at time of sale.* In determining the amount of an employee discount, the price at which the property or service is being offered to customers at the time of the employee's purchase is controlling. For example, assume that an employer offers a product to customers for $20 during the first six months of a calendar year but at the time the employee purchases the product at a discount, the price at which the product is being offered to customers is $25. In this case, the price from which the employee discount is measured is $25.

(ii) *Quantity discount not reflected.* The price referred to in paragraph (b)(2)(i) of this section cannot reflect any quantity discount unless the employee actually purchases the requisite quantity of the property or service.

(iii) *Customers of employee's employer controls.* In determining the amount of an employee discount, the price at which the property or service is offered to customers of the employee's employer is controlling. Thus, the price at which property is sold to the wholesale customers of a manufacturer will generally be lower than the price at which the same property is sold to the customers of a retailer. However, see paragraph (a)(4)(ii) of this section regarding the effect of a wholesaler providing to its employees additional rights not provided to customers of the wholesaler in the ordinary course of its business.

(iv) *Discounts to discrete customer or consumer groups.* In determining the amount of an employee discount, if an employer offers for sale property or services at one or more discounted prices to discrete customer or consumer groups, and sales at all such discounted prices comprise at least 35 percent of the employer's gross sales for a representative period, then the price at which property or service is being offered to customers is a discounted price. The applicable discounted price is the current undiscounted price, reduced by the percentage discount at which the greatest percentage of the employer's gross sales are made for such representative period. If sales at different percentage discounts equal the same percentage of the employer's gross sales, the price at which the property or service is being provided to customers may be reduced by the average of the two group discounts. For purposes of this section, a representative period is the taxable year of the employer immediately preceding the taxable year in which the property or service is provided to the employee at a discount. If more than one employer would be aggregated under section 414 (b), (c), or (m), and all of the employers do not have the same taxable year, the employers required to be aggregated must designate the 12-month period to be used in determining gross sales for a representative period.

(v) *Examples.* The rules provided in this paragraph (b)(2) are illustrated by the following examples:

Example (1). Assume that a wholesale employer offers property for sale to two discrete customer groups at differing prices. Assume further that during the prior taxable year of the employer, 70 percent of the employer's gross sales are made at a 15-percent discount and 30 percent at no discount. The current undiscounted price at which the property or service is being offered by the employer for sale to customers may be reduced by the 15-percent discount.

Example (2). Assume that a retail employer offers a 20 percent discount to members of the American Bar Association, a 15 percent discount to members of the American Medical Association, and a ten percent discount to employees of the Federal Government. Assume further that during the prior taxable year of the employer, sales to American Bar Association members equal 15 percent of the employer's gross sales, sales to American Medical Association members equal 20 percent of the employer's gross sales, and sales to Federal Government employees equal 25 percent of the employer's gross sales. The current undiscounted price at which the property or service is being offered by the employer for sale to customers may be reduced by the ten percent Federal Government discount.

(3) *Damaged, distressed, or returned goods.* If an employee pays at least fair market value for damaged, distressed, or returned property, such employee will not have income attributable to such purchase.

(c) *Gross profit percentage*—(1) *In general*—(i) *General rule.* An exclusion from gross income for an employee discount on qualified property is limited to the price at which the property is being offered to customers in the ordinary course of the employer's line of business, multiplied by the employer's gross profit percentage. The term "gross profit percentage" means the excess of the aggregate sales price of the property sold by the employer to customers (including employees) over the employer's aggregate cost of the property, then divided by the aggregate sales price.

(ii) *Calculation of gross profit percentage.* The gross profit percentage must be calculated separately for each line of business based on the aggregate sales price and aggregate cost of property in that line of business for a representative period. For purposes of this section, a representative period is the taxable year of the employer immediately preceding the taxable year in which the discount is available. For example, if the aggregate sales of property in an employer's line of business for the prior taxable year were $800,000, and the aggregate cost of the property for the year were $600,000, the gross profit percentage would be 25 percent ($800,000 minus $600,000, then

divided by $800,000). If more than one employer would be aggregated under section 414 (b), (c), or (m), and all of the employers do not have the same taxable year, the employers required to be aggregated must designate the 12-month period to be used in determining the gross profit percentage. If an employee performs substantial services in more than one line of business, the gross profit percentage of the line of business in which the property is sold determines the amount of the excludable employee discount.

(iii) *Special rule for employers in their first year of existence.* An employer in its first year of existence may estimate the gross profit percentage of a line of business based on its mark-up from the cost. Alternatively, an employer in its first year of existence may determine the gross profit percentage by reference to an appropriate industry average.

(iv) *Redetermination of gross profit percentage.* If substantial changes in an employer's business indicate at any time that it is inappropriate for the prior years' gross profit percentage to be used for the current year, the employer must, within a reasonable period, redetermine the gross profit percentage for the remaining portion of the current year as if such portion of the year were the first year of the employer's existence.

(2) *Line of business.* In general, an employer must determine the gross profit percentage on the basis of all property offered to customers (including employees) in each separate line of business. An employer may instead select a classification of property that is narrower than the applicable line of business. However, such classification must be reasonable. For example, if an employer computes gross profit percentage according to the department in which products are sold, such classification is reasonable. Similarly, it is reasonable to compute gross profit percentage on the basis of the type of merchandise sold (such as high mark-up and low mark-up classifications). It is not reasonable, however, for an employer to classify certain low mark-up products preferred by certain employees (such as officers, owners, and highly compensated employees) with high mark-up products or to classify certain high mark-up products preferred by other employees with low mark-up products.

(3) *Generally accepted accounting principles.* In general, the aggregate sales price of property must be determined in accordance with generally accepted accounting principles. An employer must compute the aggregate cost of property in the same manner in which it is computed for the employer's Federal income tax liability, pursuant to the inventory rules in section 471 and the regulations thereunder.

(d) *Treatment of leased sections of department stores*—(1) *In general*—(i) *General rule.* For purposes of determining whether employees of a leased section of a department store may receive qualified employees discounts at the department store and whether employees of the department store may receive qualified employee discounts at the leased section of the department store, the leased section is treated as part of the line of business of the person operating the department store, and employees of the leased section are treated as employees of the person operating the department store as well as employees of their employer. The term "leased section of a department store" means a section of a department store where substantially all of the gross receipts of the leased section are over-the-counter sales of property made under a lease, license, or similar arrangement where it appears to the general public that individuals making such sales are employed by the department store. An example of a leased section of a department store is a cosmetics firm that leases floor space from a department store.

(ii) *Calculation of gross profit percentage.* When calculating the gross profit percentage of property and services sold at the department store under paragraph (c) of this section, sales of property and services sold at the department store, as well as sales of property and services sold at the leased section, are considered. The rule provided in the preceding sentence does not apply, however, if it is reasonable to calculate the gross profit percentage for the department store and leased section separately, or if it would be inappropriate to combine them (such as where either the department store or the leased section, but not both, provides employee discounts).

(2) *Employees of the leased section*—(i) *Definition.* For purposes of this paragraph (d), "employees of the leased section" means all employees who perform substantial services at the leased section regardless of whether the employees engage in over-the-counter sales of property or services. The term "employee" has the same meaning as in section 133(f).

(iii) *Discounts offered to either department store employees or employees of the leased section.* If the requirements of this paragraph (d) are satisfied, employees of the leased section may receive qualified employee discounts at the department store regardless of whether employees of the department store are offered discounts at the leased section. Similarly, regardless of whether employees of the leased section are offered discounts at the department store, employees of the department store may receive qualified employee discounts at the leased section.

(e) *Excess discounts.* Unless excludable under a statutory provision other than section 132(a)(2), an employee discount provided on property is excludable to the extent of the gross profit percentage multiplied by the price at which the property is being offered for sale to customers. If an employee discount exceeds the gross profit percentage, the excess discount is includible in the employee's income. For example, if the discount on property is 30 percent and the employer's gross profit percentage for the period in the relevant line of business is 25 percent, then 5 percent of the price at which the property is being offered for sale to customers is includible in the emloyee's income. With respect to services, an employee discount of up to 20 percent may be excludable. If an employee discount exceeds 20 percent, the excess discount is includible in the employee's income.

Par. 6. The following § 1.132-4T is added at the appropriate place:

§ 1.132-4T Line of business limitation (Temporary).

(a) *In general*—(1) *Applicability*—(i) *General rule.* A no-additional-cost service or qualified employee discount provided to an employee must be for property or services that are offered for sale to customers in the ordinary course of the same line of business in which the employee receiving the property or service performs substantial services. Thus, an employee who does not perform substantial services in a particular line of business of the employer may not exclude the value of services or employee discounts received on property or services in that line of business.

(ii) *Property and services sold to employees rather than customers.* Since the property or services must be offered for sale to customers in the ordinary course of the same line of business in which the employee performs substantial services, the line of business limitation is not satisfied if the employer's products or services are sold to employees of the employer, rather than to customers. Thus, for example, an employer in the banking line of business is not considered in the variety store line of business if the employer

establishes an employee store that offers variety store items for sale to the employer's employees.

(iii) *Performance of substantial services in more than one line of business.* An employee who performs services in more than one of the employer's lines of business may only exclude no-additional-cost services and qualified employee discounts in the lines of business in which the employee performs substantial services.

(iv) *Performance of services that directly benefit more than one line of business*—(A) *In general.* An employee who performs substantial services that directly benefit more than one line of business of an employer is treated as performing substantial services in all such lines of business. For example, an employee who maintains accounting records for an employer's three lines of business may receive qualified employee discounts in all three lines of business.

(B) *Significantly interrelated minor line of business.* The employees of a minor line of business of an employer that is significantly interrelated with a major line of business of the employer who perform substantial services that directly benefit both the major and the minor lines of business are treated as employees of both the major and the minor lines of business. Employees of the minor line of business who do not perform substantial services which directly benefit the major line of business are not treated as employees of the major line of business. A minor line of business is significantly interrelated with a major line of business when, for example, the activity of the minor line of business is directly related to but is a minor part of the major line of business (such as laundry services provided at a hospital).

(C) *Examples.* The rules provided in this paragraph are illustrated in the following examples:

Example (1). Assume that employees of units of an employer provide repair or financing services, or sell by catalog, with respect to retail merchandise sold by the employer. Such employees may be considered as employees of the retail merchandise line of business under this paragraph (a)(1)(iv).

Example (2). Assume that an employer operates a hospital and a laundry service. Assume further that some of the gross receipts of the laundry service line of business are from laundry services sold to customers other than the hospital employer. Only the employees of the laundry service who perform substantial services which directly benefit the hospital line of business (through the provision of laundry services to the hospital) will be treated as employees of the hospital line of business. Other employees of the laundry service line of business will not be treated as employees of the hospital line of business.

Example (3). Assume the same facts as in example (2), except that the minor line of business also operates a chain of dry cleaning stores. Employees who perform substantial services which directly benefit the dry cleaning stores but who do not perform substantial services that directly benefit the hospital line of business will not be treated as employees of the hospital line of business.

(2) *Definition*—(i) *In general.* An employer's line of business is determined by reference to the Enterprise Standard Industrial Classification Manual (ESIC Manual) prepared by the Statistical Policy Division of the U.S. Office of Management and Budget. An employer is considered to have more than one line of business if the employer offers for sale to customers property or services in more than one two-digit code classification referred to in the ESIC Manual.

(ii) *Examples.* Examples of two-digit classifications are general retail merchandise stores; hotels and other lodging places; auto repair, services, and garages; and food stores.

(3) *Aggregation of two-digit classifications.* If, pursuant to paragraph (a)(2) of this section, an employer has more than one line of business, such lines of business will be treated as a single line of business where and to the extent that one or more of the following aggregation rules apply:

(i) If it is uncommon in the industry of the employer for any of the separate lines of business of the employer to be operated without the others, the separate lines of business are treated as one line of business.

(ii) If it is common for a substantial number of employees (other than those employees who work at the headquarters or main office of the employer) to perform substantial services for more than one line of business of the employer, so that determination of which employees perform substantial services for which line of business would be difficult, then the separate lines of business of the employer in which such employees perform substantial services are treated as one line of business. For example, assume that an employer operates a delicatessen with an attached service counter at which food is sold for consumption on the premises. Assume further that most but not all employees work both at the delicatessen and at the service counter. The delicatessen and the service counter are treated as one line of business.

(iii) If the retail operations of an employer that are located on the same premises are in separate lines of business but would be considered to be within one line of business under paragraph (a)(2) of this section if the merchandise offered for sale in such lines of business were offered for sale at a department store, then the operations are treated as one line of business. For example, assume that on the same premises an employer sells both women's apparel and jewelry. Since, if sold together at a department store, the operations would be part of the same line of business, the operations are treated as one line of business.

(b) *Grandfather rule for certain retail stores*—(1) *In general.* The line of business limitation may be relaxed under a special grandfather rule. If—

(i) On October 5, 1983, 85 percent of the employees of one member of an affiliated group (as defined in section 1504 without regard to subsections (b)(2) and (b)(4) thereof) were entitled to employee discounts at retail department stores operated by another member of the affiliated group, and

(ii) More than 50 percent of the current year's sales of the affiliated group are attributable to the operation of retail department stores,

then for purposes of the exclusion from gross income of a qualified employee discount, the first member is treated as engaged in the same line of business as the second member (the operator of the retail department stores). Therefore, employees of the first member of the affiliated group may exclude qualified employee discounts received at the retail department stores operated by the second member. However, employees of the second member of the affiliated group may not exclude any discounts received on property or services offered for sale to customers by the first member of the affiliated group.

(2) *Taxable year of affiliated group.* If all of the members do not have the same taxable year, the affiliated group must designate the 12-month period to be used in determining the "current year's sales" (as referred to in this paragraph (b)). The 12-month period designated, however, must be used consistently.

(3) *Definition of "sales".* For purposes of this paragraph (b), the term "sales" means the gross receipts of the affiliated group, based upon the accounting methods used by its members.

(4) *Retired and disabled employees.* For purposes of this paragraph (b), an employee includes any individual who was, or whose spouse was, formerly employed by the first member of the affiliated group and who separated from

service with the member by reason of retirement or disability if the second member of the group provided employee discounts to such individuals on October 5, 1983.

(5) *Increase of employee discount.* If, after October 5, 1983, the employee discount described in this paragraph (b) is increased, the grandfather rule of this paragraph (b) does not apply to the amount of the increase. For example, if on January 1, 1985, the employee discount is increased from 10 percent to 15 percent, the grandfather rule will not apply to the additional five percent discount.

(c) *Relaxation of line of business requirement.* The line of business requirement may be relaxed under an elective grandfather rule provided in section 4977. For rules relating to the section 4977 election, see § 54.4977-1.

Par. 7. The following § 1.132-5T is added at the appropriate place:

§ 1.132-5T Working condition fringe (Temporary).

(a) *In general*—(1) *Definition.* Gross income does not include the value of a working condition fringe. The term "working condition fringe" means any property or service provided to an employee of an employer to the extent that, if the employee paid for the property or service, the amount paid would be allowable as a deduction under section 162 or 167. If, under section 274 or any other section, certain substantiation requirements must be met in order for a deduction under section 162 or 167 to be allowable, those substantiation requirements apply to the determination of a working condition fringe. An amount that would be deductible by the employee under, for example, section 212 is not a working condition fringe.

(2) *Trade or business of the employee.* If the hypothetical payment for the property or service would be allowable as a deduction with respect to a trade or business of the employee other than the employee's trade or business of being an employee of the employer, it cannot be taken into account for purposes of determining the amount, if any, of the working condition fringe. For example, assume that, unrelated to company X's trade or business and unrelated to company X's employee's trade or business of being an employee of company X, the employee is a member of the board of directors of company Y. Assume further that company X provides the employee with air transportation to a company Y board of director's meeting. The employee may not exclude the value of the air transportation to the meeting as a working condition fringe. The employee may, however, deduct such amount under section 162 if the section 162 requirements are satisfied. The result would be the same whether the air transportation was provided in the form of a flight on a commercial airline or a seat on a company X airplane.

(b) *Vehicle allocation rules*—(1) *In general*—(i) *General rule.* In general, with respect to an employer-provided vehicle, the amount excludable as a working condition fringe is the amount that would be allowable as a deduction under section 162 or 167 if the employee paid for the availability of the vehicle. For example, assume that the value of the availability of an employer-provided vehicle for a full year is $2,000, without regard to any working condition fringe (i.e., assuming all personal use). Assume further that the employee drives the vehicle 6,000 miles for his employer's business and 2,000 miles for reasons other than the employer's business. In this situation, the value of the working condition fringe is $2,000 multiplied by a fraction, the numerator of which is the business-use mileage (6,000 miles) and the denominator of which is the total mileage (8,000 miles). Thus, the value of the working condition fringe is $1,500. The total amount includable in the employee's gross income on account of the availability of the vehicle is $500. For purposes of this section, the term "vehicle" has the same meaning given the term in § 1.61-2T(e)(2). Generally, when determining the amount of an employee's working condition fringe, miles accumulated on the vehicle by all employees of the employer during the period in which the vehicle is available to the employee must be considered. For example, assume that an employee of the employer is provided the availability of an automobile for one year. Assume further that during the year, the automobile is regularly used in the employer's business by other employees. All miles accumulated on the automobile by all employees of the employer during the year must be considered. If, however, substantially all the use of the automobile by other employees in the employer's business is permitted during a certain period, such as the last three months of the year, the miles driven by the other employees during that period would not be considered when determining the employee's working condition fringe exclusion.

(ii) *Use by an individual other than the employee.* For purposes of this section, if the availability of a vehicle to an individual would be taxed to an employee, use of the vehicle by the individual is included in references to use by the employee.

(iii) *Provision of an expensive vehicle for personal use.* Assume an employer provides an employee with an expensive vehicle that an employee may use in part for personal purposes. Even though the decision to provide an expensive rather than an inexpensive vehicle is made by the employer for bona fide noncompensatory business reasons, there is no working condition fringe exclusion with respect to the personal miles driven by the employee. If the employee paid for the availability of the vehicle, he would not be entitled to deduct any part of the payment attributable to personal miles.

(2) *Use of different employer-provided automobiles.* The working condition fringe exclusion must be applied on an automobile by automobile basis. For example, assume that automobile Y is available to employee D for 3 days in January and for 5 days in March, and automobile Z is available to D for a week in July. Assume further that the Daily Lease Value, as defined in § 1.61-2T, of each automobile is $50. For the eight days of availability of Y in January and March, D uses Y 90 percent for business (by mileage). During July, D uses Z 60 percent for business (by mileage). The value of the working condition fringe is determined separately for each automobile. Therefore, the working condition fringe for Y is $360 ($400 x .90) leaving an income inclusion of $40. The working condition fringe for Z is $210 ($350 x .60) leaving an income inclusion of $140. If the value of the availability of an automobile is determined under the Annual Lease Value rule for one period and Daily Lease Value rule for a second period (see § 1.61-2T), the working condition fringe exclusion must be calculated separately for the two periods.

(c) *Applicability of sections 162 and 274(d)*—(1) *In general.* The value of property or services provided to an employee may not be excluded from the employee's gross income as a working condition fringe, by either the employer or the employee, unless the applicable substantiation requirements of either section 274(d) or section 162 (whichever is applicable) and the regulations thereunder are statisfied. With respect to listed property, the substantiation requirements of section 274(d) and the regulations thereunder do not apply to the determination of an employee's working condition fringe exclusion prior to the date that those requirements apply to the first taxable year of the employer beginning after December 31,

1985. For example, if an employer's first taxable year beginning after December 31, 1985, begins on July 1, 1986, with respect to listed property, the substantiation requirements of section 274(d) apply as of that date. The substantiation requirements of section 274(d) apply to an employee even if the requirements of section 274 do not apply to the employee's employer for deduction purposes (such as when the employer is a tax-exempt organization or a governmental unit); in these cases, the requirements of section 274(d) apply to the employee as of January 1, 1986.

(2) *Section 274(d) requirements.* The substantiation requirements of section 274(d) are satisfied by "adequate records or sufficient evidence corroborating the [employee's] own statement". Therefore, such records or evidence provided by the employee, and relied upon by the employer to the extent permitted by the regulations promulgated under section 274(d), will be sufficient to substantiate a working condition fringe exclusion.

(d) *Safe harbor rules*—(1) *In general.* Section 1.274–6T provides that the substantiation requirements of section 274(d) and the regulations thereunder may be satisfied, in certain circumstances, by using one or more of the safe harbor rules prescribed in § 1.274–6T. If the employer uses one of the safe harbor rules prescribed in § 1.274–6T during a period with respect to a vehicle (as defined in § 1.61–2T), that rule must be used by the employer to substantiate a working condition fringe exclusion with respect to that vehicle during the period. An employer that is exempt from Federal income tax may still use one of the safe harbor rules (if the requirements of that section are otherwise met during a period) to substantiate a working condition fringe exclusion with respect to a vehicle during the period. If the employer uses one of the methods prescribed in § 1.274–6T during a period with respect to an employer-provided vehicle, that method may be used by an employee to substantiate a working condition fringe exclusion with respect to the same vehicle during the period, as long as the employee includes in gross income the amount allocated to the employee pursuant to § 1.274–6T and this section. (See § 1.61–2T(c)(2)(i) for other rules concerning when an employee must include in income the amount determined by the employer.) If, however, the employer uses the safe harbor rule prescribed in § 1.274–6T(a)(2) or (3) and the employee without the employer's knowledge uses the vehicle for purposes other than de minimis personal use (in the case of the rule prescribed in § 1.274–6T(a)(2)), or for purposes other than de minimis personal use and commuting (in the case of the rule prescribed in § 1.274–6T(a)(3)), then the employee must include additional income for the unauthorized use of the vehicle.

(2) *Period for use of safe harbor rules.* The rules prescribed in this paragraph (d) assume that the safe harbor rules prescribed in § 1.274–6T are used for a one-year period. Accordingly, references to the value of the availability of a vehicle, amounts excluded as a working condition fringe, etc., are based on a one-year period. If the safe harbor rules prescribed in § 1.274–6T are used for a period of less than a year, the amounts referenced in the previous sentence must be adjusted accordingly. For purposes of this section, the term "personal use" has the same meaning as prescribed in § 1.274–6T(e)(5).

(e) *Vehicles not available to employees for personal use.* For a vehicle described in § 1.274–6T(a)(2) (relating to certain vehicles not used for personal purposes), the working condition fringe exclusion is equal to the value of the availability of the vehicle if the employer uses the method prescribed in § 1.274–6T(a)(2).

(f) *Vehicles not available to employees for personal use other than commuting.* For a vehicle described in § 1.274–6T(a)(3) (relating to certain vehicles not used for personal purposes other than commuting), the working condition fringe exclusion is equal to the value of the availability of the vehicle for purposes other than commuting if the employer uses the method prescribed in § 1.274–6T(a)(3). This rule applies only if the special rule for valuing commuting use, as prescribed in § 1.61–2T, is used and the amount determined under the special rule is either included in the employee's income or reimbursed by the employee.

(g) *Vehicles used in connection with the business of farming that are available to employees for personal use*—(1) *In general.* For a vehicle described in § 1.274–6T(b) (relating to certain vehicles used in connection with the business of farming), the working condition fringe exclusion is calculated by multiplying the value of the availability of the vehicle by 75 percent.

(2) *Vehicles available to more than one individual.* If the vehicle is available to more than one individual, the employer must allocate the gross income attributable to the vehicle (25 percent of the value of the availability of the vehicle) among the employees (and other individuals whose use would not be attributed to an employee) to whom the vehicle was available. This allocation must be done in a reasonable manner to reflect the personal use of the vehicle by the individuals. An amount that would be allocated to a sole proprietor reduces the amounts that may be allocated to employees but are otherwise to be disregarded for purposes of this paragraph (g). For purposes of this paragraph (g), the value of the availability of a vehicle may be calculated as if the vehicle were available to only one employee continuously and without regard to any working condition fringe exclusion.

(3) *Examples.* The following examples illustrate a reasonable allocation of gross income with respect to an employer-provided vehicle between two employees:

Example (1). Assume that two farm employees share the use of a vehicle which for a calendar year is regularly used directly in connection with the business of farming and qualifies for use of the rule in § 1.274–6T (b). Employee A uses the vehicle in the morning directly in connection with the business of farming and employee B uses the vehicle in the afternoon directly in connection with the business of farming. Assume further that employee B takes the vehicle home in the evenings and on weekends. The employer should allocate all the income attributable to the availability of the vehicle to employee B.

Example (2). Assume that for a calendar year, farm employees C and D share the use of a vehicle that is regularly used directly in connection with the business of farming and qualifies for use of the rule in § 1.274–6T (b). Assume further that the employees alternate taking the vehicle home in the evening and alternate the availability of the vehicle for personal purposes on weekends. The employer should allocate the income attributable to the availability of the vehicle for personal use (25 percent of the value of the availability of the vehicle) equally between the two employees.

Example (3). Assume the same facts as in example (2) except that C is the sole proprietor of the farm. Based on these facts, C should allocate the same amount of income to D as was allocated to D in example (2). No other income attributable to the availability of the vehicle for personal use should be allocated.

(h) *Qualified non-personal use vehicles.* Effective January 1, 1985, 100 percent of the value of the use of a qualified nonpersonal use vehicle (as described in § 1.274–5T (k)) is excluded from gross income as a working condition fringe, provided that, in the case of a vehicle described in paragraph (k) (3) through (7) of that section, the use of the vehicles conforms to the requirements of that paragraph.

(i) [Reserved].

(j) *Application of section 280F.* In determining the amount, if any, of an employee's working condition fringe, section 280F and the regulations thereunder do not apply. For example, assume that an employee has available for a calendar year an employer-provided automobile with a fair market value of $28,000. Assume further that the special rule provided in § 1.61–2T is used and that the Annual Lease Value, as defined in § 1.61–2T, is $7,750, and that all of the employee's use of the automobile is in the employer's business. The employee would be entitled to exclude the entire Annual Lease Value as a working condition fringe, despite the fact that if the employee paid for the availability of the automobile, an income inclusion would be required under § 1.280F–5T(d)(1). This paragraph (j) does not affect the applicability of section 280F to the employer with respect to such employer-provided automobile, nor does it affect the applicability of section 274. For rules concerning substantiation of an employee's working condition fringe, see paragraph (c) of this section.

(k) *Aircraft allocation rule.* In general, with respect to a flight on an employer-provided aircraft, the amount excludable as a working condition fringe is the amount that would be allowable as a deduction under section 162 or 167 if the employee paid for the flight on the aircraft. For example, if employee P flies on P's employer's airplane primarily for business reasons of P's employer, the value of P's flight is excludable as a working condition fringe. However, if P's spouse and children accompany P on such airplane trip primarily for personal reasons, the value of the flights by P's spouse and children are includable in P's gross income. See § 1.61–2T(g) for special rules for valuing personal flights.

(l) [Reserved].

(m) *Employer-provided transportation for security concerns*—(1) *In general.* The amount of a working condition fringe exclusion with respect to employer-provided transportation is the amount that would be allowable as a deduction under section 162 or 167 if the employee paid for the transportation. Generally, if an employee pays for transportation taken for primarily personal purposes, the employee may not deduct any part of the amount paid. Thus, the employee may not generally exclude the value of employer-provided transportation as a working condition fringe if such transportation is primarily personal. If, however, for bona fide business-oriented security concerns, the employee purchases transportation that provides him or her with additional security, the employee may generally deduct the excess of the amount paid for the transportation over the lesser amount the employee would have paid for the same mode of transportation absent the bona fide business-oriented security concerns. With respect to a vehicle, the phrase "the same mode of transportation" means use of the same vehicle without the additional security aspects, such as bulletproof glass. With respect to air transportation, the phrase "the same mode of transportation" means comparable air transportation. These same rules apply to the determination of an employee's working condition fringe exclusion. For example, if an employer provides an employee with an automobile for commuting and, for bona fide business-oriented security concerns, the automobile is specially designed for security, then the employee may exclude the value of the special security design as a working condition fringe if the employee's automobile would not have had such security design but for the bona fide business-oriented security concerns. The employee may not exclude the value of the commuting from income as a working condition fringe because commuting is a nondeductible personal expense. Similarly, if an employee travels on a personal trip in an employer-provided aircraft for bona fide business-oriented security concerns, the employee may exclude the excess, if any, of the value of the flight over the amount the employee would have paid for comparable air transportation, but for the bona fide business-oriented security concerns. Because personal travel is a nondeductible expense, the employee may not exclude the total value of the trip as a working condition fringe.

(2) *Demonstration of bona fide business-oriented security concerns*—(i) *In general.* For purposes of this paragraph (m), the existence of a bona fide business-oriented security concern for the furnishing of a specific form of transportation to an employee is determined on the basis of all the facts and circumstances within the following guidelines:

(A) *Services performed outside the United States.* With respect to an employee performing services for an employer in a geographic area other than the United States, a factor indicating a bona fide business-oriented security concern is a recent history of violent terrorist activity in such geographic area (such as bombings or abductions for ransom), unless such activity is focused on a group of individuals which does not include the employee or a similarly situated employee or on a section of the geographic area which does not incude the employee.

(B) *Services performed in the United States.* With respect to an employee performing services for an employer in the United States, a factor indicating a bona fide business-oriented security concern is threats on the life of the employee or on the life of a similarly situated employee because of the employee's status as an employee of the employer.

(ii) *Establishment of overall security program.* Notwithstanding anything in paragraph (m)(2)(i) of this section to the contrary, *no* bona fide business-oriented security concern will be deemed to exist unless the employee's employer establishes an overall security program with respect to the employee involved.

(iii) *Overall security program*—(A) *Definition.* An overall security program is one in which security is provided to protect the employee on a 24-hour basis. The employee must be protected while at the employee's residence, while commuting to and from the employee's workplace, and while at the employee's workplace. In addition, the employee must be protected while traveling, whether for business or personal purposes. An overall security program would include the provision of a bodyguard/driver who is trained in evasive driving techniques; and automobile specially equipped for security; guards, metal detectors, alarms, or similar methods of controling access to the employee's workplace and residence; and, in appropriate cases, flights on the employer's aircraft for business and personal reasons.

(B) *Application.* There is no overall security program when, for example, security is provided at the employee's workplace but not at the employee's residence. In addition, the fact that an employer requires an employee to travel on the employer's aircraft, or in an employer-provided vehicle that contains special security features, does not alone constitute an overall security program. The preceding sentence applies regardless of the existence of a corporate or other resolution requiring the employee to travel in the employer's airplane or vehicle for personal as well as business reasons. Similarly, the existence of an independent security study particular to the employer and its employees, or to the employee involved, does not alone constitute an overall security program.

(iv) *Effect of an independent security study.* An overall security program with respect to an employee is deemed to exist even though security is not

provided to an employee on a 24-hour basis if the conditions of this paragraph (m)(2)(iv) are satisfied:

(A) A security study is performed with respect to the employer and the employee (or a similarly situated employee) by an independent security consultant;

(B) The security study is based on an objective assessment of all the facts and circumstances;

(C) The recommendation of the security study is that an overall security program (as defined in paragraph (m)(2)(iii) of this section) is not necessary and such recommendation is reasonable under the circumstances; and

(D) The employer applies the specific security recommendations contained in the security study to the employee on a consistent basis.

The value of the security provided pursuant to a security study that meets the requirements of this paragraph (m)(2)(iv) may be excluded from income, if the security study conclusions are reasonable and, but for the bona fide business-oriented security concerns, the employee would not have had such security. No exclusion from income applies to security provided by the employer that is not recommended in the security study. Security study conclusions may be reasonable even if, for example, it is recommended that security be limited to certain geographic areas, as in the case where air travel security is provided only in certain foreign countries.

(v) *Application of security rules to spouses and dependents.* The availability of a working condition fringe exclusion based on the existence of a bona fide business-oriented security concern with respect to the spouse and dependents of an employee is determined separately for such spouse and dependents under the rules established in this paragraph (m).

(vi) *Working condition safe harbor.* Under the special rule of this paragraph (m)(2)(vi), if, for a bona fide business-oriented security concern, the employer requires that the employee travel on an employer-provided aircraft for a personal trip, the employer and the employee may exclude, as a working condition fringe, the excess value of the trip over comparable first-class airfare without having to show that but for the bona fide business-oriented security concerns, the employee would have flown first-class on a commercial aircraft. If the special valuation rule provided in § 1.61–2T is used, the excess over the amount determined by multiplying an aircraft multiple of 200-percent by the base aircraft valuation formula may be excluded as a working condition fringe.

(3) *Examples.* The provisions of this paragraph (m) may be illustrated by the following examples:

Example (1). Assume that in response to several death threats on the life of A, the president of a multinational company (company X), company X establishes an overall security program for A, including an alarm system at A's home and guards at A's workplace, the use of a vehicle that is specially equipped with alarms, bulletproof glass, and armor plating and a bodyguard/driver who is trained in evasive driving techniques. Assume further that A is driven for both personal and business reasons in the vehicle. Also, assume that but for the bona fide business-oriented security concerns, no part of the overall suecurity program would been provided to A. With respect to the transportation provided for security reasons, A may exclude as a working condition fringe the value of the special security features of the vehicle and the value attributable to the bodyguard/driver. Thus, if the value of the specially equipped vehicle is $40,000, and the value of the vehicle without the security features is $25,000, A may determine A's income attributable to the vehicle as if the vehicle were worth $25,000. A must include in income the value of the availability of the vehicle for personal use.

Example (2). Assume that B is the chief executive officer of a multinational corporation (company Y). Assume further that there have been kidnapping attempts and other terrorist activities in the foreign countries in which B performs services and that at least some of such activities have been directed against B or similarly situated employees. In response to these activities, company Y provides B with an overall security program, including an alarm system at B's home and bodyguards at B's workplace, a bodyguard/driver who is trained in evasive driving techniques, and a vehicle specially designed for security during B's overseas travels. In addition, assume that company Y requires B to travel in company Y's airplane for business and personal trips taken to, from, and within these foreign countries. Also, assume that but for bona fide business-oriented security concerns, no part of the overall sucurity program would have been provided to B. B may exclude as a working condition fringe the value of the special security features of the automobile and the value attributable to the bodyguards and the bodyguard/driver. B may also exclude as a working condition fringe the excess, if any, of the value of personal flights in the company Y airplane over first-class airfare (as determined under the special valuation rule provided in § 1.61–2T if the safe harbor described in paragraph (m)(2)(vi) of this section is used). B must include in income the value of the availability of the vehicle for personal use and the lesser of the value of first-class airfare or the value of the flight determined under § 1.61–2T for each personal flight taken by B in company Y's airplane.

Example (3). Assume the same facts as in example (2) except that company Y also requires B to travel in company Y's airplane within the United States, and provides B with a chauffeur-driven limousine for business and personal travel in the United States. Assume further that company Y also requires B's spouse and dependents to travel in company Y's airplane for personal flights in the United States. If no bona fide business-oriented security concern exists with respect to travel in the United States, B may not exclude any portion of the value of the availability of the driver or limousine for personal use in the United States. Thus, B must include in income the value of the availability of the vehicle and driver for personal use. In addition, B may not exclude any portion of the value attributable to personal flights by B or B's spouse and dependents on company Y's airplane. Thus, B must include in income the value attributable to the personal use of company Y's airplane. See § 1.61–2T for rules relating to the valuation of personal flights on employer-provided airplanes.

Example (4). Assume that company Z retains an independent security consultant to perform a security study with respect to its chief executive officer. Assume further that, based on an objective assessment of the facts and circumstances, the security consultant reasonably recommends that the employee be provided security at his workplace and for ground transportation, but not for air transportation. If company Z follows the recommendations on a consistent basis, an overall security program will be deemed to exist with respect to the workplace and ground transportation security only.

Example (5). Assume the same facts as in example (4) except that company Z only provides the employee security while commuting to and from work, but not for any other ground transportation. Since the recommendations of the independent security study are not applied on a consistent basis, an overall security program will not be deemed to exist.

(n) *Product testing*—(1) *In general.* The fair market value of the use of consumer goods, which are manufactured for sale to nonemployees, for product testing and evaluation by an employee outside the employer's workplace is excludable as a working condition fringe if—

(i) Consumer testing and evaluation of the product is an ordinary and necessary business expense of the employer,

(ii) Business reasons necessitate that the testing and evaluation of the product be performed off the employer's business premises by employees (i.e., the testing and evaluation cannot be carried out adequately in the employer's office or in laboratory testing facilities),

(iii) The product is furnished to the employee for purposes of testing and evaluation,

(iv) The product is made available to the employee for no longer than

necessary to test and evaluate its performance and must be returned to the employer at completion of the testing and evaluation period,

(v) The employer imposes limitations of the employee's use of the product which significantly reduce the value of any personal benefit to the employee, and

(vi) The employee must submit detailed reports to the employer on the testing and evaluation.

The length of the testing and evaluation period must be reasonable in relation to the product being tested.

(2) *Employer-imposed limitations.* The requirement of paragraph (n)(1)(v) of this section is satisfied if—

(i) The employer places limitations on the employee's ability to select among different models or varieties of the consumer product that is furnished for testing and evaluation purposes,

(ii) The employer's policy provides for the employee, in appropriate cases, to purchase or lease at his or her own expense the same type of product as that being tested (so that personal use by the employee's family will be limited), and

(iii) The employer generally prohibits use of the product by members of the employee's family.

(3) *Discriminating classifications.* If an employer furnishes products under a testing and evaluation program only to officers, owners, or highly compensated employees, this fact may be considered in a determination of whether the products are furnished for testing and evaluation purposes or for compensation purposes, unless the employer can show a business reason for the classification of employees to whom the products are furnished (e.g., that automobiles are furnished for testing and evaluation by an automobile manufacturer to its design engineers and supervisory mechanics).

(4) *Factors that negate the existence of a product testing program.* If an employer fails to tabulate and examine the results of the detailed reports within a reasonable period of time after expiration of the testing period, the program will not be considered a product testing program. Existence of one or more of the following factors may also establish that the program is not a bona fide product testing program:

(i) The program is in essence a leasing program under which employees lease the consumer goods from the employer for a fee;

(ii) The nature of the product and other considerations are insufficient to justify the testing program; or

(iii) The expense of the program outweighs the benefits to be gained from testing and evaluation.

(5) *Failure to meet the requirements of this paragraph (n).* The fair market value of the use of property for product testing and evaluation by an employee outside the employee's workplace, under a product testing program that does not meet all of the requirements of this paragraph (n), is not excludable as a working condition fringe.

(6) *Example.* Assume that an employer that manufactures automobiles establishes a product testing program under which 50 of its 5,000 employees test and evaluate the automobiles for 30 days. Assume further that the 50 employees represent a fair cross section of all of the employees of the employer, such employees submit detailed reports to the employer on the testing and evaluation, the employer tabulates and examines the test results within a reasonable time, and the use of the automobiles is restricted to the employees. If the rules of paragraph (n)(2) of this section are also met, the employees may exclude the value of the use of the automobile during the testing and evaluation period.

(o) *Qualified automobile demonstration use*—(1) *In general.* The value of qualified automobile demonstration use is excludable from gross income as a working condition fringe. The term "qualified automobile demonstration use" means any use of a demonstration automobile by a full-time automobile salesman in the sales area in which the automobile dealer's sales office is located if—

(i) Such use is provided primarily to facilitate the salesman's performance of services for the employer, and

(ii) There are substantial restrictions on the personal use of the automobile by the salesman.

(2) *Full-time automobile salesman*—(i) *Definition.* The term "full-time automobile salesman" means any individual who—

(A) Is employed by an automobile dealer,

(B) Customarily spends substantially all of a normal business day on the sales floor selling automobiles to customers of the automobile dealership,

(C) Customarily works a number of hours considered full-time in the industry (but at a rate not less than 1,000 hours per year), and

(D) Derives at least 85 percent of his or her gross income from the automobile dealership directly as a result of such automobile sales activities.

An individual, such as the general manager of an automobile dealership, who receives a sales commission on the sale of an automobile is not a full-time automobile salesman unless the requirements of this paragraph (o)(2)(i) are met. The exclusion provided in this paragraph (o) is available to an individual who meets the definition of this paragraph (o)(2)(i) regardless of whether the individual performs services in addition to those described in this paragraph (o)(2)(i). For example, an individual who is an owner of the automobile dealership but who otherwise meets the requirements of this paragraph (o)(2)(i) may exclude from gross income the value of qualified automobile demonstration use.

(ii) *Use by an individual other than a full-time automobile salesman.* Personal use of a demonstration automobile by an individual other than a full-time automobile salesman is not treated as a working condition fringe. Therefore, any personal use, including commuting use, of a demonstration automobile by a part-time salesman, automobile mechanic, manager, or other individual is not "qualified automobile demonstration use" and thus not excludable from gross income.

(3) *Demonstration Automobile.* The exclusion provided in this paragraph (o) applies only to qualified use of a demonstration automobile. A demonstration automobile is an automobile that is—

(i) Currently in the inventory of the automobile dealership, and

(ii) Available for test drives by customers during the normal business hours of the employee.

(4) *Substantial restrictions on personal use.* Substantial restrictions on the personal use of demonstration automobiles exist when all of the following conditions are satisfied:

(i) Use by individuals other than the full-time automobile salesmen (e.g., the salesman's family) is prohibited,

(ii) Use for personal vacation trips is prohibited,

(iii) The storage of personal possessions in the automobile is prohibited, and

(iv) The total use by mileage of the automobile by the salesman outside the salesman's normal working hours is limited.

(5) *Sales area*—(i) *In general.* Qualified automobile demonstration use must be use in the sales area in which the automobile dealer's sales office is located. The sales area is the geographic area surrounding the automobile dealer's sales office from which the office regularly derives customers.

(ii) *Sales area safe harbor.* With respect to a particular full-time salesman, the automobile dealer's sales area may be treated as the larger of the area within a 75 mile radius of the dealer's sales office, or the on-way

commuting distance (in miles) of the particular salesman.

(p) *Parking*—(1) *In general.* The value of parking provided to an employee on or near the business premises of the employer is excludable from gross income as a working condition fringe. The working condition fringe exclusion applies whether the employer owns or rents the parking facility or parking space.

(2) *Reimbursement of parking expenses.* Any reimbursement to the employee of the ordinary and necessary expenses of renting a parking space on or near the business premises of the employer is excludable as a working condition fringe. The preceding sentence does not apply, however, to cash payments that are not actually used for renting a parking space. Thus, that part of a general transportation allowance that is not used for parking is not excludable as a working condition fringe under this paragraph (p).

(3) *Parking on residential property.* With respect to an employee, this paragraph (p) does not apply to any parking facility or space located on property owned or leased for residential purposes by the employee.

(q) *Nonapplicability of nondiscrimination rules.* Except to the extent provided in paragraph (n)(3) of this section, the nondiscrimination rules of section 132(h)(1) and § 1.132–8T do not apply in determining the amount, if any, of a working condition fringe.

Par. 8. The following § 1.132–6T is added at the appropriate place:

§ 1.132-6T De minimis fringe (Temporary).

(a) *In general.* Gross income does not include the value of a de minimis fringe provided to an employee. The term "de minimis fringe" means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.

(b) *Frequency.* Generally, the frequency with which similar fringes are provided by the employer to the employer's employees is determined by reference to the frequency with which the employer provides the fringe to each individual employee. For example, if an employer provides a free meal to one employee on a daily basis, but not to any other employee, the value of the meals is not de minimis with respect to that one employee even though with respect to the employer's entire workforce the meals are provided "infrequently." However, where it would be administratively difficult to determine frequency with respect to individual employees, the frequency with which similar fringes are provided by the employer to the employer's employees is determined by reference to the frequency with which the employer provides the fringes to the employees and not the frequency with which individual employees receive them. In these cases, if an employer occasionally provides a fringe benefit of de minimis value to the employer's employees, the de minimis fringe exclusion may apply even though a particular employee receives the benefit frequently. For example, if an employer exercises sufficient control and imposes significant restrictions on the personal use of a company copying machine so that at least 85 percent of the use of the machine is for business purposes, any personal use the copying machine by particular employees is considered to be a de minimis fringe.

(c) *Administrability.* Unless excluded by a statutory provision other than section 132(a)(4), the value of any fringe benefit that would not be unreasonable or administratively impracticable to account for must be included in the employee's gross income. Thus, except as otherwise provided in this section, the provision of any cash fringe benefit (or any fringe benefit provided to an employee through the use of a charge or credit card) is not excludable as a de minimis fringe. For example, the provision of cash to an employee for personal entertainment is not excludable as a de minimis fringe.

(d) *Special rules*—(1) *Transit passes.* A transit pass provided to an employee at a discount not exceeding $15 per month may be excluded as a de minimis fringe. The exclusion provided in this paragraph (d) also applies to the provision of $15 in tokens or fare cards that enable an individual to travel on the transit system. The exclusion provided in this paragraph (d) does not apply to any provision of cash or other benefit to defray transit expenses incurred for personal travel.

(2) *Occasional meal money or local transportation fare.* Occasional meal money or local transportation fare provided to an employee because overtime work necessitates an extension of the employee's normal workday is excluded as a de minimis fringe.

(3) *Use of special rules to establish a general rule.* The special rules provided in this paragraph (d) may not be used to establish any general rule. For example, the fact that $180 ($15 per month for 12 months) worth of transit passes can be excluded in a year does not mean that any fringe benefit with a value equal to or less than $180 may be excluded as a de minimis fringe.

(4) *Benefits exceeding value and frequency limitations.* If the benefit provided to an employee is not de minimis because either the value or frequency exceeds a limit provided in this paragraph (d), no amount of the benefit is considered to be de minimis. For example, if an employer provides a $20 monthly transit pass, the entire $20 must be included in income, not just the excess value over $15.

(e) *Nonapplicability of nondiscrimination rules.* Except to the extent provided in § 1.132–7T, the nondiscrimination rules of section 132(h)(1) and § 1.132–8T do not apply. Thus, for example, a fringe benefit may be a de minimis fringe even if the benefit is provided exclusively to officers of the employer.

(f) *Examples*—(1) *Benefits excludable from income.* Examples of de minimis fringe benefits are occasional typing of personal letters by a company secretary; occasional personal use of an employer's copying machine, provided that the employer exercises sufficient control and imposes significant restrictions on the personal use of the machine so that at least 85 percent of the use of the machine is for business purposes; occasional cocktail parties or picnics for employees and their guests; traditional holiday gifts of property (not cash) with a low fair market value; occasional theatre or sporting event tickets; and coffee and doughnuts.

(2) *Benefits not excludable as de minimis fringes.* Examples of fringe benefits that are not excludable from income as de minimis fringes are: season tickets to sporting or theatrical events; the commuting use of an employer-provided automobile or other vehicle more than once a month; membership in a private country club or athletic facility, regardless of the frequency with which the employee uses the facility; and use of employer-owned or leased facilities (such as an apartment, hunting lodge, boat, etc.) for a weekend. Some amount of the value of these fringe benefits may be excluded under other statutory provisions, such as the exclusion for working condition fringes. See § 1.132–5T.

Par. 9. The following § 1.132–7T is added at the appropriate place:

§ 1.132-7T Treatment of employer-operated eating facilities (Temporary).

(a) *In general*—(1) *General rule.* The value of meals provided to employees at an employer-operated eating facility for employees is excludable from gross income as a de minimis fringe only if—

(i) On an annual basis, the revenue from the facility equals or exceeds the direct operating costs of the facility, and

(ii) With respect to any officer, owner or highly compensated employee, access to the facility is available on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of officers, owners, and highly compensated employees. See § 1.132–8T.

(2) *Employer-operated eating facility for employees.* An employer-operated eating facility for employees is a facility that meets all of the following conditions—

(i) The facility is owned or leased by the employer,

(ii) The facility is operated by the employer,

(iii) The facility is located on or near the business premises of the employer,

(iv) Substantially all of the use of the facility is by employees of the employer operating the facility, and

(v) The meals furnished at the facility are provided during, or immediately before or after, the employee's workday.

For purposes of this section, the term "meals" means food, beverages, and related services provided at the facility. If an employer can determine the number of employees who receive meals that are excludable from income under section 119, the employer may, in determining whether the requirement of paragraph (a)(1)(i) of this section is satisfied, disregard all costs and revenues attributable to such meals provided to such employees. For purposes of this section, each dining room or cafeteria in which meals are served is treated as a separate eating facility, regardless of whether each such dining room or cafeteria has its own kitchen or other food-preparation area.

(3) *Operation by the employer.* If an employer contracts with another to operate an eating facility for its employees, the facility is considered to be operated by the employer for purposes of this section. If an eating facility is operated by more than one employer, it is considered to be operated by each employer.

(b) *Direct operating costs.* The direct operating costs test must be applied separately for each dining room or cafeteria. For purpose of this section, the direct operating costs of an eating facilities are: (1) The cost of food and beverages and (2) the cost of labor for personnel whose services relating to the facility are performed primarily on the premises of the eating facility. Direct operating costs do not include the cost of labor for personnel whose services relating to the facility are not performed primarily on the premises of the eating facility. Thus, for example, the labor cost for cooks, waiters, and waitresses is included in direct operating costs, but the labor cost for a manager of an eating facility whose services relating to the facility are not primarily performed on the premises of the eating facility is not included in direct operating costs. If an employee perfoms services both on and off the premises of the eating facility, only the applicable percentage of the total labor cost of the employee that bears the same proportion as time spent on the premises bears to total time is included in direct operating costs. For example, assume that 60 percent of the services of the cooks in the above example are not related to the eating facility. Only 40 percent of the total labor cost of the cooks is includible in direct operating costs. For purposes of this section, labor costs include all compensation required to be reported on a Form W–2 for income tax purposes and related employment taxes paid by the employer.

(c) *Valuation of non-excluded meals provided at an employer-operated eating facility for employees.* If the exclusion for meals provided at an employer-operated eating facility for employees is not available, the recipient of meals provided at such facility must include in income the amount by which the fair market value of the meals provided exceeds the sume of: (1) The amount, if any, paid for the meals, and (2) the amount, if any, specifically excluded by another section of the Code. For special valuation rules relating to such meals see § 1.61–2T (j).

Par. 10. The following § 1.132–8T is added at the appropriate place:

§ 1.132–8T Nondiscrimination rules (Temporary).

(a) *Application of nondiscrimination rules*—(1) *General rule.* To qualify under section 132 for the exclusions for non-additional-cost services, qualified employee discounts, or meals provided at employer-operated eating facilities for employees, the fringe benefit must be available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer that does not discriminate in favor of officers, owners, or highly compensated employees (the "prohibited group employees").

(2) *Consequences of discrimination.* If the availability of or the provision of the fringe benefit does not satisfy the nondiscrimination rules provided in this section, the exclusion applies only to those employees (if any) who receive the benefit and who are not prohibited group employees. For example, if an employer offers a 20 percent discount (which otherwise satisfies the requirements for a qualified employee discount) to all nonprohibited group employees and a 35 percent discount to all prohibited group employees, the entire value of the 35 percent discount (not just the excess over 20 percent) is includible in the gross income and wages of the prohibited group employees who make purchases at a discount.

(3) *Scope of the nondiscrimination rules provided in this section.* The nondiscrimination rules provided in this section apply only to fringe benefits provided pursuant to section 132 (a)(1), (a)(2), and (e)(2). These rules have no application to any other employee benefit that may be subject to nondiscrimination requirements under any other section of the Code.

(b) *Coverage requirement*—(1) *Section 132 (a)(1) and (2).* For purposes of the exclusions for no-additional-cost services and qualified employee discounts, the nondiscrimination rules of this section are applied by aggregating the employees of all related employers (as defined in § 1.132–1T (c)), but without aggregating employees in different lines of business (as defined in § 1.132–4T). Employees in different lines of business will be aggregated, however, if the line of business limitation has been relaxed pursuant to either section 1.132–4T (b) or (c). Except as provided in paragraph (e) of this section, the nondiscrimination rules of this section are generally applied separately to each fringe benefit program of an employer.

(2) *Section 132(e)(2).* For purposes of the exclusion for meals provided at employer-operated eating facilities for employees, the nondiscrimination rules of this section are applied by aggregating the employees of all related employers, without regard to different lines of business, who regularly work at or near the premises on which the eating facility is located. The nondiscrimination rules of this section are applied separately to each eating facility. Each dining room or cafeteria in which meals are served is treated as a separate eating facility, regardless of whether each such dining room or cafeteria has its own kitchen or other food-preparation area.

(3) *Classes of employees who may be excluded.* Except as otherwise provided in this section, for purposes of applying the nondiscrimination rules of this section to a particular fringe benefit program, there may be excluded from

consideration the following classes of employees provided that, with respect to each class (other than the class described in paragraph (b)(3)(iii) of this section), all employees in the class are excluded from participating in the particular fringe benefit program—

(i) All part-time or seasonal employees who are (or who are reasonably expected to be) credited with less than 1,000 hours (or such lesser number required for the program) of service during a calendar year;

(ii) All employees who are included in a unit of employees covered by an agreement with the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that the particular fringe benefit program was the subject of good faith bargaining between such employee representatives and such employer or employers (and if, after March 31, 1984, the additional condition of section 7701(a)(46) is satisfied);

(iii) All employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from services within the United States (within the meaning of section 861(a)(3));

(iv) All employees who have not completed at least one year (or such lesser period required for the program) of service with the employer;

(v) All employees who have separated from the service of the employer in a year prior to the current year (regardless of the reason for the separation);

(vi) All employees who have separated from the service of the employer in a year prior to the current year except for retired and/or disabled employees (either with or without a time limit based on a set number of years since separation from the service of the employer); and

(vii) All employees of a leased section of a department store.

(c) *Classification requirement*—(1) *General rule.* The determination of whether a particular classification established by an employer discriminates in favor of the prohibited group will depend on the facts and circumstances involved, based on principles similar to those applied in the qualified plan area (see section 410(b)(1)(B) and the regulations thereunder). In general, except as otherwise provided in this section, a classification that would be determined to be nondiscriminatory pursuant to the application of the nondiscrimination standards that are applied in the qualified plan area shall be deemed to be nondiscriminatory for purposes of section 132.

(2) *Classifications that are per se discriminatory.* A classification that, on its face, makes fringe benefits available only to prohibited group employees is per se discriminatory, and no exclusion from gross income is available to any prohibited group employee under section 132. In addition, a classification that is based on either an amount or rate of compensation is per se discriminatory if it favors those with the higher amount or rate of compensation. On the other hand, a classification that is based on factors such as seniority, full-time vs. part-time employment, or job description is not per se discriminatory but may be discriminatory as applied to the workforce of a particular employer.

(3) *Former employees.* When determining whether a classification is discriminatory, former employees shall not be considered together with other employees of the employer. Therefore, a classification is not discriminatory if the employer does not make the fringe benefits available to any former employee. Whether a classification of former employees discriminates in favor of prohibited group employees will depend on the facts and circumstances. The rules of this section shall apply separately to the former employee classification.

(4) *Employer-operated eating facilities for employees*—(i) *General rule.* If access to an employer-operated eating facility for employees is available to a classification of employees that discriminates in favor of highly compensated employees, the classification will not be treated as discriminating in favor of the prohibited group employees unless the facility is used, more than a de minimis amount, by any executive group employee.

(ii) *Executive group employees.* For purposes of this paragraph (c)(4), the term "executive group employees" has the same meaning as the term "prohibited group employees" (as defined in paragraph (g) of this section), except that for purposes of identifying highly compensated employees—

(A) The exception provided in paragraph (g)(1)(i)(A) of this section does not apply, and

(B) The phrase "highest-paid one percent of all employees of an employer" is substituted for the phrase "highest-paid ten percent of all employees of an employer" in paragraph (g)(1)(ii)(A) of this section.

(d) *Substantially-the-same-terms requirement*—(1) *General rule.* Fringe benefits available to a particular classification of employees must be available to each employee in the classification on substantially the same terms. The determination of whether this requirement is met shall depend on the facts and circumstances involved. For example, if a department store provides a 20 percent qualified employee discount to its employees on all merchandise, the substantially-the-same-terms requirement will be satisfied. Similarly, if the discount provided to all employees is 30 percent on certain merchandise (such as apparel), and 20 percent on all other merchandise, the substantially-the-same-terms requirement will be satisfied. However, if the discount provided is 20 percent on all merchandise for hourly employees and 30 percent on all merchandise for salaried employees, the substantially-the-same-terms requirement will not be satisfied. In addition, if the percentage discount varies depending on either an employee's amount or rate of compensation, or volume of purchases, the substantially-the-same-terms requirement will not be satisfied. In order to determine whether such a discount program satisfies the nondiscrimination requirements of section 132, each group of employees that does receive fringe benefits on substantially the same terms must be treated as a separate classification. However, subject to the rules of paragraph (e) (2) of this section, an employer may divide a fringe benefit program into two programs for purposes of aggregating groups of employees. See Example (1) of paragraph (d) (3) of this section.

(2) *Terms relating to priority.* Certain fringe benefits made available to employees are available only in limited quantities that may be insufficient to meet employee demand. This may occur either because of employer policy (such as where an employer determines that only a certain number of units of a specific product will be made available to employees each year) or because of the nature of the fringe benefit (such as where an employer provides a no-additional-cost transportation service that is limited to the number of seats available just before departure). Under these circumstances, an employer may find it necessary to establish some method of allocating the limited fringe benefits among the employees eligible to receive the fringe benefits. An allocation among employees on a "first-come, first-served" basis will not violate the substantially-the-same-terms requirement provided that such an allocation is not discriminatory in practice. In addition, an allocation among employees on a lottery basis will

not violate the substantially-the-same-terms requirement provided that such an allocation is nondiscriminatory in practice. For example, assume that an employer has a limited number of a particular benefit to offer to its employees. Assume further that the employees interested in receiving the benefit submit their names to the employer who then selects a number of names, at random, equal to the number of fringe benefits available. This lottery system would not violate the substantially-the-same-terms requirement. An allocation among employees on other than a "first-come, first-served", lottery, or similar basis will violate the substantially-the-same-terms requirement. Therefore, an allocation based on seniority, full-time vs. part-time employment, or job description will violate the substantially-the-same-terms requirement. In order to determine whether such a fringe benefit program satisfies the nondiscrimination requirements of section 132, each group of employees that does receive fringe benefits on substantially the same terms must be treated as a separate classification. For purposes of this rule, the last two sentences of paragraph (d) (1) of this section apply.

(3) *Examples.* The followings examples illustrate the provisions of this paragraph (d):

Example 1. Assume that with respect to a benefit available in limited quantities an employer provides priority to employees based on seniority. Assume further that all non-prohibited group employees have ten years of seniority and all prohibited group employees have nine years seniority. If each of these groups were tested separately, the benefits offered to prohibited group employees would be discriminatory under this section. In this case, the employer could divide the fringe benefit program provided to non-prohibited group employees into two parts: one relating to nine years of seniority and one relating to an additional year of seniority. As restructured in this manner, all employees receive the benefit relating to nine years seniority and only non-prohibited group employees receive the benefit relating to an additional year of seniority. Both groups (all employees and all non-prohibited group employees) are nondiscriminatory groups.

Example 2. Assume that prices charged to prohibited group employees at an employer-operated eating facility for employees are lower than prices charged to non-prohibited group employees. The substantially-the-same requirement is not satisfied.

(4) *Disproportionate use of eating facility.* If access to an employer-operated eating facility for employees is technically available on substantially-the-same-terms (to (i) all employees who regularly work at or near the premises on which the eating facility is located (the employee group), or (ii) a nondiscriminatory classification of the employee group, but in practice a highly disproportionate number of the prohibited group employees in the employee group, compared to the non-prohibited group employees in the employee group, use the facility, the substantially-the-same-terms requirement will not be satisfied unless no member of the executive group eats there more than a de minimis amount.

(e) *Aggregation of separate fringe benefit programs*—(1) *General rule.* If an employer maintains more than one fringe benefit program, i.e., two or more classifications of employees providing either identical or different fringe benefits, the nondiscrimination requirements of section 132 will generally be applied separately to each such program. Thus, a determination that one fringe benefit program discriminates in favor of prohibited group employees generally will not cause other fringe benefit programs covering the same prohibited group employees to be treated as discriminatory.

(2) *Exception*—(i) *Related fringe benefit programs.* If one of a group of fringe benefit programs discriminates in favor of prohibited group employees, no related fringe benefit provided to such prohibited group employees under any other fringe benefit program may be excluded from the gross income of such prohibited group employees. For example, assume a department store provides a 20 percent merchandise discount to all employees under one fringe benefit program. Assume further that under a second fringe benefit program, the department store provides an additional 15 percent merchandise discount to a group of employees defined under a classification which discriminates in favor of the prohibited group. Because the second fringe benefit program is discriminatory, the 15 percent merchandise discount provided to the prohibited group employees is not a qualified employee discount. In addition, because the 20 percent merchandise discount provided under the first fringe benefit program is related to the fringe benefit provided under the second fringe benefit program, the 20 percent merchandise discount provided the prohibited group employees is not a qualified employee discount. Thus, the entire 35 percent merchandise discount provided to the prohibited group employees is includible in such employees' gross incomes.

(ii) *Employer-operated eating facilities for employees.* For purposes of paragraph (e) (2) (i) of this section, meals at different employer-operated eating facilities for employees are not related fringe benefits, so that a prohibited group employee may exclude the value of a meal at a nondiscriminatory facility even though any meals provided to him or her at the discriminatory facility cannot be excluded.

(f) *Cash bonuses or rebates.* A cash bonus or rebate provided to an employee by an employer that is determined pursuant to the value of employer-provided property or services purchased by the employee, is treated as an equivalent employee discount. For example, assume a department store provides a 20 percent merchandise discount to all employees under a fringe benefit program. In addition, assume that the department store provides cash bonuses to a group of employees defined under a classification which discriminates in favor of the prohibited group. Assume further that such cash bonuses equal 15 percent of the value of merchandise purchased by each employee. This arrangement is substantively identical to the example described in paragraph (e) (2) of this section. Thus, both the 20 percent merchandise discount and the 15 percent cash bonus provided to the prohibited group employees are includible in such employees' gross incomes.

(g) *Prohibited group employees*—(1) *Highly compensated*—(i) *General rule.* Except as otherwise provided in this paragraph (g) (1) (i), any employee of an employer who has (or is reasonably expected to have) compensation during a calendar year equal to or greater than the employer's base compensation amount is highly compensated. There are two exceptions to this rule:

(A) Any employee who has (or is reasonably expected to have) compensation during a calendar year equal to or greater than $50,000 is highly compensated, regardless of whether such compensation is in excess of the base compensation amount, and

(B) Any employee who is reasonably expected to have compensation during a calendar year equal to or less than $20,000 is not highly compensated, unless no employee of the employer is reasonably expected to have compensation equal to or greater than $35,000.

The determination of whether an employee is a highly compensated employee will be determined based on the entire employee workforce of all employers aggregated pursuant to the rules of section 414 (b), (c), or (m) without regard to the regular workplace of the employees.

(ii) *Base compensation amount*—(A) *General rule.* The term "base compensation amount" is defined as that amount corresponding to the lowest annual compensation amount received by the highest-paid ten percent of all employees of an employer (the number of employees in the top ten percent will be increased to the next highest integer if necessary), determined on the basis of the preceding calendar year. For purposes of this paragraph (g) (1) (ii), the term "employer" includes all entities that would be aggregated pursuant to the rules of section 414 (b), (c), or (m).

(B) *Employees that are excluded.* For purposes of determining the base compensation amount with respect to a fringe benefit program, employees described in paragraph (b)(3) of this section are excluded whether or not they are covered under the fringe benefit program, except that: (*1*) Employees described in paragraph (b)(3)(ii) of this section are taken into account with respect to the program even if they are excluded under paragraph (b)(3), and (*2*) employees described in paragraph (b)(3) (i) and (iv) of this section are taken into account with respect to the program unless they are excluded under paragraph (b)(3).

(C) *Exception to preceding calendar year rule.* In the case of an employer's first year of operation, or where an employer's business has changed significantly from the prior calendar year (e.g., due to an acquisition or merger), the employer must make a good faith attempt to either determine or adjust the base compensation amount for the current year based on reasonable estimates of current year compensation.

(iii) *Compensation.* The term "compensation" is defined as the amount reportable on a Form W-2 as income. Amounts that would be excluded from income but for section 132(h)(1) are not included in compensation for purposes of this paragraph (g)(1). Compensation includes amounts received from all entities which would be treated as a single employer under section 414 (b), (c), or (m) and is not restricted to amounts received with respect to any one line of business.

(iv) *Employee.* Generally, for purposes of determining whether an employee is highly compensated under this paragraph (g)(1), the term "employee" does not include any individual who does not perform services for the employer as an employee during the calendar year. For example, if an employer has active employees, retired or disabled employees, and widows or widowers who are "employees" under section 132(f)(1)(B), the general rule (described in paragraph (g)(1)(i) of this section) applies only to the active employees.

(2) *Owner*—(i) *General rule.* For purposes of this section, the term "owner" means any employee who owns a one percent or greater interest in either the employer or in any entity that would be aggregated with the employer pursuant to the rules of section 414 (b), (c), or (m). In addition, such an employee shall be treated as an owner of all entities that would be aggregated with the employer pursuant to the rules of section 414 (b), (c), or (m).

(ii) *Determining ownership.* Ownership in a corporation shall be determined pursuant to the rules of section 318(a). For purposes of determining ownership in an entity other than a corporation, the rules of section 318(a) shall apply in a manner similar to the way in which they apply for purposes of determining ownership in a corporation. For non-corporate interests, capital or profits interest must be substituted for stock.

(3) *Officer.*—(i) *Non-government.* For purposes of this section, an officer of a non-government employer is any employee who is appointed, confirmed, or elected by the Board or shareholders of the employer. An employee who is an officer of an employer shall be treated as an officer of all entities treated as a single employer pursuant to section 414 (b), (c), or (m). The number of officers is not to exceed one-percent of the total number of employees of all entities treated as a single employer pursuant to section 414 (b), (c), or (m) (increased to the next highest integer, if necessary). If the number of officers exceeds one-percent of all employees, then the limitation is to be applied to employees in descending order of compensation (as defined in paragraph (g)(1)(iii) of this section). Thus, if an employer with 1,000 employees has 11 board-appointed officers, the employee with the least compensation of those officers would not be an officer under this paragraph (g)(3)(i). In determining the total number of employees with respect to a fringe benefit program, employees described in paragraph (b)(3) of this section are excluded whether or not they are covered under the fringe benefit program, except that (A) employees described in paragraph (b)(3)(ii) of this section are taken into account with respect to the program even if they are excluded under paragraph (b)(3), and (B) employees described in paragraph (b)(3) (i) and (iv) of this section are taken into account with respect to the program unless they are excluded under paragraph (b)(3).

(ii) *Government.* For purposes of this section, an officer of a government employer is any—

(A) Elected official,

(B) Federal employee appointed by the President and confirmed by the Senate. However, in the case of any commissioned officer of the United States Armed Forces, an officer is any employee with the rank of brigadier general or rear admiral (lower half) or above, and

(C) State or local executive officer comparable to individuals described in paragraphs (g)(3)(ii) (A) and (B) of this section.

For purposes of this paragraph (g)(3)(ii), the term "government" includes any Federal, state, or local governmental unit, and any agency or instrumentality thereof.

(4) *Former employees.* [Reserved]

§ 1.162-25T [Amended]

Par. 11. Paragraph (b) of § 1.162-25T is amended by removing the words "(as defined in § 1.61-2T Q/A-20)" and adding in their place the words "(as defined in § 1.61-2T(e)(2))".

§ 1.274-5T [Amended]

Par. 12. Section 1.274-5T is amended as follows:

1. Paragraph (e)(1)(ii) is amended by removing the words "(as defined in § 1.61-2T Q/A-20)" and adding in their place the words "(as defined in § 1.61-2T(e)(2))".

2. The first sentence of paragraph (l) is revised to read as follows: "For purposes of section 274(d) and this section, the terms "automobile" and "vehicle" have the same meanings as prescribed in § 1.61-2T(d)(1)(ii) and § 1.61-2T(e)(2), respectively.".

3. The third sentence of paragraph (m) is amended by removing the words "except as provided in § 1.132-1T Q/A-4b" and adding in their place the words "except as provided in § 1.132-5T(h)".

§ 1.274-6T [Amended]

Par. 13. Section 1.274-6T is amended as follows:

1. Paragraph (a)(3)(i)(E) is revised to read as follows: "The employee required to use the vehicle for commuting is not a control employee (as defined in § 1.61-2T(f) (5) and (6)) required to use an automobile (as defined in § 1.61-2T(d)(1)(ii)), and".

2. Paragraph (a)(3)(i)(F) is amended by removing the citation "§ 1.61-2T Q/A-21" and adding in its place the citation § 1.61-2T(f)(3)".

3. Paragraph (a)(3)(ii) is amended by removing from the introductory text the

citation "§ 1.61-2T Q/A-21" and adding in its place the citation "§ 1.61-2T(f)(3)".

4. Paragraph (a)(3)(ii)(E) is revised to read as follows: "The employee required to use the vehicle for commuting is not a control employee (as defined in § 1.61-2T(f) (5) and (6) required to use an automobile (as defined in § 1.61-2T(d)(1)(ii)), and".

5. Paragraph (a)(3)(ii)(F) is amended by removing the citation "§ 1.61-2T Q/A-21" and adding in its place the citation "§ 1.61-2T(f)(3)".

6. Paragraph (b)(1) is amended by removing from the last sentence the citation "§ 1.132-1T Q/A-4a(f)" and adding in its place the citation "§ 1.132-5T(g)".

7. Paragraph (b)(3) is amended by removing from the last sentence the citation "§ 1.132-1T Q/A-4a(f)" and adding in its place the citation "§ 1.132-5T(g)(3)".

8. Paragraph (e)(3) is amended by removing the citation "§ 1.61-2T Q/A-11" and adding in its place the citation "§ 1.61-2T(d)(1)(ii)".

9. Paragraph (e)(4) is amended by removing the citation "§ 1.61-2T Q/A-20" and adding in its place the citation "§ 1.61-2T(e)(2)".

PART 602—[AMENDED]

Par. 14. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 15. Section 602.101(c) is amended by inserting in the appropriate place in the table § 1.61-2T . . . 1545-0771; 1.132-2T . . . 1545-0771; and § 1.132-5T . . . 1545-0771".

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: December 11, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85-30161 Filed 12-18-85; 11:08 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 602

[T.D. 8064]

Income Tax; Information Returns Relating To Sales or Exchanges of Certain Partnership Interests

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to information returns, statements, and notifications required where there is a sale or exchange of certain partnership interests. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules Section of this issue of the **Federal Register.** The temporary regulations reflect changes to the applicable tax law made by section 149 of the Tax Reform Act of 1984 and provide guidance on the manner of filing and contents of required information returns, statements, and notifications under section 6050K of the Internal Revenue Code of 1954.

DATE: The regulations contained in this document are effective with respect to sales or exchanges of partnership interests made after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Robert E. Shaw of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T LR-129-85). Telephone, 202-566-3297 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Explanation of Provisions

Under section 6050K (a) and § 1.6050K-1T a partnership must file a return on Form 8308 when there is a sale or exchange described in section 751 (a) (a "section 751 (a) exchange") of any interest in that partnership during any calendar year after 1984. A section 751 (a) exchange occurs when any portion of any money or other property received by a transferor partner in exchange for all or a part of his or her interest in the partnership is attributable to section 751 property (unrealized receivables and substantially appreciated inventory items as defined in seciton 751 (c) and (d)). Generally, a sale or exchange of an interest in a partnership (or a portion thereof) at a time when the partnership has any section 751 property will constitute a section 751(a) exchange.

A return on Form 8308 must be filed with respect to each sale or exchange. Section 1.6050K-1T (a) (2), however, provides that the Commissioner may, at a future date, authorize the use of a single document which includes all of the partnership's returns for a calendar year, or of a composite document, by partnerships that are required to file 25 or more separate returns in any calendar year. The information to be supplied on Form 8308 includes the names, addresses, and taxpayer identification numbers of the transferee and transferor in the exchange and of the partnership, the date of the exchange, and such other information as may be required by Form 8308 or its instructions. Form 8308 shall contain a printed notice that the information on the Form has been supplied to the Internal Revenue Service, that the transferor is required to treat a portion of the gain realized from the section 751 (a) exchange as ordinary income, and that the transferor in a section 751 (a) exchange is required under § 1.751-1 (a) (3) to attach a statement relating to the exchange to his or her income tax return for the taxable year in which the exchange occurred. The partnership return on Form 8308 is to be filed as an attachment to the partnership's Form 1065 for its taxable year in which the calendar year in which the section 751 (a) exchange occurred ends.

Under section 6050K (b) and the temporary regulations all partnerships that are required to file returns under section 6050K (a) must furnish a statement to each person whose name appears on the partnership's Form 8308 showing the name and address of the partnership in addition to the information shown on the Form 8308 with respect to that person. A copy of Form 8308 is to be used as the statement. The statement must be furnished on or before January 31 following the calendar year in which the section 751 (a) exchange occurred (or, if later, 30 days after the partnership has notice of the exchange). Thus, under the statute the partnership must generally prepare Form 8308 prior to the time it must be filed so as to allow the timely furnishing of statements to the transferor and transferee.

Section 6050K (c)(1) and the temporary regulations require the transferor of a partnership interest in a section 751 (a) exchange to notify the partnership of the exchange, in writing, on or before the thirtieth day after the date of the exchange (or, if earlier, January 15 of the calendar year following the calendar year in which the exchange occurred). The written notification from the transferor must include the names and addresses of the transferor and transferee, the date of the exchange, and the taxpayer identification numbers of the transferor and, if known, of the transferee.

Under section 6050K (c) (2) and the temporary regulations the partnership is not required to file a return or furnish statements under section 6050K until the partnership has notice of the section 751 (a) exchange. Section 1.6050K-1T (e) clarifies that a partnership has notice of a section 751 (a) exchange when either (1) the partnership receives the written

notification from the transferor required under section 6050K (c)((1), or (2) the partnership has knowledge that there has been a transfer of a partnership interest at a time when the partnership had any section 751 property. However, no return or statements are required under section 6050K if the transfer was not a section 751 (a) exchange (*e.g.*, a transfer which in its entirety constitutes a gift for federal income tax purposes). A partnership may rely on a written statement from the transferor that the transfer was not a section 751 (a) exchange in the absence of knowledge to the contrary. Under the temporary regulations the partnership is generally not required to value property. However, in certain circumstances a partnership may not be able to determine whether it had any section 751 property on the date of a transfer of a partnership interest without determining the value of such property. In such cases, partnerships that do not wish to make such a valuation may file Form 8308 in order to avoid the risk of incurring a penalty under section 6652 (a).

Regulatory Flexibility Act; Executive Order 12291; Paperwork Reduction Act of 1980

No general notice of proposed rulemaking is required by 5 U.S.C 553 (b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The reporting requirements added by this document have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. The reporting requirements have been approved by OMB.

Drafting Information

The principal author of these temporary regulations is Robert E. Shaw of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations both on matters of substance and style.

List of Subjects

26 CFR 1.6001-1—1.6109-2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 and Part 602 are amended as follows:

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.6050K-1T also issued under 26 U.S.C. 6050K.

Par. 2. A new § 1.6050K-1T is added immediately after § 1.6050J-1T to read as follows:

§ 1.6050K-1T Returns relating to sales or exchanges of certain partnership interests. (Temporary)

(a) *Partnership return required.* (1) Except as provided in paragraph (a) (2) of this section, a partnership shall make a separate return on Form 8308 with respect to each section 751 (a) exchange of an interest in such partnership which occurs after December 31, 1984. The term "section 751 (a) exchange" means any sale or exchange of a partnership interest (or portion thereof) in which any portion of any money or other property received by a transferor partner in exchange for all or a part of his or her interest in the partnership is attributable to section 751 property. The term does not include a distribution which is treated as a sale or exchange between the distributee and the partnership under section 751 (b). For purposes of this section, the term "section 751 property" means unrealized receivables, as defined in section 751 (c), and inventory items which have appreciated substantially in value ("substantially appreciated inventory items"), as defined in section 751 (d). A partnership that is in doubt as to whether partnership property constitutes section 751 property to any extent or as to whether a transfer of a partnership interest constitutes a section 751 (a) exchange may file Form 8308 in order to avoid the risk of incurring a penalty under section 6652 (a). The penalty under section 6652 (a) will generally apply, however, to partnerships that do not file Form 8308 where in fact a section 751 (a) exchange occurred, except as provided in paragraph (e) of this section.

(2) The Commissioner may authorize the use, at the option of the partnership, of a single document which includes all of the partnership's returns for a calendar year in the case of partnerships required under paragraph (a) (1) of this section to make 25 or more returns on Form 8308 for any calendar year. In addition, the Commissioner may authorize the use for this purpose, also at the option of such a partnership, of a composite document. These authorizations shall be subject to such conditions, limitations, and special rules governing the preparation, execution, filing, and correction thereof as the Commissioner may deem appropriate. Such composite document shall consist of a form prescribed by the Commissioner and an attachment or attachments of magnetic tape or other approved media. To the extent that the use of a single or composite document has been authorized by the Commissioner, references in this section to Form 8308 shall be deemed to refer also to returns included in a single or composite document under this paragraph (a) (2). Any single or composite document so authorized shall include the information required to be provided on Form 8308 under paragraph (b) of this section with respect to each section 751 (a) exchange.

(b) *Contents of return.* The return on Form 8308 shall include the following information:

(1) The names, addresses, and taxpayer identification numbers of the transferee and transferor in the exchange and of the partnership filing the return;

(2) The date of the exchange; and

(3) Such other information as may be required by Form 8308 or its instructions.

(c) *Statement to be furnished to transferor and transferee.* Every partnership making a return under paragraph (a) of this section must furnish to each person whose name is set forth in such return a written statement on or before January 31 of the calendar year following the calendar year in which the section 751(a) exchange occurred to which the return under paragraph (a) relates (or, if later, 30 days after the partnership is notified of the exchange as defined in paragraph (e) of this section). The partnership shall use a copy of the completed Form 8308 as a statement unless the Form 8308 contains information with respect to more than one section 751(a) exchange (see paragraph (a)(2) of this section). If the partnership does not use a copy of

Form 8308 as a statement, the statement shall include the information required to be shown on Form 8308 with respect to the section 751(a) exchange to which the person to whom the statement is furnished is a party, as well as the printed notice on Form 8308 with respect to the facts that the information shown on the statement has been supplied to the Internal Revenue Service, that a transferor of a partnership interest in a sale or exchange described in section 751(a) of the Internal Revenue Code is required to treat a portion of any gain or loss resulting from the sale or exchange as ordinary income or loss, and that the transferor in a section 751(a) sale or exchange is required under paragraph (a)(3) of § 1.751-1 to attach a statement relating to the sale or exchange to his or her income tax return for the taxable year in which the sale or exchange occurred.

(d) *Requirement that transferor notify partnership.* The transferor of any partnership interest in a section 751(a) exchange shall notify the partnership of such exchange in writing within 30 days of the exchange, (or, if earlier, January 15 of the calendar year following the calendar year in which the exchange occurred). The written notification from the transferor shall include the following information:

(1) The names and addresses of the transferor and transferee in the section 751(a) exchange;

(2) The taxpayer identification numbers of the transferor and, if known, of the transferee; and

(3) The date of the exchange.

Any transferor who notified a partnership under section 6050K(c)(1) prior to January 22, 1986 by a notification that does not meet the requirements of this paragraph (d) shall furnish such partnership with the written notification described in this paragraph (d) on or before February 21, 1986.

(e) *Partnership not required to make a return or furnish statements under this section until it has notice of the exchange.* A partnership shall not be required to make a return or furnish statements under this section with respect to any section 751(a) exchange until it has been notified of the exchange. For purposes of section 6050K (c) (2) and this section a partnership is notified of a section 751(a) exchange when either:

(1) The partnership receives the written notification from the transferor required by paragraph (d) of this section; or

(2) The partnership has knowledge that there has been a transfer of a partnership interest or any portion thereof, and, at the time of the transfer, the partnership had any section 751 property. However, no return or statements are required under section 6050K if the transfer was not a section 751(a) exchange (*e.g.*, a transfer which in its entirety constitutes a gift for federal income tax purposes). For purposes of this paragraph (e)(2), the partnership may rely on a written statement from the transferor that the transfer was not a section 751(a) exchange in the absence of knowledge to the contrary. For rules applicable where the partnership is in doubt as to whether partnership property constitutes section 751 property to any extent or as to whether a transfer of a partnership interest constitutes a section 751(a) exchange, see paragraph (a)(1) of this section.

(f) *Partnership return is to be attached to Form 1065.* Any partnership return on Form 8308 required under this section shall be filed as an attachment to the partnership's Form 1065 for its taxable year in which the calendar year in which the section 751(a) exchange occurred ends and shall be filed at the time (determined with regard to any extension of time for filing) and place prescribed for filing of the partnership's Form 1065 for that taxable year (see paragraph (e) of § 1.6031-1 for the time and place for filing Form 1065). However, if a partnership is notified of an exchange (as defined in paragraph (e) of this section) after the partnership has filed Form 1065 for the taxable year for which the exchange should have been reported, Form 8308 shall be filed by amending the partnership's Form 1065 for that taxable year and filing the amended Form 1065 with the Form 8308 attached on or before the thirtieth day after the partnership is notified of the exchange.

(g) *Penalties.* For penalties for failure of:

(1) Transferors to furnish the notification required by paragraph (d) of this section see section 6678(c);

(2) Partnerships to furnish any statement required under paragraph (c) of this section see section 6678(a); and

(3) Partnerships to file the return on Form 8308 as required by paragraph (a) of this section see section 6652 (a) (1) and (3)

PART 602—[AMENDED]

OMB Control Numbers Under the Paperwork Reduction Act

Par. 3.—The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate places in the table "1.6050K-1T . . . 1545-0941."

* * * * *

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: December 12, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85-30323 Filed 12-20-85; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R, Amdt. No. 34]

Civilian Health and Medicare Program of the Uniformed Services (CHAMPUS); Federal Medical Care Recovery Act, Chapter IX

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This amendment revises the CHAMPUS Regulations, DoD 6010.8-R, by consolidating all federal claims provisions arising under the operation of CHAMPUS into two chapters. When originally published as a proposed rule on October 7, 1983, this amendment was proposed to be contained in only one chapter, a revised Chapter IX of the Regulation. However, based upon a number of comments received, we believe clarity will be served by separating our original proposed rule into two new chapters, Chapters XI and XII. Chapter IX will be reserved for future use. This amendment reflects changes mandated by the Debt Collection Act of 1982 and recent amendments to the Federal Claims Collection Standards issued jointly by the Department of Justice and the General Accounting Office. Federal claims arise when the government has a right to recover money or property from an individual, partnership, association, corporation, governmental body or other legal entity, foreign or domestic, except an instrumentality of the United States. This amendment clarifies the specific

procedures and criteria uses in the assertion, collection or compromise of federal claims and the suspension or termination of collection action on such claims arising under the operation of CHAMPUS. Chapter XI deals with claims in favor of the United States arising under the Federal Claims Collection Act (recoupment claims). Chapter XII deals with claims in favor of the United States arising under the Federal Medicare Recovery Act. When appropriate, these provisions would avoid the expense or court proceedings for both the government and the debtor. These provisions also will reduce administrative handling, provide greater flexibility to recovery efforts, and aid in the timely settlement of outstanding federal claims. This change will facilitate the use of the Regulation by CHAMPUS fiscal intermediaries, Uniformed Service claims officers and by the general public.

DATE: This amendment will become effective January 22, 1986. The implementation of portions of the regulation dealing with the liability questionnaire will depend upon the availability of that form. OMB has approved the form and supplies should be available to CHAMPUS fiscal intermediaries by the effective date.

FOR FURTHER INFORMATION CONTACT:

Robert L. Shepherd, Assistant General Counsel, OCHAMPUS, Aurora, Colorado 80045, telephone (303) 361-8506

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SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Civilian Health and Medical Program of the Uniform Services (CHAMPUS)," as Part 199 of this title. As originally published, § 199.15 addressed only claims collection activities under the CHAMPUS for third-party liability claims arising under the Federal Medical Care Recovery Act. Claims activity under other statutory or contractual grounds arising under the operation of CHAMPUS were addressed only in the most general terms in other Sections of the regulation.

In FR Doc. 83-27322, appearing in the **Federal Register** on October 7, 1983 (48 FR 457691), the Office of the Secretary of defense published comment a proposed amendment revising Chapter IX of the CHAMPUS Regulation, DoD 6010.8-R. The revision was generated by a desire to consolidate all federal claims provisions arising under the operation of CHAMPUS where the government has a right to recover money or property from an individual, a business entity, another government body or other legal entity. It was also deemed desirable to include greater detail in the regulation with respect to claims collection procedures than had been available previously. This was intended to facilitate the use of the regulation by CHAMPUS fiscal intermediaries, Uniformed Service claims officers and by the general public. Public comments were to have been submitted by November 7, 1983.

We received comments on the proposed amendments from several government agencies, including all of the Uniformed Services, the Veterans Administration,and the Department of Health and Human Services. We express our appreciation to all the commenters for the time they took in providing their comments. We envision the likelihood of frequent amendments to these provisions, and we encourage additional comments from any interested party. It is because of the comments received that we have determined to divide this revision into two parts published herein as §§ 199.17 and 199.18. Section 199.15 has been revised for future use.

Comments

Most of the commenters felt that the delegations of authority to the Director, OCHAMPUS, under the Federal Claims Collection Act (FCCA) and to the Uniformed Services under the Federal Medical Care Recovery Act (FMCRA) were not sufficiently clear. There was particular concern that the relative roles of the Director and the Services under the FMCRA were not sufficiently delineated. Accordingly, changes have been made which make it clear that once a potential FMCRA claim is identified, the Uniformed Services have the sole responsibility for that claim.

Concern was also expressed that the provisions of the regulation which outline the government's authority to compromise or waive claims arising under the FMCRA unnecessarily duplicate and could possibly conflict with the existing Service regulations on this subject. While these provisions have been retained to provide information to users who may not have ready access to the Service regulations, language has been added to clarify that these provisions are informational only.

A couple of the commenters objected to the provisions of § 199.15(j)(5)(ii) which require a Uniformed Service to reimburse CHAMPUS where payments have been made to ineligible persons holding inaccurate or outdated identification cards. These provisions were a part of the regulation since its initial promulgation in 1977, and were being moved to a new location in the regulation as a part of the consolidation process described above. However, the portion requiring reimbursement by a Uniformed Service has been deleted. Under the current accounting procedures, such reimbursement funds are deposited to the general treasury making the reimbursement of no real benefit to CHAMPUS. However, should the accounting procedure change to allow such refunds to benefit CHAMPUS, we will consider reinstating this requirement.

One commenter suggested that more detail be provided concerning the procedures to be followed in dealing with no-fault statutes, medical payments insurance coverage, uninsured motorist coverage, and worker's compensation. We recognize that these are areas which are evolving and changing, and in which there may be a need for eventual clarification. However, because of the relative unsettled nature of these areas, we have determined not to expand substantially on the proposed rule at this time. Rather, we have made an editorial clarification by moving the paragraphs dealing with these matters from the Medical Care Recovery Act provisions to other provisions of the § 199.18. In addition, we have added to § 199.18 a new provision dealing with "mixed claims" (i.e., those in which a potential for recovery under both the FMCRA or the FCCA may exist.) It is hoped that these measures will provide sufficient clarification for present operations to continue. Obviously, this is an area in which we expect future amendments to be helpful and necessary as clarifications in the law are realized and the concerned agencies gain experience in dealing with these difficult areas.

All of the Services expressed great concern with the reporting requirements imposed by § 199.18(e)(6)(ii). Each expressed a present inability to comply with this requirement and recommended that it be deleted. However, we deem the information required in these reports to be essential to the efficient administration of the CHAMPUS Medical Care Recovery Act program. For this reason, we have chosen to delay implementation of this reporting requirement for a reasonable time (not to exceed three years) to allow the Services to develop the capability of providing the required information.

The Veterans' Administration commented that the proposed amendment deals exclusively with the

procedures and criteria followed by "responsible claims asserting authority" in the collection or settlement of federal claims arising under the operation of CHAMPUS. They stated that because the VA is not identified as a "responsible claims asserting authority," the proposed amendment is not applicable to claims arising under the CHAMPVA and has no impact on it. By law, CHAMPVA provides medical care "in the same or similar manner and subject to the same or similar limitations" as that provided under CHAMPUS. Thus, unless specifically exempted by law (as are certain eligibility requirements and the Program for the Handicapped) all of DoD 6010.8-R including Chapters XI and XII, applies to CHAMPVA claims. This fact was recognized in the Memorandum of Understanding entered into between DoD and VA. That Memorandum of Understanding specifically delegates authority to the Secretary of Defense to take administrative action on federal claims arising under the Federal Claims Collection Act. Based upon the foregoing analysis, we believe that the VA comment was in error to the extent that the provisions of the regulation which govern CHAMPUS are made applicable to CHAMPVA claims under the Memorandum of Understanding.

The Federal Claims Collection Act of 1966 (31 U.S.C. 3701 *et seq.*) authorizes the Secretary of Defense, under regulations issued by him, to compromise, or to suspend or terminate collection activities on certain claims under the programs of the Department. The claim must not exceed $20,000, exclusive of interest, and there must be no indications of fraud in connection with the claim. CHAMPUS fiscal intermediaries are required to collect erroneous payments made to beneficiaries, providers, physicians and other suppliers of services by requesting refunds and, if necessary, offsetting such erroneous payments against current payments due or against future claims when possible. However, attempts to recover these erroneous payments are sometimes more time consuming and costly than is justified by the circumstances. Section 199.17 specifies an alternative to costly and time consuming collection activities and referrals to other government agencies for additional collection efforts. It allows the Director, OCHAMPUS, or a designee, under authority delegated by the Secretary to negotiate a compromise settlement, or to suspend or terminate collection activities when this is in the government's best interest. When appropriate, compromise, suspension, or termination will avoid the expense of court proceedings for both the government and the debtor. These provisions also will reduce administrative handling, provide greater flexibility to recovery efforts, and aid in the timely settlement of outstanding federal claims.

These §§ 199.17 and 199.18 include the following major provisions:

• Procedures for the collection by recoupment or offset of erroneous CHAMPUS payments are specified. These provisions are promulgated under the authority of the Federal Claims Collection Act of 1966 (as amended). Erroneous CHAMPUS payments can arise as the result of mathematical errors, payments for care provided to ineligible persons, payments for care which is not an authorized benefit and payments for duplicate claims and other similar circumstances. The first and preferred method of effecting recoupment of these claims is through a voluntary refund in response to a written request or demand for payment. Failing this, collection can be effected, in appropriate cases, by offset against other monies owed by the United States to the debtor and ultimately by referral to appropriate federal agencies for legal action.

• The regulation recognizes that circumstances may arise when claims other than those arising under the Federal Medical Care Recovery Act or from erroneous CHAMPUS payments will be asserted. Examples of these include property damage claims, worker's compensation claims, and insurance claims. The general responsibility for the identification and initial investigation of such claims is vested in CHAMPUS fiscal intermediaries. The responsbility for the evaluation and assertion of these claims is vested in the responsible government agency.

• Standards for the compromise or the suspension or termination of collection action for claims arising under the FCCA that do not exceed $20,000 are established. Such compromises, suspensions, or terminations are based principally on an evaluation of the debtor's ability to pay the full amount of the claim within a reasonable time or a determination that the cost of collection action or litigation will exceed the likely amount of recovery (termination), or would not justify enforced collection of the full amount (compromise). The factors that the Director, OCHAMPUS, or a designee, considers in determining the government's inability to enforce collection of the entire claim include the debtor's age, health, assets, present and potential income and possible concealment or improper transfer of assets. If the debtor is deceased, the available assets of the estate will be considered taking into account any liens or superior claims. These provisions conform with the Federal Claims Collection Standards issued jointly by the Attorney General and Comptroller General of the United States under the Federal Claims Collection Act. These joint standards are codified at 4 CFR Parts 101-105.

• Procedures for the assertion of claims arising under the Federal Medical Care Recovery Act (FMCRA) are set out. This statute allows the United States to recover the reasonable value of medical care it pays for or provides to a person injured or suffering a disease under circumstances creating tort liability in a third party to pay damages for that care. Responsibility for effecting recoveries under that statute is vested in the Uniformed Services. Such claims are to be initially identified by CHAMPUS fiscal intermediaries and referred by them to responsible legal offices of the Uniformed Services for assertion and collection. A claim in excess of $40,000 may be compromised, settled, waived or released only with the prior approval of the Department of Justice.

• The obligations of persons receiving medical care under CHAMPUS where potential third-party liability under the FMCRA exists are specified.

• The conditions for settlement and waiver of FMCRA claims are outlined. The authority for the settlement and waiver of FMCRA claims arising under CHAMPUS is vested in the Uniformed Services.

• Specific reporting requirements concerning the number of claims referred for collection and the dollar amounts collected under the FMCRA are established.

• Actions taken under these Sections are not initial determinations for the purpose of invoking the appeals procedure set out in § 199.16 of the regulation. The compromise of any claim asserted under § 199.17 shall be final and conclusive on the debtor and the United States in the absence of fraud, misrepresentation, or mutual mistake of fact. Failure of the Director, OCHAMPUS, or a designee, or any other claims-asserting authority under § 199.17 to comply with any provision of these regulations shall not be available as a defense to any debtor. Section 199.17 does not create a right to have any claim compromised, or collection activities concerning any claim terminated or suspended.

• Conforming changes to other sections of the regulation have been made to insure consistency with the provisions of these sections.

Note.—We have determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not, therefore, a "major rule" under Executive Order 12291. We certify that this amendment will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086; 5 U.S.C. 301.

2. 32 CFR 199.10(a)(8) is revised to read as follows:

§ 199.10 Basic program benefits.

(a) * * *

(8) *Double coverage and third party recoveries.* CHAMPUS claims involving double coverage or the possibility that the United States can recover all or part of its expenses from a third party, are specifically subject to the provisions of § 199.14, "Double Coverage" or § 199.18, "Third Party Recoveries," as appropriate.

* * * * *

3. 32 CFR 199.13(j) is revised to read as follows:

§ 199.13 Claims submission, review and payment.

* * * * *

(j) *Erroneous payments and recoupment.*—(1) *Erroneous payments.* Erroneous payments are expenditures of government funds which are not authorized by law or regulation. Such payments are to be recouped under the provisions of § 199.17, "Overpayments Recovery," of this part.

(2) *Claims denials resulting from clarification or change in law or regulation.* In those instances where claims review results in a finding of denial of benefits previously allowed but currently denied due to a clarification or interpretation of law or this regulation, or due to a change in this regulation, no recoupment action need be taken to recover funds expended prior to the effective date of such clarification, interpretation, or change.

* * * * *

§ 199.15 [Removed]

4. 32 CFR 199.15 is removed and reserved.

5. 32 CFR 199.17 is added as follows:

§ 199.17 Overpayments Recovery.

(a) *General.* Actions to recover overpayments arise when the government has a right to recover money or property from an individual, partnership, association, corporation, governmental body or other legal entity, foreign or domestic, except an instrumentality of the United States because of an erroneous payment of benefits under CHAMPUS. A claim against several joint debtors arising from a single incident or transaction is considered to be one claim. It is the purpose of this section to prescribe procedures for investigation, determination, assertion, collection, compromise, waiver and termination of claims in favor of the United States for erroneous benefits payments arising out of administration of the Civilian Health and Medical Program of the Uniformed Services.

(b) *Authority.*—(1) *Federal statutory authority.* The following federal statutes provide the basic authority under which claims may be asserted pursuant to this Section.

(i) The Federal Claims Collection Act (31 U.S.C. 3701 *et seq.*) ia a statute enacted to avoid unnecessary litigation. The Federal Claims Collection Act was substantially amended by the Debt Collection Act of 1982, Pub. L. 97-365, enacted on October 25, 1982. The Federal Claims Collection Act is implemented by joint regulations issued by the Department of Justice and the General Accounting Office, 4 CFR Parts 101-105. Thereunder, the heads of federal agencies or their designees are required to attempt collection of all claims of the United States for money or property arising out of the activities of their respective agencies. These officials may, with respect to claims that do not exceed $20,000, exclusive of interest, and in conformity with the standards promulgated in the joint regulations, compromise, suspend, or terminate collection action on such claims.

(2) *Other authority.* Occasionally, federal claims may arise which are grounded, at least in part, in authority other than the federal status referenced above. These include, but are not limited to, claims arising under:

(i) State worker's compensation laws.

(ii) State hospital lien laws.

(iii) State no-fault automobile statutes.

(iv) Contract rights under terms of insurance policies.

(c) *Policy.* The governmental policy of avoiding unnecessary litigation in the collection of claims by the United States for money or property necessitates aggressive agency collection action. The Director, OCHAMPUS, or a designee, will insure that CHAMPUS claims asserting personnel are adequately supported to take timely and effective action. Claims arising out of any incident which has or probably will generate a claim in favor of the government will not be compromised nor will collection action be terminated by any person not authorized to take final action on the governments's claim. By the Act of July 18, 1966 (28 U.S.C. 2415-2418), Congress established a statute of limitation applicable to the government in areas where previously neither limitations nor laches were available as a defense. Claims falling within the provisions of this statute will be processed expeditiously to the Department of Justice or the General Accounting Office, as appropriate, without attempting administrative collection action if such action cannot be accomplished in sufficient time to preclude the running of the statute of limitations.

(d) *Appealability.* This section describes the procedures to be followed in the recovery and collection of federal claims in favor of the United States arising from the operation of the CHAMPUS. Actions taken under this Section are not initial determinations for the purpose of the appeal procedures of § 199.16 of this regulation. However, the proper exercise of the right to appeal benefit or provider status determinations under the procedures set forth in § 199.16 may affect the processing of federal claims arising under this section. Those appeal procedures afford a CHAMPUS beneficiary or participating provider an opportunity for administrative appellate review in cases in which benefits have been denied and in which there is a significant factual dispute. For example, a fiscal intermediary may erroneously make payment for services which are excluded as CHAMPUS benefits because they are determined to be not medically necessary. In that event recoupment action will be initiated by the fiscal intermediary at the same time the fiscal intermediary will offer an administrative appeal as provided in § 199.16 of this regulation on the medical necessity issue raised by the adverse benefit determination. The recoupment action and the administrative appeal are separate actions. However, in an appropriate case, the pendency of the appeal may provide a basis for the suspension of collection in the recoupment. Obviously, if the appeal is

resolved entirely in favor of the appealing party, that would provide a basis for the termination of collection action in the recoupment case.

(e) *Delegation.* Subject to the limitations imposed by law or contained in this section, the authority to assert, settle, compromise or to suspend or terminate collection action on claims arising under the Federal Claims Collection Act has been delegated to the Director, OCHAMPUS, or a designee.

(f) *Recoupment of Erroneous Payments.*—(1) *Erroneous payments.* Erroneous payments are expenditures of government funds which are not authorized by law or regulation. Examples which are sometimes encounted in the administration of the CHAMPUS include mathematical errors, payment for care provided to an ineligible person, payment for care which is not an authorized benefit, payment for duplicate claims, inaccurate application of the deductible or co-payment, or payment for services which were not medically necessary. Claims in favor of the government arising as the result of the filing of false CHAMPUS claims or other fraud fall under the direct cognizance of the Department of Justice. Consequently, the procedures in this section apply to such claims only when specifically authorized or directed by the Department of Justice. (See 32 CFR 101.3.)

(2) *Scope.* (i) This section and the sections following contain requirements and procedures for the assertion, collection or compromise of, and the suspension or termination of collection action on claims for erroneous payments against a sponsor, beneficiary, provider, physician or other supplier of services under the CHAMPUS. These provisions are adopted pursuant to the Federal Claims Collection Act (31 U.S.C. 3701 *et seq.*, as amended by the Debt Collection Act of 1982, Pub. L. 97–365), which requires each agency of the U.S. Government (pursuant to regulations jointly promulgated by the Attorney General and the Comptroller General) to attempt collection of federal claims in favor of the United States arising out of the activities of the agency, and 5 U.S.C. 5514, which provides for installment deduction for indebtedness of the United States, implemented by regulations issued by the Office of Personnel Management, 5 CFR Part 550, and the Department of Defense, 32 CFR Part 90. This section also includes government-wide collections by salary offset under 5 U.S.C. 5514.

(ii) As used herein, "debtor" means a sponsor, beneficiary, provider, physician, other supplier of services or supplies, or any other person who has for any reason been erroneously paid under the CHAMPUS. It includes an individual, partnership, corporation, professional corporation or association, estate, trust or any other legal entity.

(iii) As used herein, a debt is considered "delinquent" if it has not been paid by the date specified in the initial demand for payment (i.e., the initial written notification) or applicable contractual agreement, unless other satisfactory payment arrangements have been made by that date. A debt is also considered delinquent if at any time after entering into a repayment agreement, the debtor fails to satisfy any obligations under that agreement.

(3) *Other health insurance claims.* Claims arising from erroneous CHAMPUS payments in situations where the beneficiary has entitlement to insurance, medical service, health and medical plan, or other government program, except in the case of a plan administered under Title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), through employment, by law, through membership in an organization, or as a student, or through the purchase of a private insurance or health plan, shall be recouped under one of the following procedures:

(i) Where the other health insurance plan has not already made benefit payments to the beneficiary or provider, a claim for direct reimbursement will be asserted against the plan, pursuant to the fiscal intermediary's coordination of benefit procedures.

(ii) If the other health insurance plan has made its benefit payment prior to receiving the CHAMPUS request for reimbursement, the recoupment procedures set forth in this section will be followed.

(4) *Claims denials due to clarification or change.* In those instances where claim review results in the denial of benefits previously provided but now denied due to a change, clarification or interpretation of the public law or this regulation, no recoupment action need be taken to recover funds expended prior to the effective date of such change, clarification, or interpretation.

(5) *Good faith payment.* (i) The Department of Defense, through the Defense Enrollment Eligibility Reporting System (DEERS), is responsible for establishing and maintaining a file listing persons eligible to receive benefits under CHAMPUS. However, it is the responsiblity of the Uniformed Services to provide eligible CHAMPUS beneficiaries with accurate and appropriate means of identification. When sources of civilian medical care exercise reasonable care and precaution in identifying persons claiming to be eligible CHAMPUS beneficiaries and furnish otherwise covered services and supplies to such persons in good faith, CHAMPUS benefits may be paid subject to prior approval by the Director, OCHAMPUS, or a designee, notwithstanding the fact that the person receiving the services and supplies is subsequently determined to be ineligible for benefits. Good faith payments will not be authorized for services and supplies provided by a civilian source of medical care as the result of its own careless identification procedures.

(ii) When it is determined that a person was not a CHAMPUS beneficiary, the CHAMPUS fiscal intermediary and the civilian source of medical care are expected to make all reasonable efforts to obtain payment or recoup the amount of the good faith payment from the person who erroneously claimed to be a CHAMPUS beneficiary. Recoupments of good faith payments initiated by the CHAMPUS fiscal intermediary will be processed pursuant to the provisions of this section.

(6) *Recoupment procedures.* (i) When an erroneous payment is discovered, the CHAMPUS fiscal intermediary normally will be required to take the initial action to effect recoupment. Such action will be in accordance with the provisions of this regulation and the fiscal intermediary's CHAMPUS contract and will include demands for refund or an offset against any other CHAMPUS payment becoming due the debtor. When the efforts of the CHAMPUS fiscal intermediary to effect recoupment are not successful within a reasonable time, recoupment case will be referred to the General Counsel, OCHAMPUS, for further action in accordance with the provisions of this section. All requests to debtors for refund or notice of intent to offset shall be in writing.

(ii) *Demand for payment.* The CHAMPUS fiscal intermediary and OCHAMPUS normally shall make a total of at least three progressively stronger written demands upon the debtor in terms which inform the debtor of the consequences of his or her failure to cooperate. The initial written demand shall inform the debtor of the basis for and the amount of the indebtedness. The initial written demand shall also inform the debtor of the following: the debtor's right to inspect and copy all records pertaining to the debt; his or her right to request an administrative review by the fiscal intermediary; that interest on the debt at the current rate as determined by the Director, OCHAMPUS, or a designee, will begin to accrue on the date of the initial demand notification;

that such interest shall be waived on the debt, or any portion thereof, which is paid within 30 days of the date of the initial demand notification; that payment of the indebtedness is due within 30 days of the date of the initial demand notification; and that administrative costs and penalties will be charged pursuant to 4 CFR 102.13. The debtor also shall be informed that collection by offset against current or subsequent claims may be taken. All debtors will be offered an opportunity to enter into a written agreement to repay the indebtedness. The fiscal intermediary demand letters must be dated the same day as they are mailed. Two written demands, at 30-day intervals, normally will be made by the CHAMPUS fiscal intermediary unless a response to the first demand indicates that further demand would be futile or unless prompt suit or attachment is required in anticipation of the departure of the debtor, of his removal or transfer of assets, or the running of the statute of limitations. There should be no undue time lag in responding to any communication received from the debtor. Responses should be made within 30 days whenever feasible. If these initial efforts at collection are not productive or if immediate legal action on the claim appears necessary, the claim either will be referred promptly by the CHAMPUS fiscal intermediary to the General Counsel, OCHAMPUS, or the CHAMPUS fiscal intermediary will prepare a final notice informing the debtor that the debt is to be offset in whole or in part. When a case is referred to OCHAMPUS, the Office of General Counsel will normally prepare a third written demand unless from the record such demand appears futile or otherwise inappropriate.

(iii) *Collection by administrative offset.* Collections by offset will be undertaken administratively on claims which are liquidated or certain in amount in every instance in which this is feasible. No collection by offset may be undertaken unless a demand for payment containing all of the procedural safeguards described in paragraph (f)(6)(ii) above has been sent to the debtor. The determinations of indebtedness made for recoupment of erroneous CHAMPUS payments rarely involve issues of credibility or veracity. Erroneous CHAMPUS payments most frequently arise from claims submitted by individuals ineligible for CHAMPUS benefits; from claims submitted for services or supplies not covered by CHAMPUS; from claims in which there have been other insurance payments which reduce the CHAMPUS liability and from claims from participating providers in which payment is initially erroneously made to the beneficiary. While these recoupment claims normally involve the resolution of factual questions, these resolutions nearly always require only reference to the documentary evidence compiled in the investigation and processing of the claim. The appeals system described in § 199.16 of this regulation affords a CHAMPUS beneficiary or participating provider an opportunity for an administrative appellate review, including, under certain circumstances, the right to oral hearing before a hearing officer. Further, there is no statutory provision for the waiver of indebtedness arising from erroneous CHAMPUS payments, other than the provisions of the Federal Claims Collection Act which allow for the compromise of claims or the termination of collection action under certain circumstances specified in paragraph (g) of this Section. Consequently, the pre-offset oral hearing requirements of the Federal Claims Collection Standards (4 CFR 102.3) do not apply to the recoupment of erroneous CHAMPUS payments. CHAMPUS fiscal intermediaries may take administrative action to offset erroneous payments against other current CHAMPUS payments owing a debtor. Payments on the claims of a debtor pending at or filed subsequent to the time collection action is initiated should be suspended pending the outcome of the collection action so that these funds will be available for offset. All or any part of a debt may be offset depending upon the amount available for offset. Only the cases in which no possibility of offset arises within 60 days of the initiation of collection action and on which other collection efforts have been unsuccessful or in which the debtor seeks relief from the indebtedness will be referred to the General Counsel, OCHAMPUS, by the CHAMPUS fiscal intermediary. Offset, under the provisions of 31 U.S.C. 3716, is not to be used with respect to debts owed by any state or local government. Any requests for offset that are received from other agencies shall be forwarded to the General Counsel, OCHAMPUS, for processing, as will orders for garnishment issued by courts of competent jurisdiction.

(iv) *Collection of installments.* CHAMPUS recoupment claims should be collected in one lump sum whenever possible. However, if the debtor is financially unable to pay the debt in one lump sum, payment may be accepted in regular installments by the CHAMPUS fiscal intermediary or the General Counsel, OCHAMPUS. Installment payments normally will be required on at least a monthly basis and their size will bear a reasonable relation to the size of the debt and the debtor's ability to pay. A CHAMPUS fiscal intermediary should not enter into installment agreements which extend beyond 24 months. OCHAMPUS installment agreements normally should liquidate the government's claim within 3 years. Installment payments of less than $50 per month normally will be accepted only if justifiable on grounds of financial hardship or some other reasonable cause. Any installment agreement with a debtor in which the total amount of the deferred installments will exceed $750 should normally include an executed promissory note.

(v) *Interest, penalties, and administrative costs.* Interest shall be charged on CHAMPUS recoupment debts and debts collected in installments in accordance with 4 CFR 102.13 and instructions issued by the Director, OCHAMPUS, or a designee. Interest shall accrue from the date on which the initial demand is mailed to the debtor. The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate). The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness, except that where the debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, a new interest rate may be set which reflects the current value of funds to the Treasury at the time the new agreement is executed. The collection of interest on the debt or any portion of the debt, which is paid within 30 days after the date on which interest began to accrue, shall be waived. The agency may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, the collection of interest, penalties, and administrative costs may be waived in whole or in part as a part of the compromise of a debt as provided in paragraph (g) of this section. In addition, the Director, OCHAMPUS, or a designee, may waive in whole or in part, the collection of interest, penalties, or administrative costs assessed herein, if he or she determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States. Some situations in which such a waiver may be appropriate include:

(*a*) Waiver of interest consistent with 4 CFR 104.2(c)(2) in connection with a suspension of collection action pending a CHAMPUS appeal under § 199.16 of

this part where there is a substantial issue of fact in dispute.

(*b*) Waiver of interest where the original debt arose through no fault or lack of good faith on the part of the debtor and the collection of interest would impose a financial hardship or burden on the debtor. Some examples in which such a waiver may be appropriate include: a debt arising when a CHAMPUS beneficiary, who is unaware of the loss of eligibility for CHAMPUS because he or she has become eligible for Medicare, continues to file and be paid for CHAMPUS claims, resulting in erroneous CHAMPUS payments; a debt arising when a CHAMPUS beneficiary in good faith files and is paid a CHAMPUS claim for medical sevices or supplies which are later determined not to be benefits of CHAMPUS; and a debt arising when a CHAMPUS beneficiary is overpaid as the result of a calculation error on the part of a fiscal intermediary or OCHAMPUS.

(*c*) Waiver of interest where there has been an agreement to repay a debt in installments, there is no indication of fault or lack of good faith on the part of the debtor, and the amount of interest is so large in relation to the size of the installments that the debtor can reasonably afford to pay, that it is likely the debt will never be repaid in full. When a debt is paid in installments, the installment payments first will be applied to the payment of outstanding penalty and administrative cost charges, second to accrued interest and then to principal. Administrative costs incurred as the result of a debt becoming delinquent (as defined in paragraph (f)(2)(iii) of this section, shall be assessed against a debtor. These administrative costs represent the additional costs incurred in processing and handling the debt because it became delinquent. The calculation of administrative costs should be based upon cost analysis establishing an average of actual additional costs incurred in processing and handling claims against other debtors in similar stages of delinquency. A penalty charge, not exceeding six percent a year shall be assessed on any portion of a debt that is delinquent for more than 90 days. This charge, which need not be calculated until the 91st day of delinquency, shall accrue from the date that the debt became delinquent.

(vi) *Referral to other federal agencies for administrative offset.* As appropriate and in accordance with 4 CFR Part 1023, agencies will be requested to initiate administrative offset to collect CHAMPUS debts. When a debtor is employed by the U.S. Government, or is a member or retired member of the Uniformed Service, and collection by offset against other CHAMPUS payments due the debtor cannot be accomplished, and there have been no positive responses to a demand for payment within 60 days, the Director, OCHAMPUS, or a designee, may contact the agency holding funds payable to the debtor for payment by allotment or otherwise by salary offset from current disposable pay in accordance with 37 U.S.C. 1007 or 5 U.S.C. 5514 as implemented by 32 CFR Part 90 and 5 CFR Part 550. Where applicable, the request for recovery of erroneous CHAMPUS payments shall be submitted to the debtor's paying agency in accordance with 5 CFR 550.1106. Before contacting the paying agency, the Director, OCHAMPUS, or a designee, will provide the debtor written notification of the agency's intent to collect the debt by means of salary offset, authorized by 5 U.S.C. 5514. The notification will include, as a minimum:

(*a*) The agency's determination that a debt is owed, including the origin, nature, and the amount of the debt;

(*b*) The date by which payment is to be made, which will normally be 30 days from the date the demand letter is mailed;

(*c*) The amount, frequency, proposed beginning date and duration of the intended deductions, which will be determined in accordance with the provisions of 5 CFR 550.1104 or 32 CFR Part 90, as appropriate. Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay (4 CFR 102.11). However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made unless the debtor has agreed in writing to the deduction of a greater amount. Debts must be collected in one lump-sum whenever possible. However, if the employee is financially unable to pay in one lump-sum, or the amount of the debt exceeds 15 percent of current disposable pay for an officially established pay interval, collection must be made in installments. Such installment deductions must be made to effect collection within the period of anticipated active duty or employment. If the debtor retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, offset from subsequent payments of any kind due the employee from the paying agency as of the date of separation shall be made to the extent necessary to liquidate the debt pursuant to 31 U.S.C. 3716 as implemented by 5 CFR Part 550 and 32 CFR Part 90. If possible, the installment payments should be sufficient in size and frequency to liquidate the government's claim in not more than 3 years. Installment payments of less than $50 per month should be accepted only with reasonable justification. An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 will not be construed as a waiver of any rights the debtor may have under that statute or any other provisions of contract or law, unless there are statutory or contractual provisions to the contrary.

(*d*) An explanation of interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards;

(*e*) Advice that the debtor may inspect and copy government records relating to the debt or, if debtor or his or her representative cannot personally inspect the records, to request and receive a copy of such records. Requests for copies of the records relating to the debt shall be made no later than 10 days from the receipt by the debtor of the notice of indebtedness.

(*f*) An opportunity for a review by the agency of its determination regarding the existence or the amount of the debt, or when a repayment schedule is established other than by written agreement, concerning the terms of the repayment schedule. The debtor shall be advised that a challenge to either the existence of the debt, the amount of the debt, or the repayment schedule, must be made within 30 days of the receipt by the debtor of the notice of indebtedness or within 45 days after receipt of the records relating to the debt, if such records are requested by the debtor. A request for waiver or reconsideration should be accompanied by supporting documents indicating why the debtor believes he is not so indebted, or by a financial affidavit supporting his request for an alternative repayment schedule;

(*g*) Notice that the timely filing of a petition for review will stay the commencement of collection proceedings;

(*h*) Notice that a final decision on the review (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the review unless the employee requests, and the agency grants, a delay in the proceedings;

(*i*) The opportunity, if it has not been previously provided, to enter into a written agreement to establish a schedule for repayment of the debt in

lieu of offset. The agreement will be signed, by both the debtor and the agency's representative and will be keep in the agency's files;

(*j*) Notice that any knowingly false or frivolous statements, representations, or evidence may subject the debtor to: (*1*) Disciplinary procedures appropriate under Chapter 75 of Title 5 United States Code, 5 CFR 752, or any other applicable statutes or regulations; (*2*) penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable authority, or (*3*) criminal penalties under 18 U.S.C. sections 286, 287, 1001 and 1002, or any other applicable authority;

(*k*) Where applicable, notice of the debtor's right to appeal, under 32 CFR 199.16;

(*l*) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will promptly be refunded to the debtor. Refunds do not bear interest unless required or permitted by law or contract;

(*m*) The specific address to which all correspondence regarding the debt shall be directed. Unless otherwise prohibited by law, moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund may be administratively offset in reasonable amounts in order to collect in one full payment or a mininal number of payments debts owed to the United States by the debtor. The General Counsel, OCHAMPUS, may forward requests for offset of debts arising from the operation of CHAMPUS to the appropriate officials of the Office of Personnel Management. These requests shall comply with the provisions of 4 CFR 102.4 and 5 CFR Part 550.

(vii) *Referral to debt collection agencies.* Pursuant to the provisions of the Federal Claims Collection Standards (4 CFR 102.6), the Director, OCHAMPUS, or a designee, is authorized to enter into contracts for collection services, including contracts with private collection agencies for the purpose of supplementing and strengthening the collection efforts of the Department of Defense in recouping erroneous CHAMPUS payments. Such contracts will supplement but not replace the basic collection program described herein. The authority to resolve disputes, compromise claims, terminate collection action and initiate legal action may not be delegated in such contracts but will be retained by the Director, OCHAMPUS, or a designee. Individuals or firms that enter into contracts for collection services pursuant to this paragraph are subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, federal and state laws and regulations pertaining to debt collection practices, including the Fair Debt Collection Practices Act, 15 U.S.C. 1692. Debt collection contractors shall be required to account strictly for all amounts collected and must agree to provide any data contained in their files relating to paragraphs (a)(1), (2) and (3) of 4 CFR 105.2. Contracts for commercial collection services must comply with 32 CFR Part 90.

(viii) *Referrals to consumer reporting agencies.* The Director, OCHAMPUS, or a designee, is authorized to provide for the reporting of delinquent debts to consumer reporting agencies. Delinquent debts are those which are not paid or for which satisfactory payment arrangements are not made by the due date specified in the initial notification of indebtedness, or those for which the debtor has entered into a written payment agreement and installment payments are past due 30 days or longer. These referrals may be made only after publication of a "routine use" for the disclosures involved as required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a. Procedures developed for such referrals must also insure that an accounting of the disclosures is kept which is available to the debtor; that the consumer reporting agencies are provided with corrections and annotations of disagreements by the debtor; and that reasonable efforts are made to assure that the information to be reported is accurate, complete, timely and relevant. When requested by a consumer reporting agency, verification of information disclosed will promptly be provided. Once a claim has been reviewed and determined to be valid, a complete explanation of the claim will be given the debtor. When the claim is overdue, the individual will be notified in writing that payment is overdue; that within 60 days, disclosure of the claim shall be made to a consumer reporting agency unless satisfactory payment arrangements are made or unless the debtor requests an administrative review and demonstrates some basis on which the debt is legitimately disputed; and of the specific information to be disclosed to the consumer reporting agency. The information to be disclosed to the consumer reporting agency will be limited to information necessary to establish the identity of the debtor, including name, address and taxpayer identification number; the amount, status and history of the claim; and the agency or program under which the claim arose. Reasonable action will be taken to locate an individual for whom a current address is not available.

(ix) *Use and disclosure of mailing addresses.* In attempting to locate a debtor in the collection of a debt under this section, the Director, OCHAMPUS, or a designee, may send a written request to the Secretary of the Treasury, or a designee, for current address information from records of the Internal Revenue Service. These requests will comply with the provisions of 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service. Disclosure of a mailing address so obtained may be made pursuant to 4 CFR 102.18(b) and 31 U.S.C. 3711.

(g) *Compromise, Suspension or Termination of Collection Actions Arising Under the Federal Claims Collection Act.*—(1) *Basic considerations.* Federal claims against the debtor and in favor of the United States arising out of the administration of the CHAMPUS may be compromised or collection action thereon may be suspended or terminated if:

(i) The claim exclusive of interest, penalties and administrative costs, does not exceed $20,000, and

(ii) There is no indication of fraud, the filing of a false claim, or misrepresentation on the part of the debtor or any director, partner, manager, or other party having an interest in the claim.

(iii) After deducting the amount of partial payments or collections, if any, if a claim exceeds $20,000, exclusive of interest, penalties, and administrative costs, the authority to compromise, suspend, or terminate collection action rests solely with the Department of Justice.

(2) *Authority.* CHAMPUS fiscal intermediaries are not authorized to compromise or to suspend or terminate collection action on federal CHAMPUS claims. Only the Director, OCHAMPUS, or a designee, and Uniformed Service claims officers acting under the provisions of their own regulations, are so authorized.

(3) *Basis for compromise.* A claim may be compromised hereunder if the government cannot collect the full amount if:

(i) The debtor or the estate of a debtor does not have the present or prospective ability to pay the full amount within a reasonable time;

(ii) The debtor refuses to pay the claim in full and the government is unable to enforce collection of the full amount within a reasonable time by enforced collection proceedings;

(iii) There is real doubt concerning the government's ability to prove its case in court for the full amount claimed either because of the legal issues involved or a *bona fide* dispute as to the facts; or

(iv) The cost of collecting the claim does not justify enforced collection of the full amount.

(4) *Basis for suspension.* Collection action may be suspended for either of the following reasons if future collection action may be sufficiently productive to justify periodic review and action on the claim giving consideration to its size and the amount which may be realized thereon:

(i) The debtor cannot be located; or

(ii) The debtor is unable to make payments on the government's claim or effect a compromise at the time, but the debtor's future prospects justify retention of the claim for periodic review and action and: (*a*) The applicable statute of limitations has been tolled or started running anew; or (*b*) future collection action can be effected by offset, notwithstanding the statute of limitations with due regard to the 10-year limitation prescribed by 31 U.S.C. 3716(c)(1); or (*c*) the debtor agrees to pay interest on the amount of the debt on which collection action will be temporarily suspended, and such temporary suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(iii) Consideration may be given by the Director, OCHAMPUS, or a designee, to suspend collection action pending action on a request for a review of the government's claim against the debtor or pending an administrative review under § 199.16 of this part of any CHAMPUS claim or claims directly involved in the government's claim against the debtor. Suspension under this paragraph will be based upon appropriate consideration, on a case-by-case basis as to whether: (*a*) There is a reasonable possibility that the debt (in whole or in part) will be found not owing from the debtor; (*b*) the government's interest would be protected if suspension were granted by reasonable assurance that the debt would be recovered if the debtor does not prevail; and (*c*) collection of the debt will cause undue hardship.

(5) *Basis for termination.* Collection action may be terminated for one or more of the following reasons:

(i) The United States cannot collect or enforce collection of any significant sum from the debtor having due regard to the judicial remedies available to the government, the debtor's future financial prospects and the exemptions available to the debtor under state and federal law;

(ii) The debtor cannot be located, and either: (*a*) there is no security remaining to be liquidated, or (*b*) the applicable statute of limitations has run and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, are too remote to justify retention of the claim;

(iii) The cost of further collection action is like to exceed any recovery;

(iv) It is determined that the claim is legally without merit; or

(v) Evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment are unavailing.

(6) *Factors considered.* In determining whether a claim will be compromised, or collection action terminated or suspended, the responsible CHAMPUS collection authority will consider the following factors:

(i) Age and health of the debtor, present and potential income, inheritance prospects, possible concealment or improper transfer of assets and the availability of assets or income which may be realized upon by enforced collection proceedings;

(ii) Applicability of exemptions available to a debtor under state or federal law;

(iii) Uncertainty as to the price which collateral or other property may bring at forced sale; or

(iv) The probability of proving the claim in court, the probability of full or partial recovery, the availability of necessary evidence and related pragmatic considerations.

(7) *Amount of compromise.* The amount acceptable in compromise will be reasonable in relation to the amount that can be recovered by enforced collection proceedings. Consideration shall be given to the following:

(i) The exemptions available to the debtor under state and federal law;

(ii) The time necessary to collect the debt;

(iii) The litigative probabilities involved; and

(iv) The administrative and litigative costs of collection where the cost of collecting the claim is a basis for compromise.

(8) *Payment of compromised claims.*—(i) *Time and manner.* Compromised claims are to be paid in one lump sum if possible. However, if payment of a compromise is necessary, a legally enforceable compromise agreement must be obtained. Payment of the amount that CHAMPUS has agreed to accept as a compromise in full settlement of a CHAMPUS claim must be made within the time and in the manner prescribed in the compromise agreement. Any such compromised claim is not settled until the full payment of the compromised amount has been made within the time and the manner prescribed. Compromise agreements must provide for the reinstatement of the prior indebtedness, less sums paid thereon, and acceleration of the balance due upon default in the payment of any installment.

(ii) *Failure to pay the compromised amount.* Failure of any debtor to make payment as provided in the compromise agreement will have the effect of reinstating the full amount of the original claim, less any amounts paid prior to the default.

(9) *Effect of compromise, or suspension or termination of collection action.* Pursuant to the Internal Revenue Code, 26 U.S.C. 6041, compromises and terminations of undisputed debts not discharged in a Title II bankruptcy case and totaling $600 or more for the year will be reported to the Internal Revenue Service in the manner prescribed by them for inclusion in the debtor's gross income for that year. Any action taken under paragraph (g) of this section regarding the compromise of a federal claim, or suspension or termination of collection action on a federal claim is not an initial determination for purpose of the appeal procedures of Section 199.16 of this part.

(h) *Referrals for Collection.*—(1) *Prompt referral.* Federal claims of $600 or more on which collection action has been taken in accordance with the provisions of this Section and which cannot be collected or compromised or on which collection action cannot be suspended or terminated, as provided herein, will be promptly referred by the Director, OCHAMPUS, or a designee, to the Department of Justice for litigation in accordance with 4 CFR Part 105. Such referrals will be made as early as possible consistent with aggressive collection action by CHAMPUS fiscal intermediaries and OCHAMPUS and well within the period for bringing a timely suit against the debtor. Ordinarily referrals will be made within one year of the OCHAMPUS final determination of the fact and the amount of the debt.

(2) *Report of prior collection actions.* The Director, OCHAMPUS, or a designee, will prepare a Claims Collection Litigation Report (CCLR) for each case referred for collection under the provisions of this section. The CCLR will include, as a minimum, the following:

(i) A checklist or brief summary of the actions previously taken to collect or compromise the claim. If any of the required administrative collection actions have been omitted, the reason for its omission must be provided.

(ii) The current address of the debtor, or the name and address of the agent for

a corporation upon whom service may be made. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the Department of Justice for the institution of foreclosure or other proceedings, in which the current address of any party is unknown, will be accompanied by a listing of the prior known addresses of such party and a statement of the steps taken to locate that party.

(iii) Reasonably current credit data indicating that there is a reasonable prospect of effecting enforced collection from the debtor, having due regard for the exemptions available to the debtor under state and federal law and the judicial remedies available to the government. Such credit data may take the form of a commercial credit report; an agency investigative report showing the debtor's assets, liabilities, income, and expenses; the individual debtor's own financial statement executed under penalty of perjury reflecting the debtor's assets, liabilities, income, and expenses; or an audited balance sheet of a corporate debtor. Such credit data may be omitted if a surety bond is available in an amount sufficient to satisfy the claim in full; the forced sale value of any security available for application to the government's claim is sufficient to satisfy the claim in full; the debtor is in bankruptcy or receivership; the debtor's liability to the government is fully covered by insurance, in which case such information as can be developed concerning the identity and address of the insurer and the type and amount of insurance coverage will be furnished or the nature of the debtor is such that credit data is not normally available or cannot reasonably be obtained, for example, a unit of state or local government.

(3) The CCLR shall also be used when a claim is referred to the Department of Justice in order to obtain approval of that Department with respect to compromise, suspension, or termination when such approval is required by 4 CFR 103.1(b) and 104.1(b).

(4) *Preservation of evidence.* The Director, OCHAMPUS, or a designee, will take such action as is necessary to ensure that all files, records and exhibits on claims referred hereunder are properly preserved.

(i) *Claims Involving Indications of Fraud, Filing of False Claims or Misrepresentation.* Any case in which there is an indication of fraud, filing of false claims or misrepresentation will be promptly referred to the Director, OCHAMPUS, or a designee, for processing. The Director, OCHAMPUS, or a designee, will investigate and evaluate the case and either refer the case to the appropriate investigative law enforcement agency or return the claim for other appropriate administrative action, including collection action under this section. Payment on all CHAMPUS beneficiary or provider claims in which fraud, filing false claims or misrepresentation is suspected will be suspended until payment or denial of the claim is authorized by the Director, OCHAMPUS, or a designee. Collection action on all federal claims in which a suspicion of fraud, misrepresentation or filing false claims arises will be suspended pending referral to the appropriate law enforcement agencies by the Director, OCHAMPUS, or a designee. Only the Department of Justice has authority to compromise or terminate collection action on such claims.

6. 32 CFR 199.18 is added as follows:

§ 199.18 Third party recoveries.

(a) *General.* This section deals with the right of the United States to recover the costs of medical care furnished or paid for on behalf of CHAMPUS beneficiaries from third parties. These third parties may be individuals, or entities who are liable for tort damages to the injured CHAMPUS beneficiary or a liability insurance carrier covering the individual or entity. These third parties may also include other entities who are primarily responsible to pay for the medical care provided to the injured beneficiary by reason of an insurance policy, workers' compensation law or other source of primary payment.

(b) *Authority.* The following authorities provide the basis under which claims may be asserted or other actions taken under this section.

(1) The Federal Medical Care Recovery Act (42 U.S.C. 2651–2653) is a statute enacted to authorize the recovery of the reasonable value of medical care furnished or paid for by the United States to a person who is injured or suffers a disease under circumstances creating tort liability in a third party. This Act is implemented by Executive Order 11060 and an Attorney General Regulation, 28 CFR Part 43.

(2) *Other Authority.* Third party recoveries may arise in whole or in part under authorities other than the Medical Care Recovery Act. These include, but are not limited to:

(i) State Workers' Compensation Laws;

(ii) State hospital lien laws;

(iii) State no-fault or uninsured motorist statutes;

(iv) Contract rights under terms of insurance policies.

(c) *Policy.* CHAMPUS third party recovery claims can be complex and difficult to administer because they often involve recovery potential from multiple sources. It is essential that all persons responsible for taking action under this section have adequate training and support in this area. The Director, OCHAMPUS, or a designee, will insure that CHAMPUS personnel (including fiscal intermediary personnel) responsible for taking any action under this section are adequately trained and supported to take timely and effective action. Responsibility for taking third party recovery action at various times can rest with either fiscal intermediary personnel, OCHAMPUS employees, or uniformed service claims asserting authorities. For this reason close coordination between those responsible for any action under this section is essential. Care must also be taken to insure that appropriate action to assert any third party recovery right is taken in sufficient time to preclude the running of any applicable statute of limitations or other bar to the government's right to recover.

(d) *Appealability.* This section describes the procedures to be followed in the assertion and collection of third party recovery claims in favor of the United States arising from the operation of CHAMPUS. Actions taken under this section are not initial determinations for the purpose of the appeal procedures of § 199.16 of this regulation. However, the proper exercise of the right to appeal benefit or provider status determinations under the procedures set forth in § 199.16 may affect the processing of federal claims arising under this section. Those appeal procedures afford a CHAMPUS beneficiary or participating provider an opportunity for administrative appellate review in cases in which benefits have been denied and in which there is a significant factual dispute. For example, a fiscal intermediary may deny payment for services which are determined to be excluded as CHAMPUS benefits because they are found to be not medically necessary. In that event the fiscal intermediary will offer an administrative appeal as provided in § 199.16 of this regulation on the medical necessity issue raised by the adverse benefit determination. If the care in question results from an accidental injury and if the appeal results in a reversal of the initial determination to deny the benefit, a third party recovery claim may arise as a result of the appeal decision to pay the benefit. However, in no case is the decision to initiate such a claim itself appealable under § 199.16 of this regulation.

(e) *Federal Medical Care Recovery Act Claims.*—(1) *General.* The Federal Medical Care Recovery Act (FMCRA) (42 U.S.C. 2651–2653) provides that in any case in which the United States is authorized or required by law to furnish or pay for hospital, medical, surgical or dental care and treatment to a person who is injured or suffers a disease under circumstances creating tort liability in some third person to pay damages for that care, the United States has a right to recover from the third person the reasonable value of the care and treatment furnished or to be furnished.

(2) *Obligations of persons receiving treatment.* To insure the expeditious and efficient processing of Federal Medical Care Recovery Act claims, any person furnished care and treatment under CHAMPUS, his or her guardian, personal representative, counsel, estate, dependents or survivors shall be required:

(i) To provide complete information regarding the circumstances surrounding an injury as a condition precedent to the processing of a CHAMPUS claim involving possible third-party liability.

(ii) To assign in writing to the United States his or her claim or cause of action against the third person to the extent of the reasonable value of the care and treatment furnished, or to be furnished, or any portion thereof;

(iii) To furnish such additional information as may be requested concerning the circumstances giving rise to the injury or disease for which care and treatment are being given and concerning any action instituted or to be instituted by or against a third person;

(iv) To notify the responsible recovery judge advocate, the CHAMPUS fiscal intermediary or General Counsel, OCHAMPUS, or other officer who is representing the interests of the government at the time, of a settlement with, or an offer of settlement from a third person; and,

(v) To cooperate in the prosecution of all claims and actions by the United States against such third person.

(3) *Responsibility for recovery.* The Director, OCHAMPUS, or a designee, is responsible for insuring that CHAMPUS claims arising under the Federal Medical Care Recovery Act are properly referred to and coordinated with the Uniformed Services. Generally, federal claims arising under this statute will be processed as follows:

(i) *Identification and referral of Federal Medical Care Recovery Act claims.*—(*a*) *CHAMPUS fiscal intermediaries.* In most cases where medical care is provided by civilian providers and payment for such care has been made by a CHAMPUS fiscal intermediary, initial identification of potential third-party liability will be by the CHAMPUS fiscal intermediary. In such cases, the CHAMPUS fiscal intermediary is responsible for conducting a preliminary investigation and referring the case to designated appropriate legal officers of the Uniformed Services.

(*b*) *Initial identification by other agencies.* Occasionally, cases involving potential third-party liability may be initially identified by offices, agencies or individuals other than a CHAMPUS fiscal intermediary. When this occurs, these cases should be initially referred to the General Counsel, OCHAMPUS, Aurora, CO 80045–6900 for evaluation. If appropriate, the General Counsel, OCHAMPUS, may refer the case to the fiscal intermediary or the designated Uniformed Service legal office for action.

(ii) *Processing CHAMPUS claims.* When the CHAMPUS fiscal intermediary initially identifies a claim as involving potential third-party liability, it shall request additional information concerning circumstances of the injury or disease from the beneficiary or other responsible party unless adequate information is submitted with the claim. The information normally is obtained by requesting the beneficiary to complete a personal injury questionnaire. The CHAMPUS claim will be suspended and no payment issued pending receipt of the third-party liability information. If the requested third-party liability information is not received, the claim will be denied. A CHAMPUS beneficiary may expedite the processing of his or her CHAMPUS claim by submitting a completed third-party liability questionnaire with the first claim for treatment of an accidental injury. Third-party liability information normally is required only once concerning any single accidental injury. Once the third-party liability information pertaining to a single incident or episode of care is received, subsequent claims associated with the same incident or episode of care may be processed to payment in the usual manner. If, however, the requested third-party liability information is not received, subsequent claims involving the same incident or episode of care will be suspended or denied as stated above.

(iii) *Ascertaining total potential liability.* It is essential that the legal office responsible for asserting the claim against the third party receive from the CHAMPUS fiscal intermediary a report of all amounts expended by the United States for care resulting from the incident upon which potential liability in the third party is based (including amounts paid by CHAMPUS for both inpatient and outpatient care). Prior to assertion and final settlement of a claim, it will be necessary for the responsible legal office to secure from the CHAMPUS fiscal intermediary updated information to insure that all amounts expended under CHAMPUS are included in the government's claim. It is equally important that information on future medical payments be obtained through the investigative process and included as a part of the government's claim. No CHAMPUS-related claim will be settled, compromised or waived without full consideration being given to the possible future medical payment aspects of the individual case.

(4) *Representing the government's interest.* The government's right to recover the amounts expended for the patient's medical care is independent of the right the patient has to assert a claim against the third person for damages. The existence of the government's right, however, is dependent upon establishing the liability of the third person under ordinary principles of law.

(i) Frequently, collection actions under the Federal Medical Care Recovery Act must be referred to the Department of Justice for litigation. This is usually necessary because either the administrative collection action has been unsuccessful or the injured party has initiated suit and the government must be joined to protect its interests. When such referrals involve significant cases in which the dollar amount of the potential recovery on CHAMPUS claims exceeds $40,000 or involve a unique or significant legal issue, notice of the referral will be provided to the General Counsel, OCHAMPUS. Upon request by the Uniformed Service involved, the General Counsel, OCHAMPUS, will assist in the coordination of any case with the Department of Justice.

(ii) The attorney for the injured beneficiary may be requested to represent the interests of the government and join both claims in a single action against the third person. Such representation of the government's interest normally must be made at no expense to the government. However, when such representation of the government's interest is undertaken by the injured party's attorney for the government, offices and agencies involved will extend full cooperation to the injured party's attorney to insure that the government's interests are fully protected. The coordination of such cases is normally the responsibility of the designated Uniformed Service claims office. However, the General

Counsel, OCHAMPUS, may be requested to provide assistance in coordinating CHAMPUS matters relating to these cases. If the attorney representing the injured beneficiary does not wish to join the government's claim with that of his or her client, and court action is required to recover the amount expended for the patient's medical care, intervention or an independent suit may be initiated by the United States for the reasonable value of the care or treatment provided.

(5) *Settlement and waiver of Federal Medical Care Recovery Act claims.* (i) Uniformed Services legal offices may, under the authority and provisions of regulations prescribed by their respective departments, (*a*) accept the full amount of a claim and execute a release therefore, (*b*) compromise or settle and execute a release of any claim, not in excess of $40,000, which has been referred to it under the provisions of this Section, or (*c*) waive, and in this connection, release any claim not in excess of $40,000 in whole or in part, either for the convenience of the government, or if it is determined that collection would result in undue hardship upon the person who suffered the disease or injury resulting in the care and treatment provided under the CHAMPUS.

(ii) A claim in excess of $40,000 may be compromised, settled, waived and released only with the prior approval of the Department of Justice. The Department of Justice is also to be consulted in all cases involving (*a*) unusual circumstances, (*b*) a new point of law which may serve as a precedent, or (*c*) a policy question where there is or may be a difference of views between federal departments and agencies.

(iii) The authority of compromise, settlement, waiver and release described by this paragraph cannot be exercised in any case in which (*a*) the claim of the United States for such care and treatment has been referred to the Department of Justice, or (*b*) a suit by the third party has been instituted against the United States or the individual who received or is receiving the care and treatment described herein and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

(6) *Reporting requirements.* The Department of Defense is required to submit an annual report to the Attorney General stating the number and dollar amount of claims asserted against, and the number and dollar amount of recoveries from third persons for third-party federal claims arising from the operation of the CHAMPUS. To facilitate the preparation of this report and to maintain program integrity, the following reporting requirements are established:

(i) Each CHAMPUS fiscal intermediary shall submit on or before January 31 of each year an annual report to the Director, OCHAMPUS, or a designee, covering the 12 months of the previous calendar year. This report shall contain, as a minimum, the number and total dollar amount of cases investigated for potential third-party liability and the number and dollar amount of cases referred to Uniformed Services claims offices for further investigation and collection. These latter figures are to be itemized by the states and uniformed services to which the cases are referred.

(ii) Each Uniformed Service will submit an annual report covering the 12 calendar months of the previous year, setting forth, as a minimum, the number and total dollar amount of cases involving CHAMPUS payments received from CHAMPUS fiscal intermediaries, the number and dollar amount of cases involving CHAMPUS payments received from other sources, and the number and dollar amount of claims actually asserted against, and the dollar amount of recoveries from, third persons. The report, itemized by state and foreign claims jurisdictions, shall be provided no later than February 28 of each year, by each Uniformed Service to the Director, OCHAMPUS, or a designee.

(iii) The reporting requirements prescribed by (e)(6)(i) of this section are to be implemented by the Director, OCHAMPUS, or a designee, by an appropriate action. The reporting requirements prescribed by paragraph (e)(6)(ii) of this section are to be implemented as soon as practicable by agreement between the Director, OCHAMPUS, or a designee, and the affected reporting agency. In no event will the reporting requirements prescribed in paragraph (e)(6)(ii) above be implemented later than December 23, 1988.

(f) *Automobile or Other Medical Payment Insurance, No-Fault Insurance, or Uninsured Motorist Insurance.* Payment may not be made under CHAMPUS for any medical service or supply to the extent that payment has been made or can reasonably be expected to be made for the service or supply under medical insurance or other plan, automobile medical payment insurance policy or plan, uninsured motorist insurance, no-fault insurance or other forms of medical payments protection. Unless all or a portion of a payment under a no-fault or uninsured motorist insurance policy is designated as reimbursement for medical expenses or for some other policy benefit, the full amount of all such undesignated payments shall be deemed to be for medical expenses incurred by the policy beneficiary. Where a CHAMPUS beneficiary is covered by no-fault or uninsured motorist insurance, CHAMPUS benefits will not become available until the CHAMPUS beneficiary furnishes written documentation that he or she has incurred medical expenses equal to the full amount of the payment received under the policy, or to that portion of the total payment received which was designated for medical expenses. Based upon the results of the investigation described in paragraph (e)(3)(ii) of this section, the fiscal intermediary will segregate all claims involving treatment of personal injuries for which it is likely that such other insurance is available. These claims will be processed initially as double coverage claims under the provisions of § 199.14 of this part. Any CHAMPUS payments made after the double coverage provisions have been fully complied with will be considered for possible third-party liability recovery under the provisions of this section.

(g) *Worker's Compensation Claims.* Based upon the results of the investigation described in paragraph (e)(3)(ii) of this section, the fiscal intermediary will segregate all claims involving treatment of work-related injuries. These claims will be processed initially as double coverage claims under § 199.14 of this part dealing with workers' compensation claims. Any CHAMPUS payments made after the double coverage provisions have been fully complied with will be considered for possible third-party liability recovery under the provisions of this section. Unless all or a portion of a payment made pursuant to a Worker's Compensation claim is designated as reimbursement for medical expenses or for some other policy benefit, the full amount of all such undesignated payments shall be deemed to be for medical expenses incurred by the policy beneficiary.

(h) *Mixed Claims.* Occasionally, a claim arising under the Medical Care Recovery Act will be referred to a claims collection authority which also has some other potential for recovery. A typical example of such a claim is one arising as the result of an automobile accident in which there is a likely tortfeasor and the injured party is also covered by some combination of other health insurance which is primary to CHAMPUS, such as, workers' compensation, or a medical payments provision of an automobile policy. These claims will also initially be processed as

double coverage claims. In addition, agency claims collection authorities should take full cognizance of all avenues of potential recovery as long as there is any potential for recovery from the tortfeasor. Once final action has been taken, any remaining possible recovery under the Federal Claims Collection Act may be referred to the General Counsel, OCHAMPUS, for further action in accordance with 32 CFR 199.17. Such referrals should contain a complete report of all actions taken on the case and full and complete documentation of the claims involved.

Patricia H. Means,

OSD Federal Register Liaison Officer Department of Defense.

December 13, 1985.

[FR Doc. 85-29899 Filed 12-20-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego Reg. 85-17]

Security Zone Regulations: San Diego Bay, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone at Naval Air Station North Island, San Diego, California, consisting of the water area within 100 yards (91.5 meters) of the cruiser pier (berths J-K) and within 300 yards (275 meters) of the carrier pier (quay wall, berths L-P). This security zone is established at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Commanding Officer, Naval Air Station North Island or the Captain of the Port.

DATES: This regulation becomes effective on December 5, 1985. It terminates on April 5, 1986.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101-1064, telephone (619) 293-5860.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to secure the interests of the United States.

Drafting Information

The drafters of this regulation are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The Commanding Officer, Naval Air Station North Island has requested that Captain of the Port, San Diego, California establish a security zone at Naval Air Station North Island Cruiser (J-K) and Carrier (L-P) Piers. This request was made to improve security at those piers and to prevent vessels from approaching naval ships moored at those locations closer than 100 yards (91.5 meters) at the cruiser pier and 300 yards (275 meters) at the carrier pier (quay wall). The Captain of the Port concurs with the need for this security zone. The security zone is needed to protect persons and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature, and to secure the interests of the United States. The Captain of the Port has designated the Commanding Officer, Naval Air Station North Island, to permit entry into this security zone. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 33 CFR 160.5.

2. In Part 165, a new § 165.T1104 is added to read as follows:

§ 165.T1104 Security zone: San Diego Bay, California.

(a) *Location:* The following area is a security zone: The water area adjacent to Naval Air Station North Island, Coronado, California, and within 100 yards (91.5 meters) of the Cruiser (J-K) Pier and within 300 yards (275 meters) of the Carrier (L-P) Pier, described as follows: From a point on the shoreline of Naval Air Station North Island, on North Island, Coronado, California, at latitude 32°42'47.5" N, longitude 117°11'25.0" W (Point A), for a place of beginning; thence northeasterly to latitude 32°42'52.0" N, longitude 117°11'21.5" W (Point B); thence southeasterly to latitude 32°42'44.5" N, longitude 117°11'11.0" W (Point C); thence southerly to latitude 32°42'31.0" N, longitude 117°11'16.4" W (Point D); thence southeasterly to latitude 32°42'21.4" N, longitude 117°10'44.5" W (Point E); thence southerly to latitude 32°42'12.8" N, longitude 117°10'47.8" W (Point F); thence generally northwesterly along the shoreline of Naval Air Station North Island to the place of beginning (Point A).

(b) *Effective Date:* This regulation becomes effective on December 5 1985. It terminates on April 5 1986.

(c) *Regulations:* In accordance with the general regulations in 165.33 of this Part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port or the Commanding Officer, Naval Air Station North Island. Section 165.33 also contains other general requirements.

Dated: December 5, 1985.

E.A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 85-30267 Filed 12-20-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL-012; A-4-FRL-2942-4]

Approval and Promulgation of Implementation Plans; Florida; Attainment Date Designation for Lead

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today deleting two sources from the source-specific regulations, which were promulgated on Novemer 1, 1985, for the Florida lead implementation plan. EPA is also amending the Florida table of

attainment dates, listed in Part 52, to include an attainment date for lead.

EFFECTIVE DATE: This action will be effective on February 21, 1986, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. Such notice may be submitted to Archie Lee, at the EPA, Region IV address below.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location:

Environmental Protection Agency, Air Programs Branch, EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blairstone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Archie Lee, Air Programs Branch, Region IV, EPA, at the above address and phone 404/881-3286 or FTS: 257-3286.

SUPPLEMENTARY INFORMATION: EPA took final action on the Florida Lead SIP on November 1, 1985 (50 FR 45603). The action disapproved the regulatory portion of the SIP, approved the rest of the SIP, and promulgated source-specific Federal regulations to replace the disapproved portion. Since that time, two of the sources have shut down permanently, and today's action removes them from these regulations. Specifically, 40 CFR 52.535(c) (3) and (6) are hereby removed.

The two sources are Chloride Battery in Tampa, Florida, and Refined Metals, in Jacksonville, Florida. Chloride Battery formally requested that the Hillsborough County Environmental Protection Commission invalidate its permits on July 3, 1985. Refined Metals never returned its permits, which expired on December 31, 1984. Under Florida law, should the source wish to reopen after permit expiration, it is subject to Florida's New Source Review requirements as a new source.

The Code of Federal Regulations (CFR) contains a table for attainment dates of each pollutant for each state. Florida's table is contained in 40 CFR 52.523, but does not include lead. Today's action will amend the table to include lead, and set the attainment date as December 1, 1985, which is the effective date of the federally promulgated Florida lead implementation plan.

Action

This action is taken without prior proposal because it is noncontroversial and EPA anticipates no comments on it. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action, and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 21, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 52

Air pollution control, Lead, Intergovernmental relations.

Dated: December 16, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

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

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

Authority: 42 U.S.C. 7401-7642.

Subpart K—Florida

§ 52.523 [Amended]

2. In § 52.523, Attainment dates for national standards, the table is amended as follows:

A column is added for the pollutant "Lead," with the notation "h" for every entry, and a corresponding line is added to the legend as follows: "h. December 1, 1985."

§ 52.535 [Amended]

3. In § 52.535 paragraphs (c)(3) and (6) are removed and reserved.

[FR Doc. 85-30248 Filed 12-20-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-4-FRL-2937-7]

Implementation plans; Florida; Approval of Source Sampling Rule Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final action.

SUMMARY: EPA is today approving the Source Sampling III rule amendments submitted by the Florida Department of Environmental Regulations (FDER). This rule includes serveral minor changes to the FDER's notification and testing requirments in order to correct and update portions of the existing rules.

EFFECTIVE DATE: This action will be effective on February 21, 1986, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

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

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blairstone Road, Tallahassee, Florida 32301;

Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20005;

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

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Archie Lee, Air Programs Branch, EPA Region IV, at the above address, and phone 404/881-3286, or FTS 257-3286.

SUPPLEMENTARY INFORMATION: The Source Sampling III rule amendment was submitted by the FDER to EPA on May 30, 1985. After a thorough review, EPA has determined the amendments to be acceptable, and is today approving them as submitted.

The submittal amends Florida Administrative Code (FAC) Chapter 17-2.700, *Stationary Point Source Emissions Test Procedures.* These rule amendments include:

(1) The requirement to conduct annual compliance testing of specific source classes;

(2) Confirmation that the source emission rate is established on the basis of a three test run unless otherwise specified by the applicable test method;

(3) The requirement that source owners give notice to the FDER 15 days prior to testing;

(4) Retaining the 20° alpha requirement for swirling flow stack conditions, but correctly moving the requirement to FDER Method 1;

(5) Adoption by reference of the **Federal Register** publication dates of the original promulgations and amendments to EPA Methods already in 17-2.700, and adopting EPA Methods 6A and 6B for sulfur dioxide emission testing, and EPA Method 7A for nitrogen oxides emission testing;

(6) Amending Table 1 to require EPA's Method 5 for particulate emission testing with acetone wash for citrus plants; EPA Method 6 for sulfur dioxide emission testing, and alternatively allowing the use of fuel sampling to determine sulfur dioxide emission rates for fossil fuel steam generators and EPA Method 5 particulate emission testing for portland cement plants.

Table I is a listing of the sampling procedures and special conditions for each source which has an emission limiting standard in the FAC.

Under Method 6, Special Conditions for fossil fuel steam generators, fuel sampling and analysis may be used in lieu of Method 6, with prior approval of the FDER. EPA concurs with this alternate method for determining compliance, provided that initial compliance is assured by Method 6. The FDER has been informed of this, and has stated that the intent was to assure initial compliance with Method 6. Therefore, EPA finds this to be acceptable.

Final Action

Based on the foregoing, EPA hereby approves Florida's Source Sampling III rule amendment. This action is taken without prior proposal because the changes are noncontroversial and EPA anticipates no comments on them.

The public should be advised that this action will be effective 60 days from the date of publication of this **Federal Register** notice. However, if notice is received within 30 days of the date of this notice that someone wishes to submit adverse or critical comments, this action will be withdrawn, and two subsequent notices will be published before the effective date. One notice will withdraw the final action, and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 21, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, intergovernmental relations, incorporation by reference, nitrogen dioxide, particulate matter, sulfur dioxide.

Dated: December 9, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

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

Subpart K—Florida

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.520 is amended by adding paragraph (c)(56) as follows:

§ 52.520 Identification of plan.

* * * * *

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

* * * * *

(56) Amendments to the Florida Administrative Code (FAC) submitted by the Secretary of the Florida Department of Environmental Regulation (FDER) on May 30, 1985, which deals with source sampling.

(i) Incorporation by reference.

(A) Amendments to 17-2.700 FAC, which deals with source sampling procedures and conditions, adopted on April 3, 1985, by the FDER.

(ii) Additional material.

(A) None.

[FR Doc. 85-29558 Filed 12-20-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 10

[CGD 85-094]

Licensing of Pilots; Annual Physical Examination

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: This rule amends the Final Rule (50 FR 26106) published on June 24, 1985 and the correction of the effective date (50 FR 30274) published July 25, 1985 regarding § 10.07-9(e) of 46 CFR Subpart 10.07. This amendment will permit first class pilots to take the required physical examination at any time during the calander year, with the stipulation that the time between each physical examination may not exceed 13 months. This rule provides flexibility in scheduling physical examinations in order to accommodate the employment practices in the merchant marine.

DATES: Effective January 1, 1986. Comments must be received by February 6, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke, Office of Merchant Marine Safety (G-MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593, (202) 426-2985.

SUPPLEMENTARY INFORMATION: On June 24, 1985, the Coast Guard published a Final Rule at 50 FR 26106 regarding the licensing of pilots, effective July 24, 1985. Due to numerous comments that the requirements could not be met within the 30 days allowed without a substantial disruption of pilots' schedules, the effective date was amended to January 1, 1986 (50 FR 30274). Subsequent to the revision of the effective date, more comments were received objecting to the manner in which the statutory requirement for an annual physical exam was being applied. Under 46 U.S.C. 7101(e)(3) an individual may be issued a license as a pilot only if the individual has a thorough physical examination each year while holding the license. Currently, 46 CFR 10.07-9(e) provides that if an individual holding a first class pilot's license or endorsement does not satisfactorily complete a physical examination within 90 days prior to the anniversary date of the issuance of the license, the license or endorsement is invalid as of the anniversary date and the individual may not operate under the authority of that license or endorsement until a physical examination has been completed. The 90

day provision was intended to provide flexibility in scheduling physical examinations in recognition of the employment practices in the merchant marine.

It was brought to our attention that the requirement for the physical examination to be conducted within the 90-day period prior to the anniversary date of the issuance of the license placed a large burden on the pilots because, as a matter of practice, most pilots undergo their physical exams at times that do not conflict with their sailing or seagoing period. For example, in several pilot organizations every pilot takes the physical exam during December each year. Additionally, pilots on Great Lakes vessels take their physical exams during February or March each year to avoid conflict with the sailing season which runs from April to December. In most instances the schedules for physical exams currently being followed have no relationship to the individual's license issuance date.

To deal with these problems, the Coast Guard is amending 46 CFR 10.07-9 to allow even greater flexibility. This amendment will permit a first Class pilot to take the required physical examination at any time during the calendar year. The license will become invalid on the first day of the month following the anniversary of that examination. This will allow pilots to maintain an annual physical exam schedule that best suits their individual needs. This change should eliminate the problems associated with the scheduling of annual physical exams.

This amendment is being published as an interim final rule in order to avoid a disruptive effect on pilots and their employers. The substantive requirement for an annual physical examination is not being changed, only the scheduling of the exam. Since delay in promulgating this relaxation would cause pilots to schedule additional physical examinations, the Coast Guard has determined, under 5 U.S.C. 553, that providing prior notice and opportunity for comment would be contrary to the public interest.

This interim final rule is effective in less than 30 days. Good cause exists to make this rule effective in less than 30 days because the purpose of the interim final rule is to relieve the potential hardship created by the rule published June 24, 1985, which unless amended would become effective January 1, 1986. Comments are solicited to assist in determining if the practical problems with physical exam scheduling have been eliminated. Comments should be mailed to Commandant (G-CMC/21) (CGD 85-094), U.S. Coast Guard, Washington, D.C. 20593. Between 7:30 a.m. and 3:30 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMD/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, (202) 426-1477. Comments must be received by February 6, 1986.

Regulatory Evaluation: This amendment is considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). It is not expected to have a significant economic impact, as the only consequence is that an extra physical exam may not be required for some pilots. The economic impact of this rule has been found to be so minimal that further evaluation is unnecessary. Since the impact of this rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities. There is no paperwork burden associated with this amendment.

List of Subjects in 46 CFR Part 10

Seamen, Marine Safety, Navigation (water), Passenger vessels.

PART 10—AMENDED]

In consideration of the foregoing, Part 10 of Title 46 of the Code of Federal Regulations is amended as follows:

1. The Authority citation for Part 10 reads as follows:

Authority: 46 U.S.C. 7101; 49 CFR 1.46(b).

2. Section 10.07-9 is amended by giving paragraphs (b), (e) and (g) to read as follows:

§10.07-9 Physical examination requirements for a license or endorsemennt as first class pilot.

* * * * *

(b) Every person holding a license or endorsement as first class pilot shall have a thorough physical examination each calendar year while holding the license or endorsement except that this requirement does not apply to an individual who will serve as a pilot only on a vessel of less than 1,600 gross tons.

* * * * *

(e) An individual's first class pilot's license or endorsement becomes invalid on the first day of the month following the first anniversary of the individual's most recent physical examination satisfactorily completed; the individual may not operate under the authority of that license or endorsement until a physical examination has been satisfactorily completed.

* * * * *

(g) An applicant for renewal of a license or endorsement as first class pilot shall satisfactorily complete within one year prior to renewal and file the OCMI, a physical examination meeting the requirements specified in paragraph (d) of this section.

Dated: December 18, 1985.

W.J. Ecker,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85-30266 Filed 12-20-86; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket Nos. 84-689 and 84-690]

Radiodetermination Satellite Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Erratum is to correct the Table of Frequency Allocations of the Report and Order released by the FCC on September 13, 1985, regarding radiodetermination satellite service.

FOR FURTHER INFORMATION CONTACT: Melvin J. Murray, Frequency Allocations Branch, Office of Science and Technology Federal Communications Commission, Washington, DC 20554 (202) 653-8144.

SUPPLEMENTARY INFORMATION:

Erratum

In the Matter of: Amendment of the Commission's Rules to Allocate Spectrum for, and to Establish other Rules and Policies Pertaining to, a Radiodetermination Satellite Service, Gen. Docket No. 84-689, RM-4426; Policies and Procedures for the Licensing of Space and Earth Stations in the Radiodetermination Satellite Service, Gen. Docket No. 84-690; GEOSTAR CORPORATION, For Authority to Construct, Launch and Operate Space Stations in the Radiodetermination Satellite Service, File Nos. 2191-DSS-P/L-83, 2192-DSS-P/L-83, 2193-DSS-P/L-83, 2194-DSS-P/L-83; A request to allocate the 1606.8-1613.8 MHz band on a Primary Basis to the Radio Astronomy Service, RM-4839.

Released: December 13, 1985.

In the Commission's Report and Order in the captioned proceeding released September 13, 1985 (50 FR 39101; September 27, 1985), an error was detected in the Table of Frequency

allocations in the first column on page 39108. This Table is corrected by deleting footnote US40 from both columns 4 and 5.

Federal Communications Commissions.

William J. Tricarico,

Secretary.

[FR Doc. 85-30198 Filed 12-20-85; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 50, No. 246
Monday, December 23, 1985

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 994

[Docket No. MMO-1]

Egg Marketing Order

Correction

In FR Doc. 85-29547, beginning on page 51344 in the issue of Monday, December 16, 1985, make the following corrections:

1. On page 51345:

a. In the second column, § 994.1, fourth line, "of whom" should read "to whom".

b. In the third column, § 994.9, second line, "handle" should read "handles".

c. In the third column, § 994.11, third line, "of older" should read "or older".

2. On page 51346, second column, § 994.37(d), first line, "purpose" should read "purposes".

3. On page 51347, third column, § 994.45(j)(3), third line, "made" should read "make".

4. On page 51348:

a. In the first column, § 994.50(b):

(1) In the fifth line, "sales" should read "sale".

(2) In the eighth line, "porducts" should read "products".

b. In the second column, § 994.60(a), third line, "ensuring" should read "ensuing".

c. In the third column, § 994.62(a), third line, insert the word "a" between "if" and "surplus".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-236-84]

Information Returns Relating to Sales or Exchanges of Certain Partnership Interests; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary income tax regulations relating to information returns, statements, and notifications required where there is a sale or exchange of certain partnership interests. The text of the temporary regulations serves as the comment document for this notice of proposed rulemaking..

DATES: Written comments and requests for a public hearing must be delivered or mailed by Feburary 21, 1986. The regulations are proposed to be effective with respect to sales or exchanges of partnership interests made after December 31, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, 1111 Constitution Avenue, NW., Attention: CC:LR:T (LR-236-84), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert E. Shaw of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (Attention: CC:LR:T LR-236-84). Telephone 202-566-3297 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) under section 6050K of the Internal Revenue Code of 1954.

For the text of the temporary regulations see T.D. 8064 published in the Rules and Regulations portion of this issue of the **Federal Register.** The preamble to the temporary regulations explains the addition to the regulations.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that the proposed rule is not subject to review under Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request of any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OBM) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer of Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is Robert E. Shaw of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However,

personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations both on matters of substance and style.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-30324 Filed 12-20-85; 9:22 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[LR-216-84]

Taxation of Fringe Benefits; Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking by cross-reference to temporary regulations published in the **Federal Register** for January 7, 1985 (50 FR 836), February 20, 1985 (50 FR 7073), and November 6, 1985 (50 FR 46006), relating to the taxation of fringe benefits. The text of the temporary regulations under sections 61 and 132 served as the comment document for the notice of proposed rulemaking. In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is removing portions of those temporary regulations. This document withdraws portions of the notice of proposed rulemaking that relate to the removed portions of the temporary regulations. Changes to the applicable tax law were made by section 531 of the Tax Reform Act of 1984 (98 Stat. 877).

DATE: The withdrawal of portions of the notice of proposed rulemaking is effective as of January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service, (202) 566-3918, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

Section 61 was amended and section 132 was added to the Internal Revenue Code of 1954 (Code) by section 531 of the Tax Reform Act of 1984 (98 Stat. 877). Temporary regulations published in the **Federal Register** for January 7, 1985 (50 FR 747), amended the Income Tax Regulations (26 CFR Part 1) to reflect the changes in the law relating to the taxation of fringe benefits. These regulations were later amended in the **Federal Register** for February 20, 1985 (50 FR 7038), and November 6, 1985 (50 FR 46006).

Many comments were received on the proposed and temporary regulations published during 1985. In addition, on April 16, 17, and 18, 1985, the Internal Revenue Service held public hearings concerning the provisions of the proposed regulations. In response to the comments and the statements made at the public hearings, the rules provided in the proposed and temporary regulations have been amended. Due to the extent of the amendments, the regulations have been issued in temporary rather than final form. In addition, the temporary regulations (published in the Rules and Regulations portion of this issue of the **Federal Register**) also serve as the comment document for a notice of proposed rulemaking (published in the Proposed Rules portion of this issue of the **Federal Register**). Because the rules are being reissued as proposed and temporary regulations rather than final regulations, portions of the previously published notice of proposed rulemaking and temporary regulations must be withdrawn. The portion of the temporary and proposed regulations relating to the election to aggregate lines of business for purposes of certain fringe benefit exclusions under section 4977 of the Code is not withdrawn.

Drafting Information

The principal author of this document is Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this document on matters of both substance and style.

The proposed amendments to 26 CFR Part 1 under § 1.61-2T and § 1.132-1T published in the **Federal Register** for January 7, 1985, February 20, 1985, and November 6, 1985, are hereby withdrawn.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-30163 Filed 12-18-85; 11:10 am]

BILLING CODE 4830-01-M

[26 CFR Parts 1 and 602]

[LR-216-84]

Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the taxation of fringe benefits. The text of those temporary regulations serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be mailed or delivered by February 21, 1986. Except to the extent otherwise provided, the regulations are proposed to be effective as of January 1, 1985.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-216-84 and LR-37-85), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service (202-566-3918, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Parts 1 and 602 of Title 26 of the Code of Federal Regulations. The temporary regulations are designated by a "T" following their section citation. The final regulations, which this document proposes to base on those temporary regulations, would amend Parts 1 and 602 of Title 26 of the Code of Federal Regulations.

The regulations provide guidance on the tax treatment of taxable and nontaxable fringe benefits, including the valuation of taxable fringe benefits for purposes of income and employment tax reporting and withholding. The regulations provide special rules for valuing employer-provided automobiles, use of employer-provided aircraft, free or discounted flights on commercial arilines, and meals provided at employer-operated eating facilities. The regulations also provide rules relating to the exclusions from gross income for certain fringe benefits and applicable nondiscrimination rules.

Section 61 of the Internal Revenue Code of 1954 (the Code) was amended, and section 132 was added to the Code, by section 531 of the Tax Reform Act of 1984 (98 Stat. 877). Temporary and proposed regulations were published in the **Federal Register** on January 7, 1985 (50 FR 747, 836). These regulations were

later amended in the **Federal Register** on February 20, 1985 (50 FR 7038, 7073).

Subsequently, Pub. L. 99–44 (Repeal of Contemporaneous Recordkeeping Requirements) affected some of the proposed and temporary regulations published in February. To implement the provisions of Pub. L. 99–44, the Service withdrew the affected proposed and temporary regulations published in February (50 FR 46004, 46086) and published new proposed and temporary regulations on November 6, 1985 (50 FR 46006, 46087). This document replaces portions of the previously issued proposed regulations.

Many comments were received from the public concerning the provisions in the proposed and temporary regulations published earlier this year. In addition, on April 16, 17, and 18, 1985, the Internal Revenue Service (Service) held public hearings concerning the temporary and proposed regulations. In response to the comments and the statements made at the public hearings, the regulations have been amended. Due to the extent of the amendments, the Service is issuing the regulations in temporary rather than final form. This document contains the cross-reference notice of proposed rulemaking to provide the public with an opportunity to comment on the revised provisions of the regulations before they become final. The Service expects to hold public hearings on the proposed regulations early next year.

For the text of the temporary regulations, see FR Doc. [T.D. 8.063] published in the Rules and Regulations portion of this issue of the **Federal Register.** The preamble to the temporary regulations contains a summary of the provisions of these regulations.

Special Analyses

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required by 5 U.S.C. chapter 6.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. When the public hearing is scheduled, notice of the time and place will be published in the **Federal Register.**

Comments are particularly invited concerning the administrability and appropriateness of the special rules contained in the temporary regulations relating to valuing the availability of employer-provided automobiles, the personal use of employer-provided vehicles, the use of employer-provided vehicles for commuting, flights on employer-provided aircraft, free or discounted flights on commercial airlines, and meals provided at employer-operated eating facilities for employees.

With regard to the automobile special valuation rule, comments are requested concerning the use of a four-year, level-payment lease term as the basis of the Annual Lease Value Table. (For a further discussion of this rule, see the preamble to the temporary regulations contained in the Rules and Regulations portion of this issue of the **Federal Register.**)

The proposed regulations provide guidance on valuing an automobile for purposes of determining the Annual Lease Value. In particular, the proposed regulations provide that for this purpose the value of an automobile does not include the value of specialized equipment which is not susceptible to personal use or of a telephone. An example of such equipment would be permanent shelving custom designed to hold special business tools. This provision does not mean that any property susceptible to personal use which is in an automobile must be valued as part of the automobile. The regulations are not intended to address the treatment of property which, although susceptible to personal use, is not commonly included in an automobile but when included in an automobile is commonly used for business while the automobile is being used for personal purposes. An example of such property is a car telephone, which may be used for business purposes while the car is being used for personal purposes (e.g., a business call while an employee is commuting to work). Comments are requesting as to what other property falls into this economy and as to the appropriate tax treatment for personal use of such property.

The vehicle cents-per-mile rule may be used to value the personal use of employer-provided vehicles regularly used in the employer's business if the value of the vehicle does not exceed $12,800 (for 1985). Comments are requested concerning (1) the need for further definition of the regularly used in business standard, (2) suggestions for such a definition, and (3) the appropriateness of and suggestions for refining the alternative mileage rule for use of the vehicle cents-per-mile rule.

Comments are requested concerning the definitions of Federal officers and executive officers at the state and local levels, for purposes of determining who is a control employee and thus ineligible to use the commuting special valuation rule.

Comments are also requested relating to the tax treatment of so-called "bonus" programs (such as "frequent flier" programs) under which a company provides benefits (such as free flights, automobile rentals, and hotel rooms) to their customers on the basis of the amount of business the customer does with the company. The issue of tax treatment arises when, for example, the business that gives rise to the benefits or bonuses is paid for by the customer's employer rather than the customer (i.e., business flights or hotel rooms are paid for by the employer and the company awards the bonus flight or hotel room to the employee). Comments are requested on the need for special rules relating to the valuation of the benefits, the administrability of either withholding on or reporting the value of such benefits, and the appropriate party to charge with the responsibility for reporting. Comments are specifically requested regarding whether the benefits should be regarded as "wages" subject to withholding.

In August 1985, the Service announced rules relating to reporting and withholding on the value of fringe benefits (Announcing 85–113 I.R.B. No. 31, August 5, 1985). Comments are requested relating to those withholding and reporting rules.

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. Comments on those requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on those requirements to OMB also send copies to the Service.

Drafting Information

The principal author of these regulations is Annette J. Guarisco of the

Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.61-1—1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 602

Reporting and recordkeeping requirements.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-30162 Filed 12-18-85; 11:09 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 16

[Order No. 1114-85]

Revision of Department of Justice Fee Regulations Implementing the Freedom of Information Act

AGENCY: Department of Justice.

ACTION: Proposed Rule.

SUMMARY: This notice sets forth a proposed revision to the procedural regulations of the Department of Justice, 28 CFR 16.10, setting forth the fees to be charged under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. It is proposed that this provision be amended, for the first time since 1975, to increase certain of the fees charged under the Act. No change is proposed in the current charge of $0.10 per page for duplication.

DATE: Comments must be received on or before January 22, 1986.

ADDRESS: Comments should be directed to: Kevin R. Jones, Deputy Assistant Attorney General, Office of Legal Policy, United States Department of Justice, Room 4224, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Daniel J. Metcalfe, Co-Director, Office of Information and Privacy, United States Department of Justice, Washington, DC 20530 ((202) 724-7400).

SUPPLEMENTARY INFORMATION: The regulations of the Department of Justice implementing the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act of 1974, 5 U.S.C. 552a, were amended in their entirety, effective April 30, 1984. 49 FR 12248 (Mar. 29, 1984). As stated in the Supplementary Information to that notice, revisions to the Department's FOIA fee regulation were still then under consideration and would be dealth with in a separate rulemaking proceeding. 49 FR at 12249. That review has now been completed. The purpose of this Notice of Proposed Rulemaking is to propose certain changes in the fees charged to requesters under the FOIA—the costs of searching for requested information and of related materials and services, including audio tapes and computer services and materials. No change is porposed in the current duplication charge of $0.10 per page.

The Department's current fee regulations was first adopted in 1975, in response to the 1974 amendments to the Freedom of Information Act that limited the allowable fees chargeable to requesters to the cost of search for and duplication of documents. 5 U.S.C. 552(a)(4)(A); 28 CFR 16.9 (1983). That regulation set the charge for duplication at $0.10 per page, and provided for a charge of $1.00 per quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and retrieving requested records, and a charge of $2.00 per quarter hour for nonclerical, nonroutine searches where the time of professional or managerial personnel is required. That regulation also provided a schedule of charges for computer services and materials and audio tapes needed to reproduce computerized or audio records.

These provisions have remained unchanged since 1975, except to renumber them as 28 CFR 16.10. 49 FR 12257-58. The considerable inflation since that time has rendered these charges well out of date. For Federal employees, both at the clerical level and the professional level, salary rates at specific grades in the General Schedule have increased by approximately 70% since 1975. Moreover, the charges for computer time and materials and for audio tapes are in most cases far out of line with the current actual costs of those services and items to the Department today.

Accordingly, it is proposed that the Department's regulation be amended to increase the fees to $1.75 per quarter hour after the first quarter hour for clerical searches and to $3.50 per quarter hour after the first for nonclerical, professional searches. The regulations governing computer services and materials and audio tapes would be revised to provide for the charging of current actual costs to the Department of those services and items. However, no change is proposed for the current duplication charge of $0.10 per page.

It is proposed that the provisions in current 28 CFR 16.10, as amended, relating to charges over $25.00 and to the requirement of a deposit be retained with only minor revisions.

The standard for waiving or reducing fees is proposed to be modified to conform more closely to the statutory language set forth in 5 U.S.C. 552(a)(4)(A). That section requires that documents be furnished at no charge or at a reduced charge where the agency determines that a waiver or reduction of fees is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

These rules do not constitute "major rules" within the meaning of Executive Order No. 12291 (Improving Government Regulations). The requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

List of Subjects in 28 CFR Part 16

Freedom of Information.

PART 16—[AMENDED]

Accordingly, under the authority vested in me by 28 U.S.C. 509 and 510 and 5 U.S.C. 301 and 552, Part 16 of Chapter I of Title 28 of the *Code of Federal Regulations* is proposed to be amended as follows:

1. The authority citation for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509; 5 U.S.C. 301, 552; 31 U.S.C. 483a, unless otherwise noted.

2. Section 16.10 is revised to read as follows:

§ 16.10 Fees.

(a) *When charged.* Fees pursuant to 31 U.S.C. 9701 and 5 U.S.C. 552 shall be assessed according to the schedule contained in paragraph (c) of this section for services rendered by components in responding to and processing requests for records under this subpart. All fees so assessed shall be charged to a requester, unless the requester makes a request for a waiver or reduction of the fees and the official of a component making a decision to grant all or part of the request, or making the decision on appeal, determines that all or part of the fees should be waived. Documents shall be furnished without charge or at a reduced charge if the official determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(b) *When not charged.* Fees shall not be charged where they would amount, in the aggregate, for one request or for a

series of related requests, to less than $3.00. However, a component may, in its discretion, increase the amount of this minimum fee. Fees also shall not ordinarily be charged if the requested records do not exist or cannot be located, except that search fees in excess of $25.00 may be charged in such cases if notice pursuant to paragraph (d) of this section has been given or the requester has agreed to bear those costs.

(c) *Charges.* In responding to requests under this subpart, the following charges shall be assessed, unless a waiver or reduction of the fees has been granted pursuant to paragraph (a) of this section:

(1) *Copies.* For a paper photocopy of a record (no more than one copy of any record need be supplied) the fee shall be $0.10 per page.

(2) *Clerical searches.* For each quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and retrieving a requested record, the fee shall be $1.75.

(3) *Nonroutine, nonclerical searches.* To the extent that a search and retrieval cannot be performed by clerical personnel (for example, where the identification of records within the scope of a request requires the use of professional or managerial personnel), for each quarter hour spent by higher level personnel in exces of the first quarter hour, the fee shall be $3.50.

(4) *Examination and processing of records.* No charge shall be assessed for any time spent examining or processing records to determine whether they are exempt from mandatory disclosure and should be withheld.

(5) *Other charges.* When a response to a request requires services or materials for search or duplication other than those described in paragraphs (c) (1), (2) and (3) of this section, the direct costs of such services or materials shall be charged.

(d) *Notice of anticipated fees in excess of $25.00.* When a component determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the component shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated fee. A notice to the requester pursuant to this paragraph shall offer him the opportunity to confer with Department personnel with the objection of reformulating his request to meet his needs at a lower cost.

(e) *Form of payment.* Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(f) *Advance deposits.* (1) Where the estimated fee chargeable under this section exceeds $25.00, a component may require a requester to make an advance deposit of 25% of the estimated fee or an advance payment of $25.00, whichever is greater.

(2) Where a requester has previously failed to pay a fee charged under this part, the requester must pay the component or the Department the full amount owed and make an advance deposit of the full amount of any estimated fee before a component shall be required to process a new request or a pending request from that requester.

Dated: October 17, 1985.

Edwin Meese III,

Attorney General.

[FR Doc. 85-29990 Filed 12-20-85; 8:45 am]

BILLING CODE 4410-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-020; A-4-FRL-2942-5]

Approval and Promulgation of Implementation Plans; Tennessee; Chattanooga-Hamilton County RACT for Coke Plants

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of Tennessee for the Chattanooga-Hamilton County portion of the Tennessee SIP for Total Suspended Particulates (TSP). The revisions consist of amendments to the section for Reasonably Available Control Technology (RACT) for underfire (combustion) stacks in Coke Plants, which will allow stacks that demonstrate compliance with a newly adopted (submitted as part of this revision) RACT mass emission limit, but exceed the present SIP opacity limit, to have an alternate opacity limit established for the source. The visible emission limit for charging coke batteries was also revised.

DATE: To be considered, comments must reach us on or before January 22, 1986.

ADDRESSES: Written comments should be addressed to Kelly McCarty of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the State's submittal are available for review during normal business hours at the following locations.

Chattanooga-Hamilton County Air Pollution Control Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee 37407

Tennessee Air Pollution Control Division, Bureau of Environment, T.E.R.R.A. Building, 150 Ninth, Avenue North Nashville, Tennessee 37219-5404

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

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

SUPPLEMENTARY INFORMATION: On January 31, 1985, the State of Tennessee submitted a SIP revision for the Chattanooga-Hamilton County portion of the Tennessee SIP for TSP. Several deficiencies were noted in this submittal, but Tennessee has indicated that they will be corrected and submitted to EPA for review. EPA is today proposing to approve this SIP revision with the understanding that these problems will be corrected before final action is taken on the revision.

Background

On October 9, 1981, EPA negotiated the Chattanooga Coke Consent Decree (CCCD) with the Chattanooga-Hamilton County Air Pollution Control Bureau, in order to get Chattanooga Coke & Chemicals, Inc., into compliance with the process weight table contained in the Tennessee SIP for TSP. The CCCD contains source-specific emission limits, and the testing procedures used to determine compliance with those limits. When implemented, these emission limits would bring all sources into compliance with the process weight table. Since the time that the CCCD was originally entered with the court, Chattanooga has adopted the CCCD emission limits into their regulations in place of the process weight table. However, Chattanooga has not yet adopted all the necessary testing procedures to support the emission limits.

Proposed Changes

The proposed changes deal with two parts of the RACT regulations for Coke Plants, which is part of the Tennessee SIP for TSP: Charging, Section 4-25, Rule 26.4 (B)(1)(a), and Underfire (Combustion) Stacks, Rule 26.4(B)(6). The proposed change will increase the allowance for visible emissions from coke battery charging operations from a cumulative total of seventy-five (75) seconds for any four (4) consecutive charges, to one hundred twenty-five (125) seconds for any five (5) consecutive charges.

This change is acceptable by the EPA because the new allowance is considered to be a RACT level of control, and because it will not interfere with the continued maintenance of the NAAQS for TSP. The Part D SIP for Chattanooga was approved in 1983, and was demonstrated to assure attainment of the primary TSP standard. Chattanooga was redesignated to primary attainment in 1984, in part because TSP monitors in the area had not measured exceedances since before 1981. Chattanooga Coke is currently not meeting even the emission level proposed in this notice; therefore, this relaxation would not allow any actual increase in emissions. In fact, the source is prepared to install additional control equipment to meet the proposed limit after it is approved, so actual emissions will decrease significantly. Thus, although this change in the emission limit is estimated to allow a 0.33 ton/year increase in allowable particulate emissions, it will require an actual emissions reduction that will improve air quality beyond the current level, which meets the primary TSP standard.

The Chattanooga area is presently designated nonattainment for the secondary TSP standard and the projected date for attainment is December 31, 1990. Only one of the eleven TSP monitors in the area, which is located at the Chattanooga City Hall, has measured violations of the secondary standard in the past 2 years. This monitor is located about 5 kilometers north of the subject coke batteries. Two monitors located closer to the coke batteries (2.5 kilometers north and 2.5 kilometers northeast) did not measure violations between 1982 and 1984. Due to: (1) The small impact of this change (a 0.33 tons per year increase in allowable emissions), (2) the fact that emissions from the source are released close to the ground and therefore can be expected to have their maximum impact on the close monitors showing no violations, and (3) the large decrease in actual emissions from the source that will result even under the revised limits, EPA believes the revision will not interfere significantly with reasonable further progress toward timely attainment of the standard.

A RACT mass emission limit of 0.05 gr/dscf was adopted for underfire stacks, and also included in this submittal. The major change in this submittal, however, was the allowance of alternate opacity limits for underfire stacks incoke plants that have demonstrated compliance with the newly adopted RACT mass emission limit, but cannot meet the present SIP opacity limit. Technical justification for considering this mass emission limit to be RACT may be found in EPA's Docket for Steel Mills.

Problems

There are two types of opacity limits which are widely used: timed averages and aggregate count. The timed average is an average of all the opacity readings, taken at 15-second intervals, over a specified length of time. EPA Method 9, with a modified averaging period if necessary, is the testing procedure most often used for this type of opacity limit. The aggregate count opacity limit is a specified number of exceedances per specified time period (i.e., no more than 21 readings in excess of 20% opacity per hour are allowed). Method 9 is not strictly applicable to aggregate count opacity limits.

The deficiencies which have been noted, and which Chattanooga has agreed to correct, are as follows:

(1) The present SIP opacity limit is an aggregate limit, the Chattanooga has no adopted method in their regulations for determining compliance with this aggregate opacity limit. A test method must be adopted and should include: provisions for indicating the averaging shall not be used in determining compliance a statement that each monetary observation recorded at 15-second intervals shall be deemed to represent the opacity of emissions for the preceding 15-second interval; and a statement that the accumulated exceedances do not have to be consecutive in order to document a violation. EPA may take final action on the submittal before taking final action on the corrective action for this deficiency.

(2) In order for the alternate opacity limit to be federally enforceable, some provision for submitting the limit to EPA as a SIP revision must be included in the regulations. The limit may be adopted as a regulation and submitted, or the permits which contain the limit may be submitted.

(3) The submitted regulation contains no provisions for requiring that the mass testing of the underfire stacks be conducted during representative conditions, (i.e., testing period should include a representative number of charges made at normal charging frequencies).

Chattanooga has committed to remedy all of the above deficiencies prior to EPA's final action on this proposal.

Although the CCCD contains all the necessary testing procedures, including that for aggregate count opacity limits, eventually it will expire. Unless all of the source-specific emission limits and testing procedures contained in the CCCD are adopted by regulation before it expires, Chattanooga will be left with no way to control the emissions from coke plants in the area. Therefore, it is necessary to adopt all the emission limits and testing procedures that are in the CCCD into the regulations as expeditiously as possible.

Proposed Action

EPA has reviewed the submitted material and found it to be equivalent to present EPA RACT requirements. Therefore, with the understanding that the State will submit the required materials before final action is taken, EPA is today proposing to approve the State submittal as satisfying the requirements of an acceptable plan for implementing RACT for Coke Plants in Chattanooga, and is soliciting public comment on the regulation.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

For further information on the specifics of the analysis, see EPA's Technical Support Document, which contains a detailed review of the approval of the RACT regulations for Coke Plants in Chattanooga.

Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received within thirty days of the publication of this notice.

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

List of Subjects in 40 CFR Part 52

Air pollution control, particulate matter, incorporation by reference.

Authority: 42 U.S.C. 7401-7642.

Dated: May 28, 1985.

Jack E. Ravan,

Regional Administrator.

[FR Doc. 85-30247 Filed 12-20-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 798 and 799

[OPTS-42074; FRL-2895-4]

Cumene; Proposed Test Rule

Correction

In FR Doc. 85-26262 beginning on page 46104 in the issue of Wednesday, November 6, 1985, make the following corrections:

1. On page 46107, in the second column, in the first line, "LD_{50}" should read "LC_{50}".

2. Also on page 46107, in the second column, in the ninth line, "LD_{50}" should read "LD_{50}".

BILLING CODE 1505-01-M

40 CFR Parts 798 and 799

[OPTS-42073; TSH-FRL 2906-9]

2-Mercaptobenzothiazole; Proposed Test Rule

Correction

In FR Doc. 85-26266 beginning on page 46121 in the issue of Wednesday, November 6, 1985, make the following corrections:

1. On page 46124, in the second column, in the first complete paragraph, in the fifth line, "20 mg/kg" should read "200 mg/kg".

2. On page 46130, in the second column, the signature now reading "J.S. Moore" should read "J.A. Moore".

3. Also on page 46130, in the third column, in § 798.7470(c)(1)(iii), in the third line, "(NIH)-7-23," should read "(NIH)-78-23,".

4. On page 46131, in the first column, in § 798.7470(c)(2)(ii)(C), in the ninth line, "5 cm" should read "5cm^2".

5. Also on page 46131, in the third column, in § 798.7470(d)(3)(iv), in the third line, "fermal" should read "dermal".

6. On page 46132, in the first column, in § 799.2475(b), in the sixth line, remove "December 19, 1985" and insert in its place "(44 days after the publication date of the final rule in the **Federal Register**)".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 252

[R-102]

Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in World-Wide Services

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Maritime Administration (MARAD) proposes to amend the regulations governing the calculation and payment of operating-differential subsidy (ODS) for bulk cargo vessels engaged in worldwide services, to provide for the payment of ODS as a fixed and final daily amount encompassing all items of expense authorized for ODS participation by the ODS contracts currently in force.

DATE: Comments must be received on or before February 21, 1986.

ADDRESS: Send original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional ten (10) copies of the coments. All comments will be made available for inspection during normal business hours at this address. Commenters wishing MARAD to acknowledge receipt should enclose a self-addressed and stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Costs, Maritime Administration, Washington, DC., 20590, Tel. (202) 382-6036.

SUPPLEMENTARY INFORMATION: Sections 603 and 606 of the Merchant Marine Act, 1936, (Act) as amended (46 U.S.C. 1173, 1176), contain the statutory requirements for the determination of ODS rates and the payment of ODS. The Act is quite specific in prescribing the methods for determining wage rates, but provides no guidance on the methods for determining rates for other subsidizable expenses, i.e., maintenance and repairs (M&R), hull and machinery insurance premiums (H&M) and protection and indemnity insurance premiums and deductibles (P&I). ODS rates for wages are determined and paid for fiscal periods, while ODS rates for the other expenses are determined and paid for calendar periods. In administering 46 U.S.C. 1173 and 1176, MARAD bases ODS payments on estimated expenses accured by the operators. The Act does not require the operator to pay expenses before receiving ODS payments from MARAD.

The existing regulations in 46 CFR Part 252 implement the statutory authority for determining and paying ODS for bulk cargo vessels in worldwide service. These regulations contain a detailed and comprehensive body of procedures governing the determination of ODS rates and payment of ODS under the current system. Payment of ODS is based on the U.S.-foreign cost differential which shall be the excess of an operator's cost over the principal foreign-flag competitor's cost.

The current system includes two methods for payment of ODS, i.e., a daily rate for wages and a reimbursement method, based on a percentage differential applied to eligible expenses, for other subsidizable items. It is a system which requires that MARAD audit the actual expenses of the operators. Further, under existing procedures, the finalization of U.S. and foreign cost differentials and the concomitant final payment of ODS cannot be accomplished until two to two and one-half years after the close of the subsidized year.

In 1981, the Comptroller General of the United States completed an audit of the system for ODS as previously described. The GAO Audit report of November 30, 1981 (CED-82-2), urged MARAD to expedite ODS payments and concluded, in part:

> "The U.S. Government owes subsidized operators millions of dollars. Subsidy payments are delayed due to an extensive and time-consuming process used to compute final ... subsidy rates. This process, which currently delays final payments by an average of 3 years, precludes these operators from timely receipt of monies due them and hurts their cash management capability."

The GAO report added that MARAD should take steps to provide for payment of accrued ODS owed to operators for prior years and to provide for more timely payment of future subsidy. The Office of the Secretary, Department of Transportation, concurred with the GAO's conclusions and recommendations.

In response to the GAO report and to improve current procedures for ODS rate determinations and timely payment, MARAD has developed a proposed system which would pay ODS as a fixed and final daily amount that includes all items of subsidizable expense. The new system would permit the operators to establish conclusively the amounts of

ODS receivable at the time they prepare financial statements and tax filings, and when making decisions on dividends.

The receipt of ODS at the time it is earned would greatly improve cash flow. Overall, the proposed system would place the ODS receipts of the operators and the obligations of the government on a current basis. The following discussion outlines how the proposed system would work and the changes necessitated in the current system as a result.

The Proposed System

General

Under the proposed amendments to the regulations in 46 CFR Part 252 commencing retroactively July 1, 1985, MARAD would establish a daily ODS rate every six months, inclusive of all subsidizable expenses. U.S. -foreign cost differentials would be calculated each year for the fiscal period July 1 through June 30. The year would be divided into two periods: July 1 through December 31 and January 1 through June 30. MARAD would make adjustments for wage changes, effective June 16 each year, in the ODS rates applicable to the period commencing July 1, and would make adjustments for changes in other expenses in the ODS rates applicable to the period commencing January 1.

46 U.S.C. 1173 prescribes a formula for determining daily ODS for wages applicable to the fiscal period July 1 through June 30. Since the formula requires the use of data not available until March each year, it will be necessary to wait until such data are available to establish the final wage portion of the daily ODS rate. In order to accomplish the objective of establishing final ODS by the end of the calendar year, it will be necessary for MARAD to approve final daily ODS payments for the first six months of the fiscal period. Since errors in the wage rate are expected to be small, adjustments can be made for such errors during the second half of the fiscal period, and paid to operators either as a lump sum or as an adjustment to the ODS daily amounts. As a result, both parties are protected from any error in the ODS rate for the first half of the year. This procedure would assure prompt finalization of ODS accounts. Because of the adjustment which would be made in the second half of the fiscal period, there would not be any retroactive adjustments of the daily ODS rate for the first six months. Further, MARAD does not anticipate that it will be necessary to make retroactive adjustments for more than four months in the second half of the period. Under the current system, MARAD has demonstrated high accuracy in estimating tentative ODS rates each year, averaging within five percent of the final rates. By changing the current system as discussed below, MARAD's accuracy should be improved significantly. We estimate that the margin of error would be less than two percent, so the adjustment during the second six-month period would be small.

ODS Rate Determinations

ODS rate determinations under the proposed system would conform to the existing method of establishing rate differentials, as set forth in the existing regulations, 46 CFR Part 252, except for a reduction in the amount of data required for submission and the use of regression economic techniques to determine rates. The specific changes in procedure are discussed below.

I. Foreign-Flag Competition

Currently, MARAD bases its determination of foreign-flag competition for ODS rate-making purposes as of January 1 of the subsidized year. Under the proposed system, competition data available as of January 1 of the preceding year would be used. The use of this older competition data would still provide MARAD with reasonably accurate competition data and would permit accelerated ODS rate calculations, since this data would be available at a much earlier time.

II. Foreign Exchange Rates

Under the current system, the exchange rates prevailing at the end of each month are averaged for the entire subsidized year and are used for rate calculation purposes. The proposed system would use the average of the end month exchange rates for the first seven months of the fiscal period commencing July 1, unless there is a substantial and consistent change in exchange rates in one direction during the period. In this case, the end of period (January 31) exchange rates would be used. The reduction from twelve months to seven months of exchange rates used in ODS rate determinations would still provide a sound data sample and would permit earlier ODS rate calculations.

Wage

In current rate calculations, the subsidized operator's variable cost experience for the entire calendar year preceding January 1 of the subsidized fiscal year is used. The proposed system would use only the first nine months of the preceding year. This change would permit earlier calculation of wage rates and at the same time, require a smaller but fully acceptable sample of data.

At the present time, the actual wage costs for crew members who remain aboard subsidized vessels during idle status periods are subsidized as unpredictably timed costs (costs that are not regularly incurred). As a result, these costs require audit. Under the new procedures, a man-day reduction amount calculated separately for officers and unlicensed crew members, shall be used to reduce the daily wage ODS rate to conform to the complement remaining on the vessel. The man-day reduction amounts shall be determined by dividing the daily wage ODS for officers and unlicensed crew members by the number of subsidizable crew members in each category. For each day of a reduced crew period, the man-day amount shall be multiplied by the number of crew members missing for that day, and the resulting product shall be deducted from the daily ODS rate. The difference shall be the ODS payable for such day.

Operators now bill unpredictably timed expenses for ODS purposes by using differential rates expressed as a percentage, which are derived from the ODS rate calculations for wages under the index system, contained in 46 U.S.C. 1173(b). Under the proposed system, unpredictably timed expenses would be included as a daily increment in the total daily ODS rate. This would convert subsidy payment for unpredictably timed expenses to a daily rate or lump sum payment, and would reduce audits required for such expenses.

Non-Wage Items—General

ODS for M&R, H&M and P&I premiums is paid on the basis of a differential expressed as a percentage which is applied to actual expenses. For P&I deductibles, ODS is the dollar difference between the deductible absorptions (claim costs absorbed by the company) of the U.S. operator and the deductible absorptions of the foreign competitor. Due to the unavailability of data, there is a two-year lag in the calculation of final rates which necessitates adjustment of subsidy when final rates are calculated.

Under the proposed system, ODS would be an agreed upon daily amount with no subsequent adjustment. The necessary procedural changes are discussed below for each item.

M&R

Under the proposed system, subsidizable daily costs for M&R would be determined from the historical M&R

cost experience of the operator, indexed to January 1 of the subsidized calendar year. The latest U.S./foreign percentage differential available, determined in accordance with existing procedures, would be applied to the subsidizable costs to derive a daily ODS amount for M&R. Use of a regressed U.S./foreign percentage differential would provide a reasonably accurate differential and would permit significantly earlier calculation of the ODS rate. Historical M&R expenses would be audited to assure accuracy of data.

H&M & P&I Premiums

Under the proposed system, MARAD would determine subsidizable daily costs for the subsidized calendar year from actual premium costs submitted by the operators for that year. The latest U.S./foreign percentage differential available, calculated in accordance with existing procedures, would be applied to such costs to determine a daily ODS amount for H&M and P&I premiums. Use of historical U.S./foreign percentage differentials would permit significantly earlier calculations of daily ODS amounts.

P&I Deductibles

Under the proposed system, MARAD would determine ODS for P&I deductibles on the basis of the historical relationship of P&I deductible ODS to wage ODS for a three-year period. Further, since the P&I deductible absorptions of the operators for crew claims are primarily wage related, the P&I deductible ODS woud now be determined by applying the wage percentage differential, established in the ODS calculation, for wages for the three-year period to eligible deductible expenses for the same three-year period. The ODS for P&I deductibles would be established as a percentage of wage ODS for the three-year period. The percentage would be applied to the daily wage ODS calculated for the subsidized year to derive a daily ODS rate for P&I deductibles. These changes would permit much earlier calculation of subsidy for P&I deductibles and would eliminate the need for schedules of foreign deductibles. MARAD would audit historical P&I deductible expenses to assure accuracy of data.

E.O. 12291, Statutory and DOT Requirements

The Acting Maritime Administrator has determined that this proposed rulemaking is not major, as defined in E.O. 12291, and is significant under DOT regulatory policies and procedures due to considerable public interest (49 FR 11034; February 26, 1979). This rulemaking would place the ODS receipts of the operators and the obligations of the government on a current basis, with no appreciable overall change in such receipts and obligations. Since it would only facilitate the payment of final ODS amounts in a more timely manner, the economic impact of this proposal has been found to be minimal and further evaluation is unnecessary.

However, MARAD specifically requests comments on the industry's views with respesct to the economic impact of this proposal and will prepare a regulatory evaluation, if necessary. If MARAD does believe it necessary to prepare a Regulatory Evaluation, it expects no appreciable change in receipts or obligations and, thus, no appreciable cost asscoiated with the rule. The major benefit is one of improving the timeliness of ODS payments.

Since this proposal would affect principally ship operators with substantial annual revenues, the Acting Maritime Administrator certifies that, if finalized, this rulemaking would not exert a significant economic impact on a substantial number of small entities under The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). It does not include new information collection requirements, but maintains existing information requirements which have been approved by OMB under control numbers 2133-0004 and 2133-0024, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 46 CFR Part 252

Bulk comodities, Bulk cargo vessels, ODS program, Water transportation.

PART 252—[AMENDED]

Accordingly, it is proposed to amend 46 CFR Part 252 as follows:

1. The authority citation for Part 252 is revised to read as follows:

Authority: Secs. 204(b), 603-606, 608-611, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1173-1176), 49 CFR 1.66.

2. Subpart A is amended by revising § 252.1 to read as follows:

§ 252.1 Purpose.

This part prescribes regulations implementing provisions in Title VI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1171-1176 and 1178-1181) governing operating-differential subsidy for bulk cargo vessels engaged in carrying bulk cargo in essential services in the foreign commerce of the United States.

§ 252.3 [Amended]

3. In § 252.3 of Subpart A, paragraph (f) is amended by removing the word "Assistant" and inserting in its place, the word "Associate".

4. In § 252.3 of Subpart A, paragraph (j) is removed and paragraphs (k) through (u) are redesignated (j) through (t).

5. A new § 252.4 is added to Subpart A to read as follows:

§ 252.4 Waivers.

In special circumstances and for good cause shown, the procedures prescribed in this Part may be waived, in writing, by mutual agreement of the parties, in keeping with the circumstances then present, as long as the procedures adopted are consistent with the Act and with the intent of these regulations.

§ 252.20 Subsidized and nonsubsidized voyages.

6. In § 252.20(b), paragraph (3) is amended by removing the reference to "252.24(a)" and inserting, in its place, "§ 252.23(a)".

§ 252.22 Substantiality and extent of foreign-flag competition.

7. In § 252.22, paragraph (a) is revised to read as follows:

(a) *Type and tonnage groupings.* Foreign-flag competition shall be determined as of January 1 of the year preceding January 1 of the subsidized year, by surveying a data file known as "Merchant Fleets of the World" that is maintained by MARAD. All foreign-flag bulk cargo vessels included in this data file are divided by type and category, and further subdivided by class. Classes include, but are not limited to general tanker, chemical tanker, OBO, general dry bulk carrier and wood chip carrier. Each vessel class is further divided into deadweight tonnage range as follows:

(1) Range A—vessels of less than 25,000 DWT;

(2) Range B—vessels of 25,000 but less than 50,000 DWT;

(3) Range C—vessels of 50,000 but less than 100,000 DWT; and

(4) Range D—vessels of 100,000 or more DWT.

* * * * *

§ 252.24 Financial and other reporting requirements [redesignated and amended].

8. Section 252.24 is redesignated § 252.23 and is amended by removing the words "Director, Office of Financial Analysis" and inserting, in their place, the words "Director, Office of Financial Approvals".

9. Subpart D is revised to read as follows:

Subpart D—Calculation of Subsidy Rates

Sec.
252.30 Amount of subsidy payable.
252.31 Wages of officers and crew.
252.32 Maintenance (upkeep) and repairs
252.33 Hull and machinery insurance.
252.34 Protection and indemnity insurance.

Subpart D—Calculation of Subsidy Rates

§ 252.30 Amount of Subsidy Payable.

(a) *Daily Rates.* Daily ODS rates shall be used to quantify the amount of ODS payable. The daily ODS rate represents the cost differential between the subsidized vessel and its foreign-flag competition. A daily rate shall be calculated for each subsidized item of expense identified in the ODSA, and the total of all items is the daily amount of ODS payable for approved vessel operating days, excluding reduced crew periods.

(b) *Reduced Crew Periods.* For reduced crew periods, as defined in § 252.3 of this part, a man-day reduction amount, calculated separately for officers and unlicensed crew members, shall be used to reduce the daily wage ODS rate to conform to the complement remaining on the vessel. The man-day reduction amounts shall be determined by dividing the daily wage ODS for officers and unlicensed crew members by the number of subsidizable crew members in each category. For each day of a reduced crew period, the man-day amount shall be multiplied by the number of crew members missing for that day, and the resulting product shall be deducted from the daily ODS rate. The difference shall be the ODS payable for such day.

(c) *Review of Rated.* Daily subsidy rates shall be reviewed every six months. For the item "wages of officers and crews," the daily rate shall be calculated for fiscal periods July 1 through June 30, in accordance with provisions of the Act. During the period January through June, adjustments—paid as a lump sum or as a daily amount—shall be made to wage ODS so that the correct amount of ODS for the full fiscal period is received by the operator. For other subsidizable items of expense, the daily rate shall be calculated for calendar years.

(d) *Negative Rates.* When an ODS rate in any category is less than zero, indicating that the subsidized operator is at an advantage rather than a disadvantage in such category, the negative rate shall be deducted from positive rates in determining the daily ODS amount payable.

(e) *Operator Comments.* The operator shall have the opportunity to comment on each subsidy rate as calculated MARAD. The operator and contracting officer shall make every effort to resolve disagreements that arise. In the event of a disagreement that cannot be resolved, comments received from the operator and the contracting officer's recommendation shall be presented to the Board for its consideration in determining subsidy rates.

§ 252.31 Wages of Officers and Crews.

(a) *Definitions.* When used in this part:

(1) *Base period.* The first base period under the wage index system, as provided in section 603 of the Act, is the period beginning July 1, 1970 and ending June 30, 1971. Thereafter, base period means any annual period beginning July 1 and ending June 30, with respect to which the Board establishes a base period cost. At intervals of not less than two years, nor more than four years, the Maritime Subsidy Board shall establish a new base period. Base periods shall be announced by the Board prior to the December 31 date that would be included in the new base period.

(2) *Base period cost.*—(i) *Inital base period.* For the initial base period of subsidized service, the terms "base period cost" means the collective bargaining cost as of January 1 of that base period.

(ii) *Subsequent base periods.* For base periods subseqent to the intitial base period, the term "base period cost" mean the average of the collective bargaining cost as of January 1 of such fiscal year, and the base period cost of the previous base period, indexed to January 1 of the new base period by an index compiled by the Bureau of Labor Statistics. This index shall consist of the average annual change in wages and benefits placed into effect for employees covered by collective bargaining agreements, with equal weight to be given to changes affecting employees in the transportation industry (excluding the off-shore maritime industry) and to changes affecting employees in private non-agricultural industries other than transportation. However, such base period cost shall not be less then a minimum, nor more than a maximum amount, determined as a percentage of the collective bargaining cost computed for January 1 of such base period in accordance with the following schedule:

[in percent]

	Minimum	Maximum
Base period following a:		
2 year cycle	97½	102½
3 year cycle	96¼	103¾
4 year cycle	95	105

(3) *Collective bargaining cost (CBC)* means the annual cost, calculated on the basis of the per diem rate of expense, as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required by the operator through a collective bargaining or other agreement, covering the employment of the approved manning complement of the subsidized vessel, including payments required by law of assure old-age pensions, unemployment benefits or similar benefits, and taxes or other governmental assessments on crew payrolls.

(4) *Approved manning complement* means the complement approved by the Board for subsidy.

(5) *U.S. wage cost (WC)* means the annual cost, calculated on the basis of the per diem rate of expense as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required of the operator through a collective bargaining or other agreement, covering the employment of the normal manning complement of the subsidized vessel, including payments required by law to assure old-age pensions, unemployment benefits or similar benefits, and taxes or other governmental assessments on crew payrolls.

(6) *Normal manning comnplement* means the crew complement established by a collective bargaining or other agreement with the officers and unlicensed crew of the vessel. In cases where the complement may vary in number, the lowest number shall be the normal manning complement. When ratings of different salaries are in the same job during the year, the base wages of the rating carried most of the time shall be used.

(7) *Subsidizable wate cost* means, (i) with respect to a base period, the base period cost, and (ii) in any fiscal period other than a base period, the most recent base period cost, increased or decreased by the change from January 1 of the base period to January 1 of the non-base period. The subsidizable wage cost shall not be less than 90 percent nor greater than 110 percent of the collective bargaining cost as of January 1 of such period.

(8) *Unpredictably timed costs* are collective bargaining costs that are not regularly incurred. Examples of unpredictably timed costs are such costs as severance pay, shortfalls, special assessments, and war zone bonuses.

(b) *Method of calculating collective baragaining cost (CBC).* CBC shall be determined by pricing put, for the approved crew complement, the per diem total of fixed costs specified in the

collective bargaining agreement and adding a per diem total of variable costs obtained from the experience of the subsidized vessel during the first nine months of the preceding calendar year.

(1) *Fixed Costs.* The per diem total of fixed costs shall include all costs that are stated in specific or determinable amounts per time period and, based on operating experience, do not vary. In cases where a monthly amount is specified in the agreement, the per diem amount shall be determined by dividing the monthly amount by 30. When a daily amount is specified it shall be used. Examples of fixed costs are:

(i) Base wages;

(ii) Non-watch pay;

(iii) Vacation pay (including contributions to vacation funds);

(iv) Tool allowance;

(v) Clothing and uniform allowances; and

(vi) Per diem contributions for pension, training, welfare, unemployment, including unallocated contributions placed in escrow.

(2) *Variable costs.* Variable costs are regularly incurred employment costs which vary with ship operating experience. The per diem aggregate of variable costs as of January 1 shall be determined by applying a ratio to the per diem aggregate of base wage costs as of January 1, the numerator of which shall be the total of variable costs for the first nine months of the preceding calendar year and the denominator of which shall be the total of base wage costs for the first nine months of the preceding calendar year. Variable costs include but are not limited to:

(i) Payroll taxes (including social security taxes);

(ii) Overtime and penalty pay;

(iii) Variable pension, training, welfare, unemployment, and vacation costs:

(iv) Pay in lieu of time off;

(v) Transportation and travel allowances;

(vi) Payments to relief officers and crews;

(vii) Wages and other expenses of USMMA cadets and extra messmen;

(viii) Board and lodging allowances;

(ix) Overlap in wages (a maximum of three days for officers and two days for unlicensed crew); and

(x) Penalty cargo bonuses.

(c) *Method of calculating U.S. wage cost (WC).* Two different calculations of WC are necessary—a per diem amount for every ship type on the service and a per month amount for the predominant ship type (most voyages) on the service. The purpose of the per month calculation is to make a comparison with the monthly foreign wage costs. The relationship of WC to foreign costs for the predominant ship is applied to the per diem WC for other ship types in the service to estimate comparable foreign costs for them.

(1) *Calculation of per diem WC.* The per diem WC shall be calculated by the same method that applies to CBC, except that the normal manning complement shall be used.

(2) *Calculation of per month WC.* The costs and manning level used in this calculation shall be the same as those used for the per diem WC.

(d) *Data submission requirements.* For purposes of calculating CBC and WC the operator shall each year submit Form MA-790 and, as appropriate, current copies of all collective bargaining or other agreements, memoranda of understanding, and arbitration awards, which specify the fixed costs as of January 1. Schedule A of Form MA-790, which covers wage costs on voyages terminated during the first nine months of the previous calendar year, shall be submitted by December 31. Schedule B of Form MA-790—normal manning complement, rates of pay, and contributions in effect on January 1 of the current year—shall be submitted by January 31. Form MA-790, Schedules A and B, shall be submitted to the Director, Office of Ship Operating Costs, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590.

(e) *Example Calculation.* The following is a sample calculation of CBC and WC:

ABC BULK COMPANY

[Jan. 1, 1985, collective bargaining costs (CBC) and U.S. wage cost (WC)

	Per diem	
	WC	CBC
Crew complement	[1] 35	[2] 31
Fixed costs as of Jan. 1, 1985:		
Base wages and non-watch pay	$1,789.79	$1,571.60
Allowances (radio, telephone, clothing, etc.)	5.75	5.75
Vacation pay	1,189.60	1,109.65
Pension, welfare, training, umemployment fund contributions	1,280.80	1,171.75
Total fixed	$4,265.94	3,858.75
Variable costs as of Jan. 1, 1985:		
Variable cost factor (based on 1984 cost experience) (percent)	104.69	104.69
Total variable costs (Jan. 1, 1985 base wages x variable cost factor)	$1,873.73	$1,645.31
Total wage costs as of Jan. 1, 1985	$6,139.67	$5,504.06

[1] Normal manning complement.
[2] Approved manning complement.

(f) *Method of calculating foreign wage cost.* The foreign wage cost (FC) of the principal foreign-flag competitor and the comparable WC of the subsidized vessel are matched as of January 1 of the subsidized fiscal year for purposes of determining the wage cost of the principal foreign flags. The following procedures are used:

(1) *Manning.* The foreign manning complement in number and nationality for the principal foreign-flag competitor shall be constructed for the subsidized vessel type using the manning scales and practices of the competitor as developed through an examination of alien crew manifests, payrolls, and other reliable information. The commonly used crew complement of the competitor shall be adjusted to fit the predominant vessel type in recognition of differences in physical characteristics that would affect manning scales. Where the manning complement cannot be estimated with reasonable substantiation, it will be deemed to be identicial with that of the subsidized vessel.

(2) *Method.* The method of calculating FC shall be the same as that used for WC, provided that it is possible to obtain foreign cost data on the same basis as wage cost data. Preference shall be given to pricing out for fixed costs and to cost experience for variable costs. Where applicable, foreign currencies shall be converted into U.S. currency equivalents by using the average of end-month exchange rates for July through January, unless they consistently change in one direction by 25% or more during the period, in which case the January exchange rate shall be used. The exchange rates shall be obtained from the publication, "International Financial Statistics," published monthly by the International Monetary Fund. If exchange rates for particular foreign currencies are not available in this publication, they shall be obtained from the United States Department of the Treasury.

(3) *Foreign wage cost.* The per diem composite foreign wage cost is determinded by multiplying the per diem WC for the U.S. ship type by the ratio of FC to WC for the foreign-flag competitor. The following is a sample calculation of the foreign cost percentage.

ABC BULK COMPANY, INC.

[Jan. 1, 1985—Foreign wage cost (FC)]

	United States	Liberia
Crew complement	26	26
Base wages	[1] 53,687	[1] 24,799
Allowances	1,074	4,584
Vacation pay (leave)	[1] 35,681	[1] 13,009
Pension and welfare	[2] 38,407	[2] 2,065
Social Security	[3] 6,608	[3] 7,227
Overtime and other variable costs (not elsewhere included)	[3] 48,732	[3] 10,944
Repatriation		
Total wage costs	184,189	62,608
Percentage FC to WC		33.99

[1] Based on Jan. 1 priced out cost.
[2] Excludes training costs—foreign data not available.
[3] Based on cost experience.

(g) *Determination of daily wage rate.* The foreign wage cost is deducted from subsidizable wage costs to determine the daily wage subsidy rate. Table 1 is an example calculation of a daily wage subsidy rate using the procedures described in this section.

(h) *Unpredictably timed costs (UTC)* are subsidized by calculating costs incurred during the previous six months and converting them into a daily rate. A lump sum amunt would be paid for special lump sum assessments or for per man-day increases to benefits plans which become effective during the six months following the establishment of the daily rate. In either case, the percent age subsidy rate—which is the differential percent-age between the subsidizable wage cost and the foreign wage cost—is used to establish the amount of subsidy payable for UTC incurred.

(1) UTC expenses such as severance pay and area bonuses shall be eligible for subsidy payment without obtaining prior approval and subsidy shall be paid as a lump sum amount.

(2) Expenses such as shortfalls in benefit fund contributions, special assessments for benefits funds, and retroactive wage increases may be treated as UTC if the cost increase was not negotiate. Such costs must be approved as UTC by the Director, Office of Ship Operating Costs. To the extent such expenses qualify for UTC, the Director shall determine the appropriate method of pay subsidy—added to the per diem wage subsidy rate and/or as a lump sum amount treated separately.

TABLE 1.—ABC BULK COMPANY, INC.

[Calculation of wage subsidy rates[1]]

Base period (1)	Interim period (2)	U.S. wage cost (3)	Collective bargaining cost (4)	Application of BLS index to base period cost (5)	Averaging in base periods (4)+(5)÷2 (6)	Appropriate limits (7)
1981		4,162.60	3,850.29			
	1982	4,578.24	4,230.15	3,850.29x1.0845=4,175.64		.9x(4)=3,807.14 1.1x(4)=4,653.17
	1983	4,578.24	4,230.15	3,850.29x1.1816=4,549.50		.9x(4)=4,104.34 1.1x(4)=5,016.42
	1984	5,539.40	4,966.90	3,850.29x1.2992=5,002.30		.9x(4)=4,470.21 1.1x(4)=5,463.59
1985		6,139.57	5,504.06	3,850.29x1.4044=5,407.35		.95x(4)=5,228.86 1.05x(4)=5,779.26

[1] This computation is based on a new vessel entering Subsidized Service in May 1981.

Base period cost	Subsidizable wage cost	Foreign cost percentage	Foreign wage cost	Wage subsidy daily rate	Wage subsidy percentage rate (12)+(9)
3,850.9	3,850.29	32.99	1,373.24	2,477.05	64.33
	4,175.64	32.98	1,509.90	2,665.74	63.84
	4,549.50	36.15	1,812.49	2,737.01	60.16
	5,002.30	34.77	1,926.05	3,076.25	61.50
5,445.71	5,455.71	33.99	2,086.84	3,368.87	61.75

§ 252.32 Maintenance (upkeep) and repairs.

(a) *Basis for subsidy.* The fair and reasonable maintenance and repair costs not compensated by insurance, if eligible for subsidy under the ODSA and the regulations in 46 CFR Part 272, shall be used for determining the daily amount of subsidy. The U.S.-foreign cost differential shall be determined from price estimates of representative items of maintenance and repair work and by using the repair practices of the foreign-flag competition.

(b) *U.S.-foreign cost differential.* MARAD shall use the following procedures for calculating the U.S.-foreign cost differential for M&R.

(1) *Cost survey.* MARAD shall select a sample of jobs which are representative of the various types of maintenance and repair work—drydocking and underwater repairs, machinery repairs, hull and deck repairs, electrical repairs, exterior painting and interior painting, etc. The jobs shall be described fully and combined into a standard set of specifications based on a particular type of vessel. The same specifications shall be used for obtaining all price estimates. MARAD shall request reliable and mutually acceptable ship repair cost experts to ascertain the U.S. and foreign M&R prices. MARAD shall survey foreign countries during a three-year cycle. The survey year prices shall be adjusted in the years between surveys by price adjustments estimated by the ship repair cost experts.

(2) *Country cost differential.* A country cost differential shall be determined for each country where work was performed on the competitive vessels. The country cost differential shall be 100 percent minus the ratio of the estimated foreign price divided by the U.S. price estimate. The U.S. price estimate shall be representative of the coastal area included in the subsidized service (for example East Coast) or, if more than one coast is served, the coast where the company is home based. For example.

DETERMINATION OF COUNTRY COST DIFFERENTIAL, YEAR 1985

[U.S. Atlantic—Gulf Coast; Foreign Country—Singapore]

Repair category	Foreign price	U.S. price
Drydocking and underwater repairs	$89,840	$300,245
Tank cleaning and coating	70,160	77,080
Boiler repairs	10,545	47,550
Machinery repairs	22,505	108,165
Hull and deck repairs	33,500	99,370
Piping system	71,905	215,830
Electrical repairs	12,340	36,660
Exterior painting	5,035	30,640
Interior painting	390	1,470
Estimate total	316,220	917,010

Note.—Foreign/U.S. price ratio, 34%; Country cost differential (100–34), 66%.

(3) *Distribution of repairs.* The distribution of repairs refers to the countries where M&R work was performed on the vessels of the foreign-flag competitor. When data on the repairing practices are obtained directly from the foreign competitor, they shall be used. If information about such practices is unavailable—or only partially available-data, published by the classification societies and Lloyd's Voyage Record, reporting the dates and localities of drydocking and completion of the various types of vessel surveys,

shall be used for determining the geographical distribution of the unknown repairing practices. For diesel vessels, there are three basic types of survey—drydocking, machinery, and hull. For steam vessels, there is a fourth survey—boiler—in addition to the other three surveys. Since these surveys may be performed in different countries, they are weighted in order to determine the distribution of repairs. The weighting factors shall be: Drydocking—20 percent, machinery—40 percent (10 percent allocated to boiler survey on steam vessels), and hull—40 percent.

(4) *U.S.-foreign cost differential.* The U.S.-foreign cost differential for the foreign-flag competitor shall be determined by multiplying the percentage distribution of repairs for each country where repair work was performed by the country cost differential for that country, and by adding the resulting weighted cost differentials for all countries. For example:

ABC BULK COMPANY, INC.

[U.S.-Foreign cost differential, 1985]

Principal competitor	Distribution of repairs		Country cost differential (percent)	Weighted cost differentials (1)×(2) (percent)
	Country (1)	Percent (1)	(2)	(3)
Liberia	U.K.	15	19	2.9
	Japan	20	36	7.2
	Singapore	65	57	37.1
U.S.-Foreign cost differential.				47.0

(c) *Calculation.* The U.S.-foreign cost differential is applied to the subsidizable maintenance and repair costs to establish the daily M&R subsidy amount.

(1) *Subsidizable costs.* The period used for establishing the subsidizable maintenance and repair costs will generally be a 24-to-36 month period ending in the year prior to the subsidizable year. The length of the period will be the number of months between the last two routine drydockings, and the subsidizable costs will include only the most recent routine drydocking. The costs of each year will be indexed to the subsidized year by the BLS Index of Shipbuilding and Repairing Employment and Average Hourly Earnings. The eligible costs will be divided by the calendar days of the period to establish daily average maintenance and repair costs. The U.S.-foreign differential percentage applicable to the most recent year will be applied to the daily average cost to determine the daily M&R subsidy amount.

(2) *Data submission requirement.* The operator is required to submit an annual certified statement of eligible M&R expenses for each month. The report shall be submitted to the Director, Office of Ship Operating Costs. The report should be submitted not later than sixty (60) days after the close of each calendar year.

§ 252.33 Hull and Machinery Insurance.

(a) *Subsidy items.* The fair and reasonable net premium costs (including stamp taxes) of hull and machinery, increased value, excess general average, salvage, and collision liability insurance against risks and liabilities covered under the terms and conditions of policies approved as to form and coverage by MARAD, less lay-up returns, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential. Port risk premiums are eligible for subsidy but not for determining the U.S.-foreign cost differential.

(b) *U.S.-foreign cost differential.* A U.S.-foreign cost differential shall be calculated for the service. Due to the difficulty of comparing forms and costs of hull and machinery insurance coverages, the following assumptions shall be used for estimating the composite premium cost of the foreign-flag competitor.

(1) *Coverage.* The foreign competitive vessels have the same types and amounts of insurance coverages and deductible averages as the subsidized vessels.

(2) *Premium rate.* The foreign competitive vessels are insured in the British market and the rate for such vessels is the same as the British market rate for the subsidized vessels. If the operator carries all of its insurance in the American market, the American market rate shall be assumed to be the same as the British market rate.

(3) *Repairs.* Insurable repairs of the foreign competitive vessels are performed in the same countries and in the same distribution as non-insurable repairs, and the cost differential for such repairs shall be the same as the maintenance and repair percentage differential.

(4) *Particular average.* The percentage of particular avarage repair claims for the foreign competitive vessels is the same as the percentage of particular average repair claims for the subsidized vessels. The particular average portion of the premium cost for the subsidized vessels shall be determined as follows:

(i) *Percentage.* the particular average portion of the premium cost shall be determined by applying a percentage to the hull and machinery premium cost after deducting the estimated total loss premium. The percentage is based on insured claims experience. The percentage shall be determined by dividing the total of underwriter's absorptions for particular average domestic repair claims paid and estimated by the total of underwriter's absorptions for all claims paid and estimated (excluding total loss and constructive total loss claims) under the hull and machinery portion of the insurance coverage, except that such percentage shall not exceed eighty-five (85) percent. The percentage is based on the claims experience of the subsidized vessels for the five (5) calendar year period preceding the subsidized year. For subsidized operators that do not have five years of claims experience, the average percentage of particular average domestic repair claims for all similar subsidized vessels shall be used unless the operator can submit data to substantiate its own claims cost experience on similar vessels.

(ii) *Data submission requirement.* The operator shall submit the five year claims experience, invoices showing net premium costs and coverages for the subsidized year, and lay-up returns for the previous year to the Director, Office of Ship Operating Costs, not later than sixty (60) days after the close of each calendar year.

(c) *Calculation.* In calculating the subsidized premium cost, the following steps shall be taken:

(1) The particular average portion of the premium cost shall be adjusted in order to give effect to the repair cost differential for the foreign competitive vessels by applying the complement of the maintenance and repairs precentage cost differential (100 percent minus the differential) to the particular average

portion of the premium cost. The adjusted particular average foreign premium cost shall be added to the net premium cost excluding the particular average portion to determine the composite foreign premium cost.

(2) The foreign premium cost shall be subtracted from the operator's total premium cost to determine the difference in dollars. The percentage differential is determined by dividing the dollar difference by the operator's total premium cost. An example calculation is included in Table 2.

(3) The net premium cost of the subsidized vessels shall be divided by the number of days in the calendar year and the resultant daily insurance cost shall be multiplied by the U.S.-foreign cost differential percentage applicable to the most recent year to determine the daily amount of subsidy for hull and machinery insurance.

Table 2.—ABC Bulk Co., Inc., U.S./Foreign Cost Differential for Hull and Machinery Insurance

[1985]

1. Foreign premium cost:		
A. Hull and machinery, total coverage	$92,741,996	
Average premium rate in British market (percent)	1.00966	
Premium cost in British market		$936,379
(Estimated total loss premium $92,741,966@ .46500 pct. $431,250)		
B. Increased value, total coverage	$1,083,325	
Average premium rate in British market (percent)	.32550	
Premium cost in British market		3,526
C. Excess liability, total coverage		None
D. Total premium cost if insured 100 pct. in British Market		939,905
E. Deduct particular average portion: $936,379 less $431,250=$505,129 × 62 pct.[2]		313,180
F. Net premium cost exclusive of particular average		626,725
	World-wide service	
G. Particular average adjustment:		
P/A portion of premium cost	$313,180	
M&R Subsidy rate complement [3] (percent)	84.48	
Adjusted P/A foreign premium cost	$264,574	
Add: Net premium cost (excluding P/A)	$626,725	
2. Foreign premium cost	$891,299	
3. Total premium cost to subsidized operators	$1,068,998	
4. Differential in dollars [4]	$177,699	
5. U.S. Foreign cost differential [5] (percent)	16.62	

[1] Estimated gross total loss rate adjusted for broker's discounts, policy tax and other costs, as necessary
[2] Percentage of particular average.
[3] 100% minus M&R subsidy rate of the same calendar year.
[4] Line 3 less line 2.
[5] Line 4 divided by line 3.

§ 252.36 Protection and Indemnity Insurance.

(a) *Subsidy items.* Items eligible for determination of subsidizable costs and the U.S.-foreign cost differential area:

(1) *Premiums.* The fair and reasonable net premium costs (including stamp taxes) of protection and indemnity, excess insurance, second seamen's insurance, tovalop or other forms of pollution insurance, bumbershoot (only that portion identified as applicable to P&I insurance), cargo liability if excluded from the primary policy, supplemental calls against liabilities covered under the terms and conditions of policies approved as to form and coverage by MARAD, less lay-up return premiums, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential.

(2) *Deductibles.* The fair and reasonable cost of crew claims paid by and pending with the operator under the deductible provision of the protection and indemnity insurance policy approved as to form and coverage by MARAD, to the extent that such cost would have been paid by the insurance underwriter under the terms of the policy, except for the fact that it did not exceed the deductible provision of the policy, shall be eligible for subsidy. For subsidy purposes, the deductible absorption shall not exceed $50,000 for each accident or occurrence, provided however, that benefits paid on unearned wages, if excluded from coverage under the protection and indemnity insurance policy, shall be eligible notwithstanding that the deductible provisions of the policy may be exceeded.

(b) *Assumptions made in calculation.* For purposes of determining subsidy for protection and indemnity insurance, it shall be assumed that the cost differential between the subsidized vessels and the foreign competitive vessels is limited to those portions of premium costs and deductible absorptions which are related to crew liability and that the cost of all other liabilities is the same for both the subsidized vessels and the foreign competitive vessels.

(c) *Calculation.* The following is the method of calculating the U.S.-foreign cost differential for premiums:

(1) *General.* A differential shall be calculated for the service of the vessels. Since the premium cost for all other liabilities is assumed to be the same for both the U.S. and foreign competitive vessels, the calculation of the differential for protection and indemnity insurance premiums is in effect based on the difference between U.S. and foreign premium costs for crew liabilities. Premium costs are determined in costs per gross registered ton (GRT).

(2) *Reporting requirement.* The operator shall submit the total premium cost for the subsidized year, plus any supplemental calls and lay-up return premiums not previously reported, to the Director, Office of Ship Operating Costs, not later than 60 days after the beginning of such year. The data shall be supported by invoices from the insurance underwriter.

(3) *U.S. crew liability cost.* The crew liability portion of the total premium cost shall be determined by applying a percentage to the total premium cost based on five (5) years of claims experience for the five years preceding January 1 of the subsidized year. The percentage shall be determined by dividing the total of underwriter's absorptions for crew claims, paid and estimated, by the total of underwriter's absorptions for all claims, paid and estimated. The crew claims portion shall be limited to eighty-five (85) percent unless the operator can substantiate a higher percentage as a result of having crew liability and all other liabilities insured with different underwriters. The operator shall submit the five-year claims experience not later than 60 days following the close of each calendar year.

(4) *All other liabilities cost—U.S. and foreign.* The all other liabilities portion of the U.S. premium cost shall be determined by subtracting the crew liability portion from the total premium

cost. The same cost shall be used for the all other liabilities portion of the foreign-flag competitor's premium cost.

(5) *Foreign crew liability cost.* The crew liability cost of each principal foreign-flag competitor shall be used, if reliable cost data can be obtained. If such data cannot be obtained for a principal competitor, and it is determined that such competitor has a non-national crew, the crew liability cost for similar vessels registered under the flag of the crew's nationality may be used, at the Board's discretion, provided reliable cost data are obtained. If no reliable cost data are obtained for a competitor, the crew liability cost for that competitor shall be estimated by multiplying the subsidized operator's crew liability portion of the total premium cost by the ratio of that competitor's wage costs (FC) to the subsidized operator's wage costs (WC), as determined in the calculation of the wage differential.

(6) *U.S.-foreign cost differential.* The U.S.-foreign cost differential shall be the excess of the operator's total premium cost over the principal foreign-flag competitor's estimated total premium cost, expressed as a percentage, calculated in the following manner.

ABC BULK CO., INC., PROTECTION AND INDEMNITY INSURANCE PREMIUMS

[1985]

	United States	Liberia
Premium cost (per GRT):		
Crew liability	[1] $3.98	[2] $1.27
All other liability	1.06	1.06
Total cost	5.04	2.33
Differential—Excess of:		
U.S. cost over foreign cost		$2.71
U.S.-Foreign cost differential (percent)		53.77

[1] Determined by applying 79.03 percent (based on 5-year claims experience) to total GRT premium rate of $5.04.
[2] Crew liability data obtained by Maritime Administration.

NOTE.—The unweighted percentage of foreign to U.S. wage costs would be used to estimate the foreign cost if the foreign crew liability data were not available.

(d) *Daily subsidy rate.* The daily subsidy rate shall be calculated in the following manner:

(1) *Premiums.* The net premium costs per calendar day for the subsidized year shall be multiplied by the U.S.-foreign cost differential percentage determined for the most recent year. The product shall be the daily amount of subsidy for P&I premiums.

(2) *Deductibles.* (i) The eligible illness and injury crews, paid and pending, shall be audited for each calendar year of a three-year period commencing six years prior to January 1 of the subsidized year, and shall be multiplied by the percentage age differential, as determined in the calculation of wage subsidy for the appropriate fiscal period. The resulting calender period P&I deductible differential shall be divided by the fiscal period wage differential in the service for the three-year period, and the resulting percentage shall be applied to the wage per diem calculated for each ship type in the service to derive the daily amount of subsidy for P&I deductibles. As to pending claims previously recognized in the historical period, only the amount of changes in cost with respect to such claims shall be subsequently recognized. The following methodology shall determine subsidy for P&I deductibles.

DETERMINATION OF DAILY AMOUNT OF SUBSIDY FOR P&I DEDUCTIBLES

T.R. 98 item	Fiscal year			Total
	1980	1981	1982	
Wage ODS	1,500,000	1,000,000	1,750,000	4,250,000(1)
	Calendar year			
	1980	1980	1980	
P&I Ded. ODS	75,000	80,000	100,000	255,000(2)
Ratio of P&I DED. ODS to wage ODS				6.00(2)-(1)

T.R. 98 ship type	Daily wage ODS Jan. 1, 1985	Ratio P&I Ded. to wage ODS	Daily P&I Ded. ODS Jan. 1, 1985
C4-A	$4,000	X .06	$240.00
C5-B	5,000	X .06	300.00
C6-C	6,000	X .06	360.00

(ii) In case where national insurance schemes cover crew claims costs in their entirety, resulting in no cost to the foreign competitor for deductible absorptions, the composite percentage differential for wages shall be adjusted by substituting a zero cost for such foreign competitor in the calculation of the differential. The adjustment of the wage percentage differential shall not be used for Japan, where operators incur minimal costs for deductible absorptions, rather than no costs. For Japan, the insurance related costs which are normally included in the calculation of Japanese wage costs shall be excluded in adjusting the wage percentage differential for this purpose.

10. Section 252.40 is revised to read as follows:

§ 252.40 Payment of subsidy.

Submission of voucher. At the close of each calender month, the subsidized operator may submit a voucher, and include for payment in such voucher the amount of ODS accrued for the voyages terminated during the period.

11. Section 252.41 is revised to read as follows:

§ 252.41 Subsidy billing procedures.

(a) *Subsidy voucher.*—(1) *Form.* Requests for payment of ODS shall be submitted on a public voucher, Standard Forms 1034 and 1034A, which can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) *Copies.* The operator shall submit the original and 3 copies of the voucher for payment to the MARAD Region Director. The original and 2 copies must be supported by schedules and an affidavit. The third copy is the payee's copy and need not be supported.

(b) *Schedules and affidavit.* (1) The following schedules shall be used for calculating the amount of ODS payable:

Schedule A

(Company) _____

ODSA No. _____

ODS Accrued During Fiscal Year 19—

ODS Payable for the Month of

	Current voucher	Previous voucher	Total
Total Accrued ODS (Sched. B).	$		
Less ODS Reductions: Reduced Crew (Sched. C).	$		
Net ODS Accrued.	$	$	$
Less Previous Payments.			$
ODS Payable			$

(Company) _____

ODS Accrued for the Month of _____

Vessel name	Voyage No.	Voyage dates		Voyage days	Per diem rates	Accrued subsidy
		From	To			
					$	$
ODS Payable for Unpredictably Timed Expenses not included in Daily Amount (Attach supporting information)						$
Total Accrued Subsidy (Enter on Schedule A)						$

Schedule C

(Company) ———

REDUCED CREW PERIODS

Vessel	Reduced crew dates		Number of reduced crew days	X	No. of crew reduced	=	Man-days	X	Man-day amount	=	Reduced crew reduction
	From—	To—									
									$	$	
									$		
Total Reduced Crew Reduction (Enter on Schedule A)											$

[a] If licensed crew, indicate (*).
[b] If unlicensed crew, indicate (*).

(2) A notorized affidavit as shown below shall be signed by an official of the subsidized operator who is familiar with the ODSA, these regulations, the operation of the subsidized vessel, and the accounts, books, records, and disbursements of the subsidized operator relating to such operation:

AFFIDAVIT

State of ———
City of ———
County/Parish of ———

I, ———, being duly sworn, depose and say, that I am (title) of the ——— (herein referred to as the "Operator"), and as such am familiar with (a) provisions of the Operating-Differential Subsidy Agreement, Contract No. ——, dated as of ———, as amended, to which the Operator is a party; and (b) the regulations govrning the payment of operating-differential subsidy for bulk cargo vessels, PART 252, Title 46; CFR; and (c) the operation of the vessels covered by said Agreement and regulations; and (d) the accounts, books, records, and disbursements of the Operator relating to such operation.

Referring to the public voucher dated ———, covering voyage days allowed for subsidy during the periods commencing ——— and ending ———, and attached, submitted by said Operator concurrent herewith for a payment on account in the sum of ———, under said Agreement, I further depose and say that, to the best of my knowledge and belief, the Operator has fully complied with the terms and conditions of said Agreement and regulations, applicable orders, rulings and provisions of the Merchant Marine Act, 1936, as amended, and is entitled, under the provisions of said Agreement and regulations, orders and rulings applicable thereto, to the amount of the payment on account requested; and further depose and say that the vessels named in the attached schedules were in authorized service for the vessel operating days on which the payment is requested and has not included in the calculation of the amount of subsidy claimed in the attached voucher any costs of a character that the Maritime Administration, or Secretary of Transportation acting by and through the Maritime Subsidy Board or any predecessor or successor, had advised the Operator to be ineligible to be so included, or any costs collectible from insurance, or from any other source.

Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval of the correctness of the amount stated to have been due, nor a waiver of any right of remedy the Maritime Administration, or Secretary of Transportation, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have under the terms of said Agreement, or otherwise.

I further depose and say that this affidavit is made for and on behalf and at the direction of the Operator for the purpose of inducing the Maritime Administration to make a payment pursuant to the provisions of the aforesaid Operating-Differential Subsidy Agreement, as amended.

Subscribed and sworn to before me, a Notary Public, in and for the aforesaid County and State, this ——— day of ———.

My commission expires ———
Notary Public ———

(3) The subsidized operator shall furnish its own supply of supporting schedules and affidavit.

12. Section 252.42 is revised as follows:

§ 252.42 Appeals procedures.

(a) *Appeals of annual or special audits.* An operator who disagrees with the findings, interpretations or decisions in connection with audit reports of the Office of the Inspector General and who cannot settle said differences by negotiation with the Contracting Officer may submit an appeal to the Maritime Administrator from such findings, interpretations or decisions in accordance with part 205 of this chapter.

(b) *Appeals of administrative determinations.*—(1) *Policy.* An operator who disagrees with the findings, interpretations or decisions of the Contracting Officer with respect to the administration of this part may submit an appeal from such findings, interpretations or decisions as follows:

(i) Appeals shall be made in writing to the Secretary, Maritime Subsidy Board, Maritime Administration, within 60 days following the date of the document notifying the operator of the administration determination of the Contracting Officer. In his appeal to the Secretary the operator shall indicate whether or not he desires a hearing.

(ii) The appellant will be notified in writing if a hearing is to be held and whether he is required to submit

additional facts for consideration in connection with the appeal.

(iii) When a decision has been rendered by the Board, the appellant will be notified in writing.

(2) *Appeal to the Secretary of Transportation.* An operator who disagrees with the Board may appeal such findings and determinations by filing with the Secretary of Transportation, a written petition for review of the Board's action. The petition shall be filed in accordance with provisions of the Department of Transportation pertaining to Secretarial review.

(3) *Hearings.* The Rules of Practice and Procedures, 46 CFR Part 201, Subpart M, shall be followed for all hearings granted under 46 U.S.C. 1176 and 46 CFR 252.42

By order of the Maritime Administrator.

Dated: December 17, 1985.

Murray A. Bloom,

Assistant Secretary, Maritime Administration.

[FR Doc. 85-30157 Filed 12-20-85; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to revise Part 18 to incorporate amendments to the Marine Mammal Protection Act of 1972 and update organizational nomenclature. The revisions would affect those sections of Part 18 where the regulations paraphrase the wording in the Act. Also changed are the references to terms, such as "Bureau" and "Area Director," which are no longer used in the Service's organization. These amendments will eliminate inconsistencies with the law and avoid reader confusion.

DATE: Comments concening these changes should be submitted no later than January 22, 1986.

ADDRESS: Coments should be forwarded to Chief, Division of Wildlife Management, Room 514 Matomic, U.S. Fish and Wildlife Service, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: LeRoy Sowl, Chief, Division of Wildlife Management, address above, telephone (202) 632-2202.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act (MMPA or Act) was enacted in 1972, and the Fish and Wildlife Service implemented the Act by regulations contained in 50 CFR Parts 18, 82 and 403. The MMPA was enacted for the purpose of ensuring that marine mammals are maintained at healthy population levels. In passing the Act, Congress responded to the growing concern regarding the decline of certain marine mammal species and recognized the important role that marine mammals play in the ecosystem as well as their economic, aesthetic and recreational value. Under the MMPA the Department of the Interior is charged with responsibility for polar bears, walruses, sea and marine otters, manatees and dugongs. On October 9, 1981, Congress amended the MMPA with the passage of Pub. L. 97-58.

On July 29, 1983, the Service published a notice in the **Federal Register** (48 FR 34486) that described the various changes made by Pub. L. 97-58. While the substantive changes addressing marking and tagging of marine mammal parts, and incidental take by commercial fishermen will be addressed in proposed and final rulemaking documents, this document contains proposed changes necessary to remove inconsistencies with the legislative amendments, and corrects several outdated organization terms.

The individual proposed changes to 50 CFR Part 18 are described below:

1. Section 18.11. This section would be amended to include citation to 50 CFR Part 403, the joint regulations issued by the Service and the National Marine Fisheries Service concerning transfer of marine mammal management authority to States. Such reference paraphrases the wording of 16 U.S.C. 1372(a), which was amended by Pub. L. 97-58 to include reference to the transfer of management authority provisions.

2. Section 18.13. This section paraphrased 16 U.S.C. 1372(a), which was changed by the 1981 MMPA amendments (see section 3 of Pub. L. 97-58) by replacing paragraph (a)(3) with new paragraphs (a) (3) and (4) and redesignating paragraph (a)(4) as (a)(5). Sections 18.13 (b) and (c) of Title 50, CFR would be revised to make them consistent with the present wording of the law.

3. Section 18.14(c). This would update the term "Bureau" to "Service." The "Bureau" term referred to the Service's former name, Bureau of Sport Fisheries and Wildlife.

4. Section 18.22. This section paraphrases 16 U.S.C. 1379(h), which was revised by Pub. L. 97-58, section 4, by adding Federal employees to the officials that may "take" marine mammals in the course of official duties. Section 18.22 would be amended to reflect this statutory change. Section 18.22(b) would be amended by replacing the term "Bureau" with "Service," for the same reason as described in item 2, above.

5. Section 18.23. This sectin would be amended by changing the section title, introductory sentence, and paragraph (a)(1). The reision would remove the inconsistencies with 16 U.S.C. 1371(b), which is paraphrased by section 18.23(a). The changes were made by Pub. L. 97-58, section 2. The two references made to the Alaska Area Director would be changed to reflect the position's current title of regional director.

6. Section 18.26. The term "Bureau of Sport Fisheries and Wildlife" would be replaced with "Service" for the reasons set forth under 2, above.

As noted above, the proposed amendments to Part 18 would remove inconsistencies with the MMPA in those areas where the law changed wording paraphrased by the regulations. These changes are necessary to conform existing regulations to the law. The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Similarly, the Service determines that, since the regulatory amendments reflect the statutory language, an environmental assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared for this action. There are no impacts on the public other than to remove any confusion created by the lack of consistent wording contained in the regulations and the law. Additionally, there are no information collection requirements contained in this document that require Office of Management and Budget clearance under 44 U.S.C. 3501. The primary authors of this document are Rupert R. Bonner and James E. Pinkerton of the Fish and Wildlife Service.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Marine mammals, Transportation.

PART 18—[AMENDED]

Accordingly, 50 CFR Part 18 is proposed to be amended as described below:

1. The authority for Part 18 continues to read as follows:

Authority: Marine Mammal Protection Act of 1972, as amended (Pub. L. 92-522, 88 Stat. 1027; Pub. L. 97-58 State. 979 (16 U.S.C. 1361-1407)).

2. Section 18.11 is amended by revising the introductory text to read as follows:

§18.11 Prohibited taking.

Except as otherwise provided in Subpart C, D, or H of this Part 18, or Part 403, it is unlawful for:

* * * * *

3. Section 18.13 is amended by redesignating paragraph (c) as (d), revising paragraph (b) and adding a new (c) to read as follows:

§ 18.13 Prohibited uses, possession, transportation, and sales.

* * * * *

(b) Any person subject to the jurisdiction of the United States to possess any marine mammal, or product therefrom, taken in violation of the Act or these regulations;

(c) Any person subject to the jurisdiction of the United States to transport, purchase, sell, or offer to purchase or sell any marine mammal or marine mammal product; or

* * * * *

4. Section 18.14(c) is amended by replacing the term "Bureau" with "service."

5. Section 18.22 is amended by revising the section title, and amending paragraph (a), by inserting "Federal" before the term "State" as follows:

§ 18.22 Taking by Federal, State or local government officials.

(a) A Federal, State or local government official or employee * * *

(a) A Federal, State or local government official or employee * * *

6. The flush paragraph appearing after paragraph (a)(6) of § 18.22 is amended by replacing the term "Bureau of Sport Fisheries and Wildlife" with the term "U.S. Fish and Wildlife Service.

7. Section 18.23 is amended by revising the section title, introductory paragraph (a), and paragraph (a)(1) to read as follows:

§ 18.23 Native exemptions.

(a) *Taking.* Notwithstanding the prohibitions of subpart B of this Part 18, but subject to the restrictions contained in this section, any Alaskan Native who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean may take marine mammals without a permit, if such taking is:

(1) For subsistence purposes, or

* * * * *

8. Section 18.23 is further amended in introductory paragraph (b) and paregraph (b)(2) by replacing the term "Alaska Area" with "Regional" both times it appears in this section.

§ 18.26 [AMENDED]

9. Section 18.26(b) is amended by replacing the term "Bureau of Sport Fisheries and Wildlife" with the term "U.S. Fish and Wildlife Service."

Dated: November 1, 1985.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-29987 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 246
Monday, December 23, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 43-85]

Foreign-Trade Zone 14—Little Rock, AR; Application For Subzone Polar Stainless Products Sink Plant, Searcy

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Little Rock Port Authority on behalf of the State of Arkansas, grantee of Foreign-Trade Zone 14, requesting special-purpose subzone status for the stainless steel sink manufacturing plant of Polar Stainless Products, Inc. (Polar), in Searcy, White County, Arkansas, some 45 miles northwest of the Little Rock Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 9, 1985.

The proposed subzone is located at 920 E. Lincoln Avenue, Searcy. The 12.5-acre facility employs 171 persons and is used to produce stainless steel sinks for home and commercial uses. Polar has been purchasing most of its stainless steel sheet and strip from domestic sources. Because of increasing foreign competition, the company plans to purchase about 50 percent of its steel from lower-cost foreign sources. Polar exports over 6 percent of its production.

Zone procedures would allow Polar to avoid duty payments on the foreign steel used in its exports. On its domestic sales, the company would be able to take advantage of the normal duty rate available to importers of sinks, which is 4.7 percent. Stainless steel sheet and strip is subject to a 10-percent basic duty rate. An additional 6 percent duty is in effect under an ITC Escape Clause action. Polar states that it cannot maintain its domestic production without turning to lower cost foreign materials, because of the price competitiveness of sinks made abroad.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal St., New Orleans, LA 70130; and Colonel Robert W. Whitehead, District Engineer, U.S. Army Engineer District Little Rock, P.O. Box 867, Little Rock AR 72203.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before February 7, 1986.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, Suite 635, Savers Federal Bldg., 320 W. Capitol Ave., Little Rock, AR 72201

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Ave., NW., Washington, DC 20230

Dated: December 16, 1985.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 85-30282 Filed 12-20-85; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

Carbon Steel Plate from Japan; Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Antidumping Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act of 1930, of the antidumping duty order on carbon steel plate from Japan. The review covers the period from October 1, 1984. Bethlehem Steel Corporation, Inland Steel, Lukens, Inc., Laclede Steel Company, LTV Steel Company, National Steel Corporation, and United States Steel Corporation, all of which are domestic interested parties to this proceeding, have notified the Department that they are no longer interested in the antidumping duty order. These affirmative statements of no interest and a Voluntary Restraint Agreement that imposes restrictions on imports of carbon steel plate from Japan provide a reasonable basis for the Department to revoke the order. Therefore, we intend to revoke the order. In accordance with the interested parties, notifications, the revocation will apply to all carbon steel plate entered, or withdraw from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On May 30, 1978, the U.S. Department of the Treasury published in the **Federal Register** T.D. 78-150, an antidumping duty order on carbon steel plate from Japan (43 22937).

Bethlehem Steel Corporation, Inland Steel, Lukens, Inc., Laclede Steel Company, LTV Steel Company, National Steel Corporation, and United States Steel Corporation, domestic interested parties to this proceeding, have notified the Department that they are no longer interested in the order and stated their support of revocation of the order. Collectively, these companies constitute a substantial majority of the U.S. industry producing carbon steel plate. In their letters, these companies stated their opinion that the May 14, 1985, Voluntary Restraint Agreement with Japan, which imposes restrictions on imports of carbon steel plate from Japan,

provides relief from unfairly traded imports of carbon steel plate from Japan that is at least equal to that which could be obtained through continuation of the antidumping duty order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping order that is no longer of interest to domestic interested parties.

Scope of the Review

The merchandise covered by this review is hot-rolled carbon steel plate, 0.1875 inches or more in thickness, over 8 inches in width, not in coils, not pickled, not coated or plated with metal, not clad, and not cut, pressed, or stamped to non-rectangular shape. Carbon steel plate is currently classifiable under items 607.6620 and 607.6625 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminary determine that the domestic interested parties' affirmative statements of no interest in continuation of the antidumpting duty order on carbon steel plate from Japan and a Voluntary Restraint Agreement that imposes restrictions on imports of carbon steel plate from Japan provide a reasonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on this product effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of carbon steel plate from Japan which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, and which were not covered in a prior administrative review. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b), and (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: December 17, 1985.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-30253 Filed 12-20-85; 8:45 am]

BILLING CODE 3510-25-M

[C-614-504]

Preliminary Affirmative Countervailing Duty Determination; Carbon Steel Wire Rod From New Zealand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to maufacturers, producers, or exporters in New Zealand of carbon steel wire rod. The estimated net bounty or grant is 9.83 percent *ad valorem* for all manufacturers, producers, or exporters in New Zealand of carbon steel wire rod.

We are directing the U.S. Customs Service to suspend liquidation of all entries of carbon steel wire rod from New Zealand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of this product in the amount equal to the estimated net bounty or grant.

If this investigation proceeds normally, we will make our final determination by March 3, 1986.

EFFECTIVE DATE: December 23, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Ellie Shea, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 377-2438 or 377-0184.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended, (the Act), are being provided to manufacturers, producers, or exporters in New Zealand of carbon steel wire rod. For purposes of this preliminary determination, the following programs are found to confer bounties or grants:

- Export Performance Taxation Incentive (EPTI).
- Export Market Development Taxation Incentive (EMDTI).
- Sales Tax Exemptions or Refunds.

We preliminarily determine the estimated net bounty or grant to be 9.83 percent *ad valorem* for all manufacturers, producers, or exporters in New Zealand of carbon steel wire rod.

Case History

On September 23, 1985, we received a petition in proper form from Atlantic Steel Co., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co., filed on behalf of the U.S. Industry producing carbon steel wire rod. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in New Zealand of carbon steel wire rod, directly or indirectly, receive benifits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on October 15, 1985, we initiated such an investigation (50 FR 43590). We stated that we expected to issue a preliminary determination on or before December 17, 1985.

Since New Zealand is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303(a)(1) and 303(b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Administration is not required to determine whether, imports of this merchandise materially injure, or threaten material injury to, a U.S. industry.

On October 25, 1985, we presented a questionnaire to the New Zealand government in Washington, DC concerning the petitioners' allegations. On November 25, 1985, we received

responses to our questionnaire from New Zealand Steel Ltd., Pacific Steel Ltd., and the government of New Zealand. Pacific Steel Ltd. is the only known manufacturer of carbon steel wire rod in New Zealand. Both New Zealand Steel Ltd. and Pacific Steel Ltd. exported carbon steel wire rod to the U.S. during the review period.

Scope of Investigation

For purposes of this investigation, the term "carbon steel wire rod" covers a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross-section, not under 0.20 inch in diameter, nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Wire rod is currently classifiable under items 607.14, 607.17, 607.22, and 607.23 of the *Tariff Schedules of the United States.*

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, of course, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is April 1, 1984, through March 31, 1985. Based upon our analysis of the petition and the responses to our questionnaire submitted by the government of New Zealand, New Zealand Steel Ltd. and Pacific Steel Ltd., we preliminarily determine the following.

I. Programs Preliminarily Determined To Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in New Zealand of carbon steel wire rod under the following programs.

A. Export Performance Taxation Incentive (EPTI)

Petitioners allege that the New Zealand wire rod industry receives EPTI tax credits on exports of qualifying goods under section 156A of the Income Tax Act of 1976, as amended.

According to the response of the government of New Zealand, under the 1979 Amendment of the Income Tax Act of 1976, exporters receive a tax credit based on the f.o.b. value of qualifying goods exported. Credits are available as a deduction against income tax payable. If the tax credit exceeds the income tax payable, the remainder is paid to the taxpayer in cash. The rate of the tax credit is dependent upon the government predetermined value-added category into which the product falls. The amount of the tax credit is calculated by multiplying the rate corresponding to the value-added category into which the product falls by the f.o.b. value of export sales. Carbon steel wire rod falls into value-added category B, for which the corresponding rate is 10.5 percent. According to the response, the rates specified under this program will be reduced in the tax years ending March 31, 1986, and March 31, 1987. On the tax return filed during the review period, New Zealand Steel Ltd. did not claim EPTI tax credits for exports of wire rod. However, Pacific Steel Ltd. claimed EPTI tax credits on the tax return filed during the review period for its exports of wire rod.

Because eligibility for this program is limited to exporters, we preliminarily determine that it provides a bounty or grant to producers and exporters of carbon steel wire rod within the meaning of the countervailing duty law.

Under our tax methodology, we calculate the benefit from this program by dividing the amount of the EPTI tax credits claimed by Pacific Steel Ltd. on its tax return filed during the review period by the company's total export sales during the review period. On this basis, we calculate an estimated net bounty or grant of 9.12 percent *ad valorem.*

B. Export Market Development Taxation Incentive (EMDTI)

Petitioners allege that the New Zealand wire rod industry receives EMDTI tax credits under section 156F of the New Zealand Income Tax Act of 1976, as amended, for qualifying export market development expenditures.

According to the government's response, under the 1979 Amendment of the Income Tax Act of 1976, export market development expenditures, such as expenses incurred principally for seeking and developing markets, retaining existing markets, and obtaining market information, qualify for a tax credit of 67.5 percent of the total expenditure. Any company that has such expenditures may claim them in calculating taxable income. However, an exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating the taxable income. Because the normal corporate tax rate in New Zealand is 45 percent, and exporters may claim a tax credit of 67.5 percent, the net benefit to the exporters under this program is 22.5 percent of the qualifying expenditure amount.

In the company responses, New Zealand Steel Ltd. and Pacific Steel Ltd. reported receiving benefits under this program during the review period. Because eligibility for this program is limited to exporters, we preliminarily determine that it confers a bounty or grant within the meaning of the countervailing duty law.

To calculate the benefit, we divided 22.5 percent of the qualifying expenditures which were claimed by respondent companies on their 1983/84 tax returns by the total f.o.b. value of export sales during the review period. On this basis, we find an estimated net bounty or grant amount of .21 percent *ad valorem.*

C. Sales Tax Exemptions or Refunds

Petitioners allege that the New Zealand wire rod industry receives sales tax exemptions or refunds on machinery and equipment used in the production of goods for export.

In the response, Pacific Steel Ltd. states that it did not receive sales tax exemptions or refunds during the review period. New Zealand Steel Ltd., however, indicates that it received sales tax exemptions or refunds, but was unable to provide an estimate of the amount of such exemptions or refunds.

Because information provided in the government's response indicates that sales tax exemptions or refunds are available only on machinery and equipment used principally in export production, we preliminarily determine that this program provides a bounty or grant to producers and exporters of

carbon steel wire rod within the meaning of the countervailing duty law.

As the best information available to calculate the benefit, we multiplied the net increase in the value of plant and equipment from 1984 to 1985, as reported in the 1985 financial statements of New Zealand Steel Ltd., by the sales tax rate for machinery listed in Chapter 84 of New Zealand's Customs Tariff. We then divided this by total export sales during the review period. On this basis, we calculate an estimated net bounty or grant of .50 percent *ad valorem.*

II. Programs Preliminarily Determined Not To Be Used

In accordance with our practice of accepting a response to an allegation which denies the receipt of benefits under a program, we preliminarily determine, subject to verification, that manufacturers, producers, or exporters in New Zealand of carbon steel wire rod did not use the following programs which were listed in our notice of initiation.

A. Export Credits From the Development Finance Corporation

Petitioners allege that the New Zealand wire rod industry receives export credits on preferential terms from the Development Finance Corporation (DFC).

According to the responses, neither New Zealand Steel Ltd. nor Pacific Steel Ltd. has received concessionary financing from the Development Finance Corporation.

B. Export Marketing Assistance

Petitioners allege that the New Zealand wire rod industry receives various types of export marketing assistance from the New Zealand Export-Import Corporation, the Department of Trade and Industry, the Building Research Association, the Department of Scientific and Industrial Research, the Standards Association of New Zealand, and the Testing Laboratory Registration Council.

According to the responses, neither New Zealand Steel Ltd. nor Pacific Steel Ltd. received export marketing assistance from any of the aforementioned organizations. With respect to petitioners allegation that the Standards Association of New Zealand translates technical documents and aids exporters in obtaining foreign standards, regulations, and testing requirements, the responses indicate that neither New Zealand Steel Ltd. nor Pacific Steel Ltd. received such assistance in obtaining U.S. standard on carbon steel wire rod.

C. Export Suspensory Loan Scheme (ESLS)

Petitioners allege that the New Zealand wire rod industry receives ESLS loans for purchasing equipment needed to expand production of export goods under a program administered by the Department of Trade and Industry and the Development Finance Corporation (DFC). ESLS loans are payable at DFC's normal rates but can become grants if the exporters meets predetermined export sales targets.

According to the responses, neither New Zealand Steel Ltd. nor Pacific Steel Ltd. received loans under ESLS during the period 1973 through 1985.

D. Export Programme Grants Scheme (EPGS)/Export Programme Suspensory Loan Scheme (EPSLS)

Petitioners allege that, under the Export Programme Grants Scheme (EPGS), the New Zealand wire rod industry is eligible to receive 64 percent of its approved overseas market development costs in advance. Although the EPGS was superseded by the Export Programme Suspensory Loan Scheme (EPSLS) in June 1982, petitioner's allege that grants under the EPGS could continue unitl June 1985.

According to the responses, neither New Zealand Steel Ltd. nor Pacific Steel Ltd. received loans or grants under EPGS or EPSLS during the last 15 years.

E. Preferential Treatment to Exporters in Granting Import Licenses

Petitioners allege that import licensing concessions are provided to companies which import materials for incorporation in goods to be exported. Such concessions may include additional availability of import licenses on components for incorporation in goods to be exported.

According to the responses, neither New Zealand Steel Ltd. nor Pacific Steel Ltd. received import licensing concessions during the review period.

F. Research and Development Incentives

Petitioners allege that the New Zealand wire rod industry receives research and development incentives under the Applied Technology Program administered by the DFC and under the previous Industrial Research and Development Grants Advisory Committee of the Department of Trade and Industry.

According to the responses, no assistance has been provided under this program to New Zealand Steel Ltd. or Pacific Steel Ltd.

G. Regional Development Investment Incentives

Petitioners allege that New Zealand wire rod producers receive a variety of regional development incentives based on their location in regions classified as either priority or slow-growth. Petitioners also allege that the wire rod industry receives concessions on electricity, water rights, and rail freight for any facilities located on the South Island.

According to the government's response and supported by the company responses, no regional development incentives are offered to the wire rod industry as no manufacturers or exporters of wire rod are located in a designated priority or slow-growth region. The responses also indicate that none of the facilities or plants of New Zealand Steel Ltd. or Pacific Steel Ltd. is located on the South Island and therefore neither company receives concessions on electricity, water rights, or rail freight.

H. Special Industrial Development Allowances

Petitioners allege that the New Zealand wire rod industry receives tax benefits from the Industrial Development Plan Investment Allowance (IDPIA) under section 121 or the High Priority Investment Allowance under section 121A of the New Zealand Income Tax Act of 1976, as amended.

According to the government's response, no industrial development plan has been approved for the steel industry and, therefore, no manufacturer or exporter of carbon steel wire rod has qualified for this program. Both companies indicate in their responses that they have not received benefits under this program.

III. Programs PReliminarily Determined To Be Terminated

A. Increased Exports Taxation Incentive (IETI)

Under the IETI program, an exporter can claim an income tax deduction proportionate to the exporter's increased export earnings. Although the New Zealand government terminated this program on March 31, 1983, we included this program in our investigation to determine whether benefits might still be accruing to the producers or exporters of carbon steel wire rod.

According to the response, neither New Zealand Steel Ltd. nor Pacific Steel Ltd. received benefits under this program during the review period and no benefits are further accruing.

B. Export Investment Allowances

Petitioners allege that the New Zealand wire rod industry receives tax benefits under the Export Investment Allowance program, which was terminated on March 31, 1983, and the Export Manufacturing Investment Allowance program.

According to the responses, neither New Zealand Steel Ltd. nor Pacific Steel Ltd. received tax benefits under these programs during the review period and no benefits are still accruing.

C. New Markets Increased Exports Taxation Incentive (NMIETI)

Petitioners allege that the New Zealand wire rod industry is eligible to receive NMIETI tax benefits under Section 157 of the New Zealand Tax Act of 1976, as amended.

Accoding to the response, this program was terminated on March 31, 1983, and no benefits are still accruing. Therefore, neither New Zealand Steel Ltd. nor Pacific Steel Ltd. received benefits under this program during the review period.

IV. Program for Which Additional Information is Needed

A. Import Duty Exemptions or Refunds

Petitioners allege that the New Zealand wire rod inustry receives import duty exemptions or refunds on machinery and equipment used in the production of goods for export.

According to the response, both New Zealand Steel Ltd. and Pacific Steel Ltd. have received import duty exemptions and refunds on equipment and machinery during the review period. The response also indicates, however, that such exemptions and refunds are available, at the discretion of the Minister of Customs, to all importers when no local equivalent product is available which could perform the same function. During verification, we intend to seek further information on the review and approval process for import duty exemptions and refunds on machinery and equipment and on the availability of such exemptions and refunds.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of carbon steel wire rod from New Zealand which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each entry of this merchandise in the amount of the estimated *ad valorem* rate. The estimated net bounty or grant is 9.83 percent *ad valorem* for all manufacturers, producers, or exporters in New Zealand of carbon steel wire rod. This suspension will remain in effect until further notice.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on January 17, 1986, at the U.S. Department of Commerce, room 3708, 14th Street and Consitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, room B-099, at the above address within 10 days of the publication of this notice.

Requests for a hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by January 10, 1986. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 17, 1985.

[FR Doc. 85-30283 Filed 12-20-85; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Applications; Minority Business Development Center (MBDC); Hawaii

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $694,118 for the project performance period of July 1, 1986 to June 30, 1987. The MBDC will operate in the Honolulu Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $590,000 in Federal funds and a minimum of $104,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 09-10-86015-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements incuded in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 450 Golden Gate Avenue, Room 15018, San Francisco, California 94102. January 14, 1986 at 10:00 A.M.

Proposals are to be mailed to the following address: Minority Business

Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 450 Goldren Gate Avenue, Box 36114, San Francisco, California 94102; 415/556-6734.

CLOSING DATE: The closing date for applications is January 31, 1986. Applications must be postmarked by midnight January 31, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Busines Development, (Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office

December 17, 1985

[FR Doc. 85-30258 Filed 12-20-85; 8:45 am]

BILLING CODE 3510-21-M

National Techincal Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to:

Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-710,639
Space Board
SN 6-671,113
Electrodynamic Method for Separating Components of a Mixture
SN 6-774,698
Dyed Wrinkle-Resistant and Durale-Press Cotton Fabrics
SN 6-779,958
Filament Seed Thresher

Department of Commerce

SN 6-783,503
Process for Preparing Refractory Borides and Carbides

Department of Health & Human Services

SN E-404-85
A Human Mouse Hybrid Cell Line Expressing Monocyte-Macrophase Properties
SN 6-717,615
Treatment of Diagnosis of Cancers by Endoscopic Injection for Access of Reagents into the Lymphatics
SN 6-748,854
Synthesis of Chiral 1-Benzyl-1-1,2,3,4-Tetrahydroisoquinolines by Asymmetric Reduction
SN 6-776,044
Apparatus and Method for Continuous Countercurrent Foam Separation
SN 6-778,669
A Method and Kit for Detecting Human Exposure to Genotoxic Agents
SN 6-778,670
Target Specific Cross-Linked Heteroantibodies
SN 6-780,932
Method of Preparing 1,2-Diaminocyclohexane Tetrachloro Planinum (IV) Isomers
SN 6-791,120
An Oxomorpholinyl Dimer and Rescue of Anthracycline and Mitomycin C Damage
SN 6-792,646
In Vivo Treatment of HTLV-III Using Suramin
SN 6-792,836
A Method of Controlling Graft Versus Host Reaction

Department of the Air Force

SN 6-357,441 (4,523,212)
Simultaneous Doped Layers for Semiconductor Devices
SN 6-380,451 (4-448,086)
Temperature Controlled Gyro
SN 6-382,069 (4,523,325)
Three-Stage Binary Coincidence Detector Apparatus with Adaptive Constant False Alarm Rate
SN 6-393,169 (4,534,100)
Electrical Method of Making Conductive Paths in Silicon
SN 6-394,591 (4,532,695)
Method of Making Self-Aligned IGFET
SN 6-444,004 (4,528,506)
Ferromagnetic Resonance Probe Liftoff Suppression Apparatus
SN 6-447,599 (4,533,933)
Schottky Barrier Infrared Detector and Process
SN 6-448,162 (4,534,050)
X-Ray Goniometer
SN 6-454,081 (4,523,359)
Machine With an Intermittently Rotating Table for the Performance of work Operations
SN 6-455,674 (4,523,327)
Multi-color X-Ray Line Source
SN 6-455,715 (4,536,658)
Hybrid Schottky Infrared Focal Plane Array
SN 6-468,629 (4,523,104)
Switch Debounce Circuit
SN 6-482,377 (4,523,293)
Two-Dimensional Bulk Acoustic Wave Correlator-Convolver
SN 6-487,340 (4,521,893)
Clock Distribution Circuit for Active Aperture Antenna Array
SN 6-511,592 (4,533,829)
Optical Electromagnetic Radiation Detector
SN 6-511,697 (4,523,198)
Radio Frequency Lens Antenna
SN 6-512,070 (4,534,016)
Beam Addressed Memor System
SN 6-512,083 (4,534,538)
Modular Air Shut-Off Valve
SN 6-521,803 (4,535,466)
Random Timer
SN 6-533,330 (4,523,475)
Simultaneous Incremental Strain/Incremental Temperature Analog Devic for, and Method, of Testing For Stress Response
SN 6-578,335 (4,522,883)
Circumferentially Wrapped Carbon-Carbon Structure
SN 6-593,759 (4,535,457)
Transverse Flow CW Atomic Iodine Laser System
SN 6-596,863
Analog Circuit for Simulating a Digitally Controlled Rheostat
SN 6-617,445 (4,534,808)
Method for Refining Micrositurctures of Prealloyed Powder Metallurgy Titanium Articles
SN 6-617,447 (4,536,234)
Method for Refining Microstructures of Blended Elemental Power Metallurgy Titanium Aticles
SN 6-640,916 (4,534,938)
Method for Making Alloy Additions to Base Metals Having Higher Melting Points

Department of the Army

SN 6-267,312 (4,377,751)
Optical Waveguide Dosimeter
SN 6-441,718 (4,489,240)
Radiochromic Leuko Dye Real Time Dosimeter, One Way Optical Waveguide
SN 6-771,968
Flat Passband Etched Groove Saw Filter
SN 6-772,971
Millimeter Wave-Infrared Block Oscillator/Detector
SN 6-778,120

Radiological Instrument
SN 6-780,347
Method of Protecting a Radiochromic Optical Waveguide Dosimeter from Adverse Temperature Effects

[FR Doc. 85-30204 Filed 12-20-85; 8:45 am]
BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products from the Republic of Korea; Effective on January 1, 1986

December 18, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, as issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilataral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea establishes restraint limits for Categories 300/301, 313, 314, 315, 317, 319, 320, 331, 333/334, 335, 336, 337, 338/339, 340, 341, 345, 347/348, 351, 353/354/653/654, 359pt. (only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0652, 384.3443, 384.4300, 384.4420), 410, 433/434, 435, 436, 438, 440, 442, 443, 444, 445/446, 447, 448, 459pt. (only T.S.U.S.A. numbers 702.7500, and 702.8000), 604, 605pt. (only T.S.U.S.A. numbers 316.5500 and 316.5800), 612, 613, 614, 631, 633/634/635, 636, 638/639, 640, 641, 642, 643, 644, 645/646, 647, 648, parts of 659, 669, and 670, produced of manufactured in Korea and exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986. Accordingly, the letter which follows this notice from the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the foregoing categories that have been exported during the aforementioned agreement period in excess of the designated amounts.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 18, 1985.

Commissioner of Customs
Department of the Treasury, Washington, DC

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, 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, you are directed to prohibit, effective on January 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986, in excess of the indicated restraint limits:

Category	12-mo. restraint limit
300/301	5,145,354 pounds.
313	50,383,665 square yards.
314	2,692,226 square yards.
315	23,001,542 square yards.
317	16,580,640 square yards.
319	8,070,440 square yards.
320	24,591,453 square yards.
331	483,870 dozen pairs.
333/334	66,826 dozen.
335	68,237 dozen.
336	43,076 dozen.
337	36,842 dozen.
338/339	640,223 dozen.
340	207,303 dozen.
341	129,149 dozen.
345	65,726 dozen.
347/348	309,035 dozen.
351	110,143 dozen.
353/354/653/654	222,899 dozen.
359 pt.[1]	1,567,235 dozen.
410	4,567,529 dozen.
433/434	17,112 dozen of which not more than 13,065 dozen shall be in Category 433 and not more than 6,700 shall be in Category 434.
435	30,977 dozen.
436	13,113 dozen.
438	62,186 dozen.
440	211,262 dozen.
442	44,311 dozen.
443	26,838 dozen.
444	4,004 dozen.
445/446	51,686 dozen.
447	82,623 dozen.
448	31,176 dozen.
459 pt. [2]	185,931 pounds.
604	585,127 pounds.
605 pt [3]	2,524,954 pounds.
612	94,860,871 square yards.
613	22,902,386 square yards.
614 pt. [4]	8,990,165 square yards.
614 pt. [5]	12,082,188 square yards.
631	226,147 dozen pairs.
633/634/635	1,416,411, dozen of which not more than 178,914 dozen shall be in Category 633, not more than 824,191 dozen shall be in Category 634 and not more than 625,766 dozen shall be in Category 635.
636	215,378 dozen.
638/639	5,641,220 dozen.
640 pt. [6]	3,804,434 dozen.
640 pt. [7]	2,536,289 dozen.
641	1,024,978 dozen.
642	78,285 dozen.
643	60,691 dozen.
644	86,151 dozen.
645/646	3,348,885 dozen.
647	813,145 dozen.
648	351,632 dozen.
659 pt. [8]	2,437,961 pounds.
659 pt. [9]	297,250 pounds.
659 pt. [10]	437,994 pounds.
669 pt. [11]	1,893,715 pounds.
669 pt. [12]	680,590 pounds.
669 pt. [13]	3,769,118 pounds.
669 pt. [14]	5,194,747 pounds.
670 pt. [15]	22,274,668 pounds.

[1] In Category 359, only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0652, 384.3443, 384.4300, 384.4420.

[2] In Category 459, only T.S.U.S.A. numbers 702.7500, and 702.8000.

[3] In Category 605, only T.S.U.S.A. numbers 316.5500 and 316.5800.

[4] In Category 614, only T.S.U.S.A. numbers 338.1000, 338.1505, 338.1508, 338.1511, 338.1525, 338.1528, 338.1531, 338.1552, 338.1554, 338.1556, 338.1558, 338.1562, 338.1564, 338.1568, and 338.1572.

[5] In Category 614, only T.S.U.S.A. numbers except those in footnote 4.

[6] In Category 640, only T.S.U.S.A. numbers 381.3130, 381.3370, 381.3558, 381.6972, 381.9535, 381-9540, 381.9860, and 381.9968.

[7] In Category 640, only T.S.U.S.A. numbers except those in footnote 6.

[8] In Category 659, only T.S.U.S.A. numbers 703.0510, 703.0520, 703.530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640, and 703.1650.

[9] In Category 659, only T.S.U.S.A. numbers 381.2340 381.3170 381.9100, 381.9570, 384.1920, 384.2339, 384.8300, 384.8400, and 384.9353.

[10] In Category 659, only T.S.U.S.A. numbers 381.3325, 381.9805, 384.2205, 381.2530, 384.8605, and 384.9310.

[11] In Category 669, only T.S.U.S.A. numbers 348.0065, 348.0075, 348.0565 and 348.0575.

[12] In Category 669, only T.S.U.S.A. numbers 355.4520 and 355.4530.

[13] In Category 669, only T.S.U.S.A. numbers 385.5300.

[14] In Category 669, only T.S.U.S.A. numbers 386.1105 and 389.6210.

[15] In Category 670, only T.S.U.S.A. numbers 706.4144 and 706.4152.

In carrying out this directive, entries of textile products in the foregoing categories which have been exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall, to the extent of any unfilled balances be charged against the restraint limits established for such goods during that

twelve-month period. In the event the levels established for these categories have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The 1986 levels are subject to adjustment according to the provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, which provide, in part, that: (1) During any agreement year specific limits and sublimits may be adjusted exceeded by certain designated percentages, provided a corresponding reduction in square yards equivalent is made in one or more other specific limits; (2) under specific conditions specific limits and sublimits may be adjusted for carryover and carryforward not to exceed 10 percent; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any adjustment under the foregoing provisions will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonweath of Puerto Rico.

The Committee for the Implementation of Textle Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. (a) (1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 30254 Filed 12-20-85; 8:45 am]

BILLING CODE 3510-DR-M

New Limit for Certain Wool Textile Products Produced or Manufactured in the People's Republic of China

December 18, 1985.

The Chairman of the Committee for the Implementation of Textle Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 24, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On April 29, 1985 a notice was published in the **Federal Register** (50 FR 16729) announcing an import restraint limit of 12,195 dozen for wool knit shirts and blouses in Category 438, produced or manufactured in China and exported to the United States during the twelve-month period which began on March 29, 1985 and extends through March 28, 1986.

During consultations held under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, the Governments of the United States and teh People's Republic of China have agreed to establish a specific limit of 22,000 dozen for Category 438, produced or manufactured in China and exported during the agreement year which began on January 1, 1985 and extends through December 31, 1985.

In the letter published below, the CITA Chairman directs the Commissioner of Customs to establish the new specific limit for Category 438.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

December 18, 1985.

Commissioner of Customers,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive cancels and supersedes the directive of April 24, 1985 concerning wool textile products in Category 438, produced or manufactured in China and exported during the period which begin on March 29, 1985 and extends through March 28, 1986.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton Wool and Man-Made Fiber Textile Agreement, of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 24, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 438, produced or manufactured in the People's Republic of China, and exported during twelve-month period which began on January 1, 1985 and extending through December 31, 1985, in excess of 22,000 dozen.[1]

Textile products in Category 438 which have been exported to the United States prior to January 1, 1985 shall not be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (48 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry the United States for consumption to include entry for consumption into the Commonweath of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of the Textile Agreements.

[FR Doc. 85-30256 Filed 12-20-85; 8:45 am]

BILLING CODE 3510-DR-M

Permitting Entry of Certain Man-Made Fiber Yarns Produced or Manufactured in Brazil

December 18, 1985.

The Chairman of the Commitee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Comissioner of Customs to be effective on December 24, 1986. For further information contact Ann Fields, International Trade Specialist (202) 377-4212.

Background

During negotiation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1985, the Governments of the United States and the Federative Republic of Brazil agreed that 363,000 pounds of

[1] The limit has not been adjusted to account for any imports exported after December 31, 1984.

man-made fiber yarn in Category 604, produced or manufactured in Brazil and exported during the restraint periods established prior to the current agreement year, which began on April 1, 1985 and extends through March 31, 1986, should be permitted entry without charge during the current agreement year. It was further agreed that the 363,000 pounds would be charged to the limit established for Category 604 during the agreement year beginning on April 1, 1986 and extending though March 31, 1987.

Accordingly, the letter which follows this notice requests the Commissioner of Customs to deduct 363,000 pounds from the imports charged to the restraint limit established for Category 604 during the period which began on April 1, 1984 and extends through March 31, 1985 which were exported during the period that began on Novermber 1, 1983 and extended through March 31, 1985. This amount will be charged to the limit established for the category during the period which begins on April 1, 1986 and extends through March 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED(1985). 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

December 18, 1985.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1985 between the Governments of the United States and the Federative Republic of Brazil, I request that, effective on December 24, 1985, you deduct 363,000 pounds from imports charged to the restraint limit established for man-made fiber textile products in Category 604 during the twelve-month period which began on April 1, 1984 and extended through March 31, 1985, produced or manufactured in Brazil and exported during the period which began on November 1, 1983 and extended through March 31, 1985. This amount is to be charged to the limit established for Category 604 during the twelve-month period beginning on April 1, 1986 and extending through March 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30255 Filed 12-20-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on DNA Management; Meeting

SUMMARY: The Defense Science Board Task Force on DNA Management will meet in closed session on 8-9, January 1986 in the Defense Nuclear Agency Field Command, Albuquerque, New Mexico.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review Defense Nuclear Agency management structure, organization and staffing to determine if they are appropriate for fulfilling the Agency's mission. Emphasis will include Agency functions as well as relationships with other U.S. Government Agencies and offices.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 17, 1985.

[FR Doc. 85-30218 Filed 12-20-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Electronic Warfare; Meeting; Date Change

ACTION: Change in Date of Advisory Committee Meeting Notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Electronic Warfare scheduled for 16 December 1985 as published in the **Federal Register** (Vol. 50, No. 221, Friday, November 15, 1985, FR Doc. 85-27267) will be held on 15 January 1986. In all other respects the original notice remains unchanged.

Linda M. Lawson,

Aletrnate OSD Federal Register Liaison Office, Department of Defense.

December 17, 1985.

[FR Doc. 85-30219 Filed 12-20-85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contain the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Existing

Champus Treatment Report

The CHAMPUS Treatment Report is necessary to: determine whether the psychiatric treatment is medically/psychologically necessary and appropriate; for professional review for the purpose of making benefit determinations; and to assure compliance with statutory requirements. The respondents are all mental health professional who submit claims to CRAMPUS.

Small Business or Organizations

Responses: 8,000

Burden Hours: 12,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vittiello, DoD Clearance Officer, WHS/DIOR, Suite 1204, 1215 Jefferson Davis Highway, Arlington, VA 22202-4302, telephone (202) 746-0664.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Jane Bomgardner, OCHAMPUS, Aurora, Colorado 80045–6900, telephone (303) 361–3509.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer Department of Defense.

December 17, 1985.

[FR Doc. 85–30214 Filed 12–20–85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Existing

CHAMPUS Authorization of Psychoanalysis Form

The CHAMPUS Authorization of Psychoanalysis Form is necessary to: have information regarding the patient and the treatment; determine whether psychoanalysis is medically/psychologically necessary; determine appropriateness through professional review; make benefit determinations; and comply with statutory requirements. The respondents are psychoanalysts submitting claims to OCHAMPUS.

Small Businesses or Organizations

Responses: 250
Burden Hours: 750

ADDRESSED: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vittiello, DoD Clearance Officer, WHS/DIOR, Suite 1204, 1215 Jefferson Davis Highway, Arlington, VA 22202–4302, telephone (202) 746–0664.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained form Ms. Jane Bomgardner, OCHAMPUS, Aurora, Colorado 80045–6900, telephone (303) 361–3509.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 17, 1985.

[FR Doc. 85–30215 Filed 12–20–85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of information collection and form number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Revised

Allotments for Child and Spousal Support

DoD has published an interim rule under 32 CFR Part 54, titled: "Allotments for Child and Spousal Support," that outlines how persons may request enforcement of child, or child and spousal support, orders from the pay of members on active duty. The interim rule specifies the information collection requirements necessary for the military services to process requests for enforcement of such support orders by allotment from the member's pay.

State Child Support Enforcement Agencies

Responses: 2,000
Burden hours: 1,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302, telephone (703) 746–0664.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. James T. Jasinski, Office of the Depty Assistant Secretary of Defense (Management Systems), Room 3A882, The Pentagon, Washington, DC 20301, telephone (202) 697–0536.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 17, 1985.

[FR Doc. 85–30216 Filed 12–20–85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the use to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Existing

CHAMPUS Follow-up Progress Summary

The CHAMPUS Follow-up Progress Summary is necessary to: obtain periodic updates of information regarding patients and their treatment; validate continued medical/psychological necessity/appropriateness for professional review; benefit determinations; and complying with statutory requirements. The form is used as a follow-up to the more comprehensive CHAMPUS Treatment Report and CHAMPUS Authorization for Psychoanalysis forms.

Small Businesses or Organizations

Responses: 4,500
Burden Hours: 2,250

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vittiello, DoD Clearance Officer, WHS/DIOR, Suite 1204, 1215 Jefferson Davis Highway, Arlington, VA 22202-4302, telephone (202) 746-0664.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Jane Bomgardner, OCHAMPUS, Aurora, Colorado, 80045-6900, telephone (303) 361-3509.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 17, 1985.

[FR Doc. 85-30217 Filed 12-20-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Personal Information Questionnaire NAVMC 10064

Information is required to provide the Marine Corps relevant information regarding an applicant's background in terms of education, intelligence, experience and personal characteristics and is used as a method of determining the overall eligibility of applicants for all Reserve officer candidate programs.

Individuals or Households and Businesses or Other Institutions

Responses: 25,000
Burden Hours: 6,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202-430-2, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from M.A. Cagiano, Headquarters, U.S. Marine Corps, Personnel Procurement Division, Officer Procurement Section, Washington, DC 20380, telephone (202) 694-1801.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 17, 1985.

[FR Doc. 85-30220 Filed 12-20-85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Enlistee Financial Statement NAVCRUIT 1130/13

Information is required to collect data by which to make a determination as to the applicant's ability to meet his/her financial obligations on Navy pay.

Applicants for Naval Service With Persons Either Wholly or Partially Dependent Upon Them

Responses: 75,000
Burden Hours: 25,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mrs. Doris Davis, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, VA 22203 (ATTN: Code 216), telephone (202) 696-4860.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 17, 1985.

[FR Doc. 85-30221 Filed 12-20-85; 8:45 am]

BILLING CODE 3810-01-M

Chief of Naval Operations, Executive Panel Advisory Committee Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Strategic Defense and Naval Warfare Task Force will meet 7-8 January, 1986, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in strategic defensive architecture, and related intelligence. The entire agenda for the meeting will consist of discussions of key issues regarding strategic defense systems in support of U.S. national security. These matters constitute classified information that is specifically authorized by Executive order to be be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States, Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: December 18, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-30268 Filed 12-20-85; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Laboratory Oversight and Review Panel will meet on January 13, 1986, at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8:00 a.m. and teminate at 4:30 p.m. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to bring all Laboratory Review team Leaders together to discuss the review process to date, share lessons learned during the process, and to begin preparation of a consolidated report of findings and recommendations. The agenda will consist of an Executive Session dedicated to a review of material received to date and discussion among the Review Team Leaders in order to begin preparation of a consolidated report. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concering this meeting contact: Commander T. C. Fritz, U. S. Navy, Office of Naval Research (Code 00NR) 800 North Quincy Street, Arlington, VA 22217-5000; Telephone number (202) 696-4870.

Dated: December 18, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-30269 Filed 12-20-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-C&E-86-14; OFP Case No. 50552-0096-20, 21, 22, 23-22]

Chugach Electric Association, Inc.; Acceptance of Petition for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Chugach Electric Association, Inc.

SUMMARY: On November 15, 1985, Chugach Electric Association, Inc. (Chugach), of Anchorage, Alaska, completed its filing of a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent reliability of service exemption for four gas-fired units at its Beluga Station facility from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or "the Act"). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in any new electric powerplant and the construction of such a powerplant without the capability to use an alternate fuel as a primary energy source. Final rules setting forth the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. The final rules governing the reliability of service exemption, 10 CFR 503.40, were published at 46 FR 59872 (December 7, 1981).

The four proposed units for which Chugach seeks exemption consists of the following: (1) Two simple cycle gas turbines rated at 87 MW each, one to be installed in 1988, the other in 2011; (2) two combined cycle units each having two gas turbines with a heat recovery unit and each having a rating of 236 MW. These are to be installed in 1999 and 2006.

Beluga Station is located in a remote area approximately 40 air miles west of and across Cook Inlet from Anchorage.

Chugach, headquartered in Anchorage, Alaska, is a non-profit member-owned electric cooperative. Chugach serves approximately 61,000 retail electric consumers within the Municipality of Anchorage and on the Kenai Peninsula. In addition, Chugach is wholesale power supplier for two neighboring cooperatives—Matanuska Electric Association, Inc. of Palmer, Alaska, and Homer Electric Association, Inc. of Homer, Alaska—and for the City of Seward, Alaska. Overall, Chugach has the power supply responsibility of approximately half of Alaska's estimated 500,000 population.

At present, Chugach owns and operates five generating plants with a combined capacity of 529.9 MW. This includes 14 MW from the Knik Arm Power Plant, (in process of being retired).

In addition, Chugach has an entitlement of 9 MW from the Alaska Power Administration's Eklutna Project. Chugach also purchases 50 MW from Anchorage Municipal Light & Power (ML&P), under a five-year, annually decreasing purchase power agreement. Under this Chugach-ML&P agreement, Chugach will purchase power only until 1990, due to ML&P's increasing power demands. Chugach's overall generating capacity, including purchased power and the Knik Arm Power Plant, is 588.9 MW.

Chugach recently signed a conditional sales agreement to purchase 80 percent (72MW) of the 90 MW to be generated from the proposed Bradley Lake Hydroelectric Power Project to be constructed by the state-run Alaska Power Authority. The Bradley Lake project is planned to begin service in 1990.

The new units for Beluga Station are in addition to all other Chugach power requirements, proposals and planned generation units. Since Chugach—like other Alaska electric utilities—is a small isolated system within the security of a regional or national grid, and because of the length and severity of Alaska winters, the need for system reliability is paramount. According to Chugach, unexpectedly high growth in its power supply area, reflected in demand forecasts, make the installation of these units necessary.

After receipt of information from Chugach, ERA has determined that the petition includes sufficient evidence to support a determination on the exemption request and it is, therefore, accepted pursuant to 10 CFR 501.3. ERA retains the right, however, to request additional relevant information from Chugach at any time during the proceeding should circumstances or procedural requirements so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials relating to the proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of the reasons therefor, will be published in the **Federal Register.**

DATES: Written comments are due on or before February 6, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585. Docket No. ERA-C&E-86-14 should be printed on the outside of the envelope and the documents contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585; Telephone (202) 252-4708.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building—Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Chugach proposes to install four generation units at its Beluga Station facility located approximately 40 air miles west of and across Cook Inlet from Anchorage.

Section 212(f) of FUA and 10 CFR 503.40 provides for a permanent exemption for powerplants necessary to maintain reliability of service. In addition, section 317 of Pub. L. 97-394 (42 U.S.C. 8322) provides that:

> In the case of any new electric powerplant located in Alaska for which a petition is accepted after the date of enactment of this Act, but before December 31, 1985, pursuant to Section 212(f) of the Powerplant and Industrial Fuel Use Act of 1978, to use natural gas . . . the petitioner shall be deemed to have made the demonstrations required by clauses (1) and (2) of such section and such exemption, subject to the other applicable provisions of such Act, shall be granted . . . Nothing in this section shall apply to any new electric powerplant using natural gas produced from the Prudhoe Bay unit of Alaska.

In accordance with the requirements of 10 CFR 503.40 (a) and (c), Chugach's petition for a permanent exemption for the four Beluga Station units includes evidence and supporting information demonstrating that the Beluga Station units are qualifying powerplants under section 317 of Pub. L. 97-394; that no alternate power supply exists; and that the use of mixtures in the unit is not feasible. In addition, Chugach submitted an environmental impact analysis, as required by 10 CFR 503.13.

NEPA Compliance

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significant by affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Chugach is entitled to the exemption requested. That determination will be based on the entire record of the proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC on December 16, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-30263 Filed 12-20-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-15; OFP Case No. 50552-9302-23-22]

Chugach Electric Association, Inc.; Acceptance of Petition for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Chugach Electric Association, Inc.

SUMMARY: On November 15, 1985, Chugach Electric Association, Inc. (Chugach), of Anchorage, Alaska, completed its filing of a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent reliability of service exemption for a package-power plant simple-cycle natural gas turbine at its Soldotna Unit No. 3 facility from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or "the Act"). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in any new electric powerplant and the construction of such a powerplant without the capability to use an alternate fuel as a primary energy source. Final rules setting forth the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. The final rules govering the reliability of service exemption, 10 CFR 503.40, were published at 46 FR 59872 (December 7, 1981).

The proposed unit for which Chugach seeks an exemption is to be a package-power plant simple-cycle natural gas turbine rates at 87 MW. The unit is scheduled to be installed by Chugach in 2013.The facility will be located in a rural area approximately three miles east of the community of Soldotna. Natural gas will be produced from the surrounding Kenai field. No natural gas used in the generation unit will be provided from the Prudhoe Bay gas fields of Alaska.

Chugach, headquartered in Anchorage, Alaska, is a non-profit member-owned electric cooperative. Chugach serves approximately 61,000 retail electric consumers within the Municipality of Anchorage and on the Kenai Peninsula. In addition, Chugach is wholesale power supplier for two neighboring cooperatives—Matanuska Electric Association, Inc. of Plamer, Alaska, and Homer Electric Association, Inc. of Homer, Alaska—and for the City of Seward, Alaska. Overall Chugach has the power supply responsibility for approximately half of Alaska's estimated 500,000 population.

At present, Chugach owns and operates five generating plants with a combined capacity of 529.9 MW. This includes 14 MW from the Knik Arm Power Plant, (in process of being retired).

In addition, Chugach has an entitlement of 9 MW from the Alaska Power Administration's Eklutna Project. Chugach also purchases 50 MW from Anchorage Municipal Light & Power (ML&P), under a five-year, annually descreasing purchase power agreement. Under this Chugach-ML&P agreement, Chugach will purchase power only until 1990, due to ML&P increasing power demands. Chugach's overall generating capacity, including purchased power and the Knik Arm Power Plant, is 588.9 MW.

Chugach recently signed a conditional sales agreement to purchase 80 percent (72 MW) of the 90 MW to be generated from the proposed Bradley Lake Hydroelectric Power Project to be constructed by the state-run Alaska Power Authority. The Bradley Lake project is planned to begin service in 1990.

The new unit for Soldotna Station is in addition to all other Chugach power requirements, proposals and planned generation units. Since Chugach—like other Alaska electric utilities—is a small isolated system within the security of a regional or national grid, and because of the length and severity of Alaska winters, the need for system reliability is paramount. According to Chugach, unexpectedly high growth in its power supply area, reflected in demand forecasts, make the installation of this unit nessessary.

After receipt of information from Chugach, ERA has determined that the petition includes sufficient evidence to support a determination on the exemption request and it is, therefore, accepted pursuant to 10 CFR 501.3. ERA retains the right, however, to request additional relevant information from Chugach at any time during the proceeding should circumstances or procedural requirements so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials relating to the proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of the reasons therefor, will be published in the **Federal Register**.

DATES: Written comments are due on or before February 6, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585. Docket No. ERA-C&E-86-15 should be printed on the outside of the envelope and the documents contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-045, Washington, DC 20585, Telephone (202) 252-4708;

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building—Room 6A-113, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Chugach proposes to install a package-power plant simple-cycle natural gas turbine rated at 87 MW. The geographic location of the facility is to be in a rural area approximately three miles east of the community of Soldotna. The unit is scheduled to be installed by 2013.

Section 212(f) of FUA and 10 CFR 503.40 provides for a permanent exemption for powerplants necessary to maintain reliability of service. In addition, section 317 of Pub. L. 97-394 (42 U.S.C. 8322) provides that:

> In the case of any new electric powerplant located in Alaska for which a petition is accepted after the date of enactment of this Act, but before December 31, 1985, pursuant to Section 212(f) of the Powerplant and Industrial Fuel Use Act of 1978, to use natural gas . . . the petitioner shall be deemed to have made the demonstrations required by clauses (1) and (2) of such section and such exemption, subject to the other applicable provisions of such Act, shall be granted . . . Nothing in this section shall apply to any new electric powerplant using natural gas produced from the Prudhoe Bay unit of Alaska.

In accordance with the requirements of 10 CFR 503.40(a) and (c), Chugach's petition for a permanent exemption for Soldotna Unit No. 3 includes evidence and supporting information demonstrating that Soldotna Unit No. 3 is a qualifying powerplant under Section 317 of Pub. L. 97-394; that no alternate power suply exists; and that the use of mixtures in the unit is not feasible. In addition, Chugach submitted an environmental impact analysis, as required by 10 CFR 503.13.

NEPA Compliance

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980 NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Chugach is entitled to the exemption requested. That determination will be based on the entire record of the proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on December 16, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-30264 Filed 12-20-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-16; OFP Case No. 50552-9301-24-22]

Chugach Electric Association, Inc.; Acceptance of Petition For Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Chugach Electric Association, Inc.

SUMMARY: On November 15, 1985, Chugach Electric Association, Inc.

(Chugach), of Anchorage, Alaska, completed its filing of a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent reliability of service exemption for a package-power plant simple-cycle natural gas turbine at its International Station No. 4 facility from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or "the Act"). Title II of FUA prohbits the use of petroleum and natural gas as a primary energy source in any new electric powerplant and the construction of such a powerplant without the capability to use an alternate fuel as a primary energy source. Final rules setting forth the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. The final rules governing the reliability of service exemption, 10 CFR 503.40, were published at 46 FR 59872 (December 7, 1981).

The proposed unit for which Chugach seeks an exemption is to be a package-power plant simple-cycle natural gas turbine rated at 87 MW. The unit is scheduled to be installed by Chugach in 1996. The facility will be located in the greater Municipality of Anchorage. Natural gas will be produced from Enstar and supplied from the Kenai Peninsula fields. No natural gas used in the generation unit will be provided from the Prudhoe Bay gas fields of Alaska.

Chugach, headquartered in Anchorage, Alaska, is a non-profit member-owned electric cooperative. Chugach serves approximately 61,000 retail electric consumers within the Municipality of Anchorage and on the Kenai Peninsula. In addition, Chugach is wholesale power supplier for two neighboring cooperatives—Matanuska Electric Association, Inc. of Palmer, Alaska, and Homer Electric Association, Inc. of Homer, Alaska—and for the City of Seward, Alaska. Overall, Chugach has the power supply responsibliity for approximately half of Alaska's estimated 500,000 population.

At present, Chugach owns and operates five generating plants with a combined capacity of 529.9 MW. This includes 14 MW from the Knik Arm Power Plant, (in process of being retired).

In addition, Chugach has an entitlement of 9 MW from the Alaska Power Administration's Eklutna Project. Chugach also purchases 50 MW from Anchorage Municipal Light & Power (ML&P), under a five-year, annually decreasing purchase power agreement.

Under this Chugach-ML&P agreement, Chugach will purchase power only until 1990, due to ML&P's increasing power demands. Chugach's overall generating capacity, including purchased power and the Knik Arm Power Plant, is 588.9 MW.

Chugach recently signed a conditional sales agreement to purchase 80 percent (72 MW) of the 90 MW to be generated from the proposed Bradley Lake Hydroelectirc Power Project to be constructed by the state-run Alaska Power Authority. The Bradley Lake project is planned to begin service in 1990.

The new unit for International Station is in additon to all other Chugach power requirements, proposals and planned generation units. Since Chugach—like other Alaska electric utilities—is a small isolated system within the security of a regional or national grid, and because of the length and severity of Alaska winters, the need for system reliability is paramount. Acccording to Chugach, unexpectedly high growth in its power supply area, reflected in demand forecasts, make the installation of this unit necessary.

After receipt of information from Chugach, ERA has determined that the petition includes sufficient evidence to support a determination on the exemption request and its is, therefore, accepted pursuant to 10 CFR 501.3. ERA retains the right, however, to request additional relevant information from Chugach at any time during the proceeding should circumstances or procedural requirements so require. A reveiw of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provide for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials relating to the proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m. except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of the reasons therefor, will be published in the **Federal Register**.

DATES: Written comments are due on or before February 6, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585. Docket No. ERA-C&E-86-16 should be printed on the outside of the envelope and the documents contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administation, 1000 Independence Avenue, SW, Room GA-045, Washington, DC 20585, Telephone (202) 252-4708;

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building—Room 6A-113, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Chugach proposes to install a package-powerplant simple-cycle natural gas turbine rated at 87MW. The geographic location of the facility is to be in the greater municipality of Anchorage. The unit is scheduled to be installed by 1996.

Section 212(f) of FUA and 10 CFR 503.40 provides for a permanent exemption for powerplants necessary to maintain reliability of service. In addition, section 317 of Pub. L. 97-394 (42 U.S.C. 8322) provides that:

> In the case of any new electric powerplant located in Alaska for which a petition is accepted after the date of enactment of this Act, but before December 31, 1985, pursuant to Section 212(f) of the Powerplant and Industrial Fuel Use Act of 1978, to use natural gas . . . the petitioner shall be deemed to have made the demonstrations required by clauses (1) and (2) of such section and such exemption, subject to the other applicable provisions of such Act, shall be granted . . . Nothing in this section shall apply to any new electric powerplant using natural gas produced from the Prudhoe Bay unit of Alaska.

In accordance with the requirements of 10 CFR 503.40(a) and (c), Chugach's petition for a permanent exemption for International Station No. 4 includes evidence and supporting information demonstrating that International Station No. 4 is a qualifying powerplant under Section 317 of Pub. L. 97-394; that no alternate power supply exists; and that the use of mixtures in the unit is not

feasible. In addition, Chugach submitted an environmental impact analysis, as required by 10 CFR 503.13.

NEPA Compliance

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.* and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that chugach is entitled to the exemption requested. That determination will be based on the entire record of the proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on December 16, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-30265 Filed 12-20-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES86-16-000, et al.]

El Paso Electric Company, et al.; Electric Rate and Corporation Regulation Filings

Take notice that the following filings have been made with the Commission:

1. El Paso Electric Company

[Docket No. ES86-16-000]

December 17, 1985.

Take notice that on December 11, 1985, El Paso Electric Company (Applicant) filed an application with the Federal Energy Regulatory Commission seeking authority, prsuant to section 204 of the Federal Power Act, to issue up to $70,000,000 principal amount of long-term promissory notes, to issue second mortgage bonds equal in principal amount to the principal amount of such promissory notes in order to secure the payment of the promissory notes and to enter into an interest rate swap agreement in order to effect a fixed interest rate on the borrowings under the notes. The Company proposes to issue such notes and second mortgage bonds and enter into the interest rate swap agreement in January 1986.

Comment date: December 30, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Gulf States Utilities Company

[Docket No. ES86-12-000]

December 17, 1985.

Take notice that on November 27, 1985, Gulf States Utilities Company (Applicant) filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue up to 750,000 Shares of New Preferred Stock, $100 Par Value, and seeking exemption from competitive bidding requirements.

Comment date: December 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Gulf States Utilities Company

[Docket No. ES86-11-000]

December 17, 1985.

Take notice that on November 25, 1985, Gulf States Utilities Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to Section 204 of the Federal Power Act, to issue not more than $400 million of short-term unsecured promissory notes with a final maturity no later than December 31, 1988.

Comment date: December 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Cities of Newark, New Castle, and Milford, Delaware, and Town of Smyrna, Delaware v. Delmarva Power and Light Company

[Docket No. EL86-11-000]

December 13, 1985.

Take notice that on November 27, 1985 that the Cities of Newark, New Castle and Milford, Delware, and Town of Smyrna Delaware (Municipalities) tendered for filing a complaint against Delmarva Power and Light Company (DP&L) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206.

The municipalities seek to have the Commission order DP&L to file reduced rates or refunds to the municipalities of $2,800,000 plus interest in compliance with the agreement between the two parties filed with the Commission on February 2, 1983. In the alternative, municipalities request this Commission to order DP&L to reduce rates to municipalities corresponding to retail rate reductions of March, 1984, June, 1984, March 1985 and the two rate reductions in June 1985 and order a hearing to determine the appropriate amount of rate reduction.

Comment date: January 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30233 Filed 12-20-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2894-003, et al.]

ARCO Oil & Gas Co., Division of Atlantic Richfield Co., et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates[1]

December 16, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 31, 1985, file with the Federal Energy Regulatory Commission,

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and Location	Price per Mcf	Pressure base
G-2894-003, D, Dec. 5, 1985	ARCO Oil & Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	El Paso Natural Gas Company, Various Fields, Lea County, New Mexico.	(1)	
G-7009-003, D, Dec. 9, 1985	Cities Service Oil & Gas Corporation, P.O. Box 300, Tulsa, Okla. 74102.	Columbia Gas Transmission Corporation, Blackberry Field, Pike County, Kentucky.	(2)	
CI65-603-000, D, Dec. 2, 1985	Marathon Oil Company, P.O. Box 3128, Houston, Texas 77253.	Natural Gas Pipeline Company of America, Indian Basin Area, Eddy County, New Mexico.	(3)	
CI65-663-000, D, Oct. 7, 1985	Sohio Petroleum Company, P.O. Box 4587, Houston, Texas 77210.	Phillips Petroleum Company, Panhandle Field, Moore County, Texas.	(4)	
CI66-172-001, D, Oct. 10, 1985	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Texas Gas Transmission Corporation, Maurice Field, Lafayette & Vermilion Parishes, Louisiana.	(5)	
CI86-85-000, D, Nov. 26, 1985	Phillips Petroleum Company, 336 HS&L Bldg., Bartlesville, Okla. 74004.	El Paso Natural Gas Company, Anadarko Basin Area, State of Texas.	(6)	14.73
CI66-86-000 (CI74-641), B, Nov. 25, 1985.	do	KN Energy, Inc., Pawnee Creek Field, Logan County, Colorado.	(7)	
CI86-87-000, B, Nov. 25, 1985	TXO Production Corp., First City Center LB 10, 1700 Pacific Avenue, Dallas, Texas 75201-4696.	Northwest Central Pipeline Corporation, Gate Townsite No. 1 Well, Sec. 33-5N-28ECM, Beaver County, Oklahoma.	(8)	
CI86-88-000, B, Nov. 25, 1985	do	Northwest Central Pipeline Corporation, Keahey No. 1 Well, Sec. 15-17N-25W, Roger Mills County, Oklahoma.	(8)	
CI86-89-000, B, Nov. 25, 1985	do	Northwest Central Pipeline Corporation, Gate Townsite No. 1 Well, Sec. 33-5N-28ECM, Beaver County, Oklahoma.	(9)	
CI86-90-000, B, Dec. 2, 1985	do	Northwest Central Pipeline Corporation, Beavins No. 1 Well, Sec. 12-17N-25W, Roger Mills County, Oklahoma.	(8)	
CI86-91-000 (CI71-499), B, Dec. 4, 1985.	The Superior Oil Company, Nine Greenway Plaza, Sutie 2700, Houston, Texas 77046.	Tennessee Gas Pipeline Company, Lac Blanc Field, Vermilion Parish, Louisiana.	(9)	
CI86-92-000, B, Dec. 4, 1985	Buckeye Oil Producing Co	Consolidate Gas Transmission Corporation, Ritchie County, West Virginia.	(10)	
CI86-124-000 (CI77-560), B, Dec. 6, 1985.	The Superior Oil Company, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Natural Gas Pipeline Company of America, Cemetary Field, Eddy County, New Mexico.	(11)	
CI86-125-000 (CI66-350), B, Dec. 5, 1985.	Cities Service Oil & Gas Corporation, P.O. Box 300, Tulsa, Okla. 74102.	Gas Gathering Corporation, Bayou Henry Field, Iberville Parish, Louisiana.	(12)	
CI86-126-000 (CI72-278), B, Dec. 9, 1985.	The Superior Oil Company	Tennessee Gas Pipeline Company, Lac Blanc Field, Vermilion Parish, Louisiana.	(11)	
CI86-127-000 (G-6161), B, Dec. 9, 1985.	do	Lone Star Gas Company, Roady Field, Garvin County, Oklahoma.	(13)	
CI86-128-000 (G-11813), B, Dec. 9, 1985.	Marathon Oil Company, P.O. Box 3128, Houston, Texas 77253.	Tennessee Gas Pipeline Company, Nelsonville Field, Austin County, Texas.	(14)	
CI86-129-000, F, Dec. 10, 1985	Tenneco Oil Company (Succ. to Forest Oil Corporation), P.O. Box 2511, Houston, Texas 77001.	Natural Gas Pipeline Company of America, West Cameron Area Block 229, Offshore Louisiana.	(15)	14.73
CI86-130-000 (CI70-23), B, Dec. 10, 1985.	Pennzoil Company, P.O. Box 2967, Houston, Texas 77252-2967.	Columbia Gas Transmission Corporation, O. D. Stockley Lease, Henry District, Clay County, West Virginia.	(16)	

[1] Deliveries directly to El Paso from the Tubb Zone only in the S. J. Sarkeys Well No. 5 have ceased as a result of the commingling operation.
[2] Gas is no longer available.
[3] Reserves depleted, well plugged and abandoned and lease terminated by the Land Commissioner of the State of New Mexico.
[4] Sohio Petroleum Company conveyed the acreage to Kodiak Drilling, Inc. effective 7-1-85.
[5] Sale of Bendel Heirs Property No. 808008 to Custom Enterprises and Investment Co.
[6] Applicant is filing for an increase exchange of volumes of natural Gas with El Paso Natural gas Company and adding new delivery points.
[7] The well was plugged and abandoned and the lease has been cancelled.
[8] Depleted.
[9] Gas depleted and *well* plugged and abandoned.
[10] $75.00 a month meter charge.
[11] Gas depleted and *wells* plugged and abandoned.
[12] The purchaser has advised that its resale contract with Transcontinental Gas Pipe Line Corporation expired 7-1-85, extended to 7-16-85, and the purchaser will no longer require the available gas. The subject gas will be sold to Anchor Gasoline Corporation for plant fuel and shrinkage.
[13] Production ceased and leases expired.
[14] Gas reserves were depleted and the wells were plugged and abandoned. The leases were terminated and were released to the lessor.
[15] Tenneco Oil Company acquired this property as of 8-1-85 from Forest Oil Corporation.
[16] Gas depleted to the extent that continuance of service under contract is unwarranted, and pursuant to paragraph 10 of the contract, said contract has been terminated by Seller. Pennzoil proposes to sell this gas to consolidated under Pennzoil's Rate Schedule #10.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 85-30234 Filed 12-20-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C173-494-000]

Columbia Gas Development Corp.; Request for Waiver and Petition To Amend Certificate

Issued December 17, 1985

Take notice that on December 2, 1985, Columbia Gas Development Corporation ("Columbia Development") filed a Request For Waiver of Optional Procedure Pricing Certificate Conditions (18 CFR 2.75(f) and 2.75(m)) and Petition to Amend the Certificate of Public Convenience and Necessity issued pursuant to Federal Power Commission Opinion No. 705 (September 11, 1974). Commission approval would permit Columbia Development to receive up to Natural Gas Policy Act (NGPA) applicable maximum lawful prices for all gas produced in Block 307, Eugene Island Area, Offshore Louisiana in the Federal Domain and sold to Columbia Gas Transmission Corporation pursuant to the certificate previously issued in the above-referenced docket. Columbia Development states that under the current rate allowed in the optional pricing certificate, participation in current Block 307 operations is uneconomic.

Columbia Development proposes to

amend the optional pricing certificate to allow repricing the gas based on a market-pricing provision proposed in a November 18, 1985 Amendment to its Gas Purchase and Sales Agreement, filed with this petition as a supplement to its applicable Rate Schedule. Columbia Development states that this relief is necessary to fund on -going and future operations on Block 307, Eugene Island Area. Under the amendment, the price for all gas purchased and produced from any well existing prior to October 1, 1985 would not exceed the lesser of the NGPA maximum lawful price under NGPA section 104 or an "alternate price" nominated by the purchaser as being representative of the market value of the gas in the purchaser's market area. The price for all gas purchased and produced from any well drilled subsequent to October 1, 1985 would not exceed the lesser of the applicable NGPA maximum lawful price or the "alternate price." The amendment provides that no adjustments will be made to the applicable price pursuant to section 110 of the NGPA. Under the terms of the amendment, the alternate price can be proposed periodically by either the seller or the buyer. With the exception of NGPA section 104 or 109 gas, the amendment allows the seller to seek a bona fide third party offer of a price other than the price nominated by the purchaser who may then continue to purchase the gas at the third party's price, or release such gas. Columbia Development additonally has petitioned for an order of pre-granted partial abandonment to effectuate any contingent release.

Any peprson desiring to be heard or to protest this application should, not later than thirty days after the date of publication in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1985)). All protests filed with the Commisison will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate a a party in any hearing therein must file a motion to intervene in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 395.214 (1985)).

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30235 Filed 12-20-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST86-1-000, et al.]

Texas Gas Transmission Corp., et al.; Self-Implementing Transactions

December 17, 1985.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Subpart F of Part 157 and Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant ot § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to blanket certificate issued under §284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under §284.222 of the Commission's Regulations.

A "G(HT)" or "GHS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protests with reference to a transaction reflected in this notice should on or before January 3, 1986, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

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[1] Notice of transactions does not constitute a determination that service will continue in accordance with Order No. 436, Final Rule and Notice Requesting Supplemental Comments, 50 FR 42372 (Oct. 18, 1985); Order No. 436-A, 33 FERC ¶ 61,372 (19085).

Docket No.[1]	Transport/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST86-1	Texas Gas Transmission Corp	Alumax Aluminum Corp	10-01-85	F(157)		
ST86-2	Texas Gas Transmission Corp	Baptist Memorial Hospital	10-01-85	F(157)		
ST86-3	Texas Gas Transmission Corp	Conley Frog & Switch Co	10-01-85	F(157)		
ST86-4	Texas Gas Transmission Corp	Southwire Co	10-01-85	F(157)		
ST86-5	Algonquin Gas Transmission Co	Boston Gas Co	10-01-85	B		
ST86-6	Acadian Gas Pipeline System	Mid Louisiana Gas Co	10-01-85	C		
ST86-7	Lone Star Gas Co	Davco Pipeline Corp	10-01-85	B		
ST86-8	Panhandle Eastern Pipe Line Co	Federal-Mogul Corp	10-01-85	F(157)		
ST86-9	Panhandle Eastern Pipe Line Co	Michigan Consolidated Gas Co	10-01-85	B		
ST86-10	Midwestern Gas Transmission Co	SCM Corp	10-01-85	F(157)		
ST86-11	Midwestern Gas Transmission Co	N-Ren Corp	10-01-85	F(157)		
ST86-12	Midwestern Gas Transmission Co	J.R. Simplot	10-01-85	F(157)		
ST86-13	Consolidated Gas Transmission Corp	MacKintosh-Hempfield Manuf. Co	10-03-85	F(157)		
ST86-14	Panhandle Eastern Pipe Line Co	Missouri Portland Cement Co	10-03-85	F(157)		
ST86-15	Trunkline Gas Co	Missouri Portland Cement Co	10-03-85	F(157)		
ST86-16	Panhandle Eastern Pipe Line Co	Clifford-Jacobs Forging Co	10-03-85	F(157)		
ST86-17	Red River Pipeline	Pacific Lighting Gas Supply Co., *et al.*	10-04-85	C		
ST86-18	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	10-04-85	C		
ST86-19	Columbia Gulf Transmission Co	Pennsylvania Gas & Water Co	10-04-85	B		
ST86-20	Columbia Gulf Transmission Co	Hayes-Albion Corp	10-04-85	F(157)		
ST86-21	Columbia Gulf Transmission Co	Pennsylvania Gas & Water Co	10-04-85	B		
ST86-22	Columbia Gulf Transmission Co	Anchor Hocking Corp	10-04-85	F(157)		
ST86-23	ANR Pipeline Co	Boston Gas Co	10-04-85	B		
ST86-24	ANR Pipeline Co	Badger Paper Mills, Inc	10-04-85	F(157)		
ST86-25	ANR Pipeline Co	Scott Paper Co	10-04-85	F(157)		
ST86-26	Transcontinental Gas Pipe Line Corp	Kings Mountain Mica Co	10-04-85	F(157)		
ST86-27	Transcontinental Gas Pipe Line Corp	Kings Mountain Brick, Inc	10-04-85	F(157)		
ST86-28	Tennessee Gas Pipeline Co	Cabot Corp	10-04-85	B		
ST86-29	Oklahoma Natural Gas Co	Panhandle Eastern Pipe Line Co	10-04-85	C	03-03-86	24.32
ST86-30	Trunkline Gas Co	Michigan Gas Utilities Co	10-07-85	B		
ST86-31	Panhandle Eastern Pipe Line Co	Quincy Soybean Co	10-07-85	F(157)		
ST86-32	Southern Natural Gas Co	MacMillan Bloedel, Inc	10-07-85	F(157)		
ST86-33	Southern Natural Gas Co	Bickerstaff Clay Products Co., Inc	10-07-85	F(157)		
ST86-34	ANR Pipeline Co	Borden, Inc	10-07-85	F(157)		
ST86-35	ANR Pipeline Co	American Potatoe	10-07-85	F(157)		
ST86-36	ANR Pipeline Co	Kohler Co	10-07-85	F(157)		
ST86-37	ANR Pipeline Co	Interlake, Inc	10-07-85	F(157)		
ST86-38	Texas Eastern Transmission Corp	Southern Connecticut Gas Co	10-08-85	B		
ST86-39	Algonquin Gas Transmission Co	Bay State Gas Co	10-08-85	B		
ST86-40	Algonquin Gas Transmission Co	Providence Gas Co	10-08-85	B		
ST86-41	Algonquin Gas Transmission Co	Southern Connecticut Gas Co	10-08-85	B		
ST86-42	Northern Natural Gas Co	Granite State Gas Trans., *et al.*	10-08-85	G/B		
ST86-43	Texas Eastern Transmission Corp	Commonwealth Gas Co	10-08-85	B		
ST86-44	Texas Eastern Transmission Corp	Providence Gas Co	10-08-85	B		
ST86-45	Texas Eastern Transmission Corp	Lukens Steel Co	10-08-85	F(157)		
ST86-46	Algonquin Gas Transmission Co	Bay State Gas Co	10-08-85	B		
ST86-48	Algonquin Gas Transmission Co	Connecticut Light and Power Co	10-08-85	B		
ST86-49	ANR Pipeline Co	Henkel Corp	10-08-85	F(157)		
ST86-50	ANR Pipeline Co	SCM Corp	10-08-85	F(157)		
ST86-51	Texas Gas Transmission Corp	Consolidated Gas Transmission Corp	10-08-85	G		
ST86-52	Texas Eastern Transmission Corp	Connecticut Light and Power Co	10-08-85	B		
ST86-53	Texas Eastern Transmission Corp	Middleborough Gas and Elect. Dept	10-08-85	B		
ST86-54	Texas Eastern Transmission Corp	Bay State Gas Co	10-08-85	B		
ST86-55	Consolidated Gas Transmission Corp	Copperweld Steel Co	10-09-85	F(157)		
ST86-56	Consolidated Gas Transmission Corp	Burke Steel	10-09-85	F(157)		
ST86-57	Consolidated Gas Transmission Corp	Seneca Foods Corp	10-09-85	F(157)		
ST86-58	Midwestern Gas Transmission Co	Henkel Corp	10-09-85	F(157)		
ST86-59	Delhi Gas Pipeline Corp	Southwest Gas Corp	10-10-85	C		
ST86-60	Tennessee Gas Pipeline Co	Bay State Gas Co	10-10-85	B		
ST86-61	Tennessee Gas Pipeline Co	Bridgeline Gas Distribution Co	10-10-85	B		
ST86-62	Louisiana Intrastate Gas Corp	Creole Gas Pipeline Corp	10-10-85	C	03-09-86	22.40
ST86-63	United Gas Pipe Line Co	Providence Gas Co	10-10-85	B		
ST86-64	Southern Natural Gas Co	Georgia Kaolin Co., Inc	10-10-85	F(157)		
ST86-65	Southern Natural Gas Co	Armstrong World Industries, Inc	10-10-85	F(157)		
ST86-66	Southern Natural Gas Co	Mustang Fuel Corp. of Mississippi	10-10-85	B		
ST86-67	Southern Natural Gas Co	Kemira, Inc	10-10-85	F(157)		
ST86-68	Southern Natural Gas Co	Atlantic Steel Co	10-10-85	F(157)		
ST86-69	Southern Natural Gas Co	The Bibb Co	10-10-85	F(157)		
ST86-70	United Gas Pipe Line Co	U.S. Steel Corp	10-10-85	F(157)		
ST86-71	Williston Basin Inter. Pipeline Co	Sugar Creek Resources, Inc	10-10-85	F(157)		
ST86-72	El Paso Natural Gas Co	Magma Copper Co	10-10-85	F(157)		
ST86-73	Natural Gas Pipeline Co. of America	Tennessee Gas Pipeline Co	10-10-85	G		
ST86-74	Columbia Gulf Transmission Co	General Electric Co	10-10-85	F(157)		
ST86-75	Southern Natural Gas Co	Calsilite Corp	10-10-85	F(157)		
ST86-76	United Gas Pipe Line Co	Bay State Gas Co	10-10-85	B		
ST86-77	Valero Transmission Co	El Paso Natural Gas Co	10-11-85	C		
ST86-78	Columbia Gas Transmission Corp	Hammermill Paper Co	10-11-85	F(157)		
ST86-79	Natural Gas Pipeline Co. of America	Tennessee Gas Pipeline Co	10-11-85	G		
ST86-80	Columbia Gas Transmission Corp	U.S.S. Chemicals	10-11-85	F(157)		
ST86-81	Producer's Gas Co	ANR Pipeline Co	10-11-85	C	03-10-86	25.20
ST86-82	Columbia Gulf Transmission Co	Chemetals, Inc	10-11-85	F(157)		
ST86-83	Columbia Gulf Transmission Co	Hammermill Paper Co	10-11-85	F(157)		
ST86-84	Columbia Gas Transmission Corp	Chemetals, Inc	10-11-85	F(157)		
ST86-85	Valero Transmission Co	Transcontinetal Gas Pipe Line Corp	10-11-85	C		
ST86-86	Columbia Gas Transmission Corp	PPG Industries, Inc	10-11-85	F(157)		
ST86-87	Tennessee Gas Pipeline Co	East Tennessee Natural Gas Co	10-11-85	G		
ST86-88	Tennessee Gas Pipeline Co	Columbia Gas of Kentucky, *et al.*	10-11-85	B		
ST86-89	El Paso Natural Gas Co	Tucson Electric Power Co	10-11-85	F(157)		
ST86-90	Florida Gas Transmission Co	Atlanta Gas Light Co	10-11-85	B		
ST86-91	United Gas Pipe Line Co	Connecticut Light & Power Co	10-15-85	B		
ST86-92	Columbia Gulf Transmission Co	Monterey Pipeline Co	10-15-85	B		
ST86-93	ANR Pipeline Co	Peoples Gas Light and Coke Co	10-15-85	B		

Docket No.[1]	Transport/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST86-94	Producer's Gas Co	Peoples Gas Light and Coke Co	10-15-85	D		
ST86-95	Natural Gas Pipeline Co. of America	Jones and Laughlin Steel, Inc	10-15-85	F(157)		
ST86-96	Natural Gas Pipeline Co. of America	Vulcan Chemicals	10-11-85	F(157)		
ST86-97	Texas Gas Transmission Corp	National-Southwire Aluminum Co	10-11-85	F(157)		
ST86-98	Texas Gas Transmission Corp	General Electric Co	10-11-85	F(157)		
ST86-99	Texas Gas Transmission Corp	DIXICO, Inc	10-11-85	F(157)		
ST86-100	Texas Gas Transmission Corp	Logan Aluminum, Inc	10-11-85	F(157)		
ST86-101	ANR Pipeline Co	Pennsylvania Gas and Water Co	10-17-85	B		
ST86-102	Transcontinental Gas Pipe Line Corp	Scott Paper Co	10-15-85	F(157)		
ST86-103	Texas Gas Transmission Corp	Emerson Electric Co	10-16-85	F(157)		
ST86-104	Southern Natural Gas Co	Thomaston Mills, Inc	10-16-85	F(157)		
ST86-105	Southern Natural Gas Co	Union Camp Corp	10-16-85	F(157)		
ST86-106	Michigan Gas Storage Co	Battle Creek Gas Co	10-16-85	B		
ST86-107	Westar Transmission Co	Pacific Lighting Co	10-16-85	C		
ST86-109	ANR Pipeline Co	Proctor & Gamble Paper Products Co	10-16-85	F(157)		
ST86-110	Panhandle Eastern Pipe Line Co	Dunn/SECO Partners	10-16-85	F(157)		
ST86-111	Southern Natural Gas Co	Allied Corp	10-16-85	F(157)		
ST86-112	Southern Natural Gas Co	Owens-Corning Fiberglas Corp	10-16-85	F(157)		
ST86-113	Southern Natural Gas Co	A.P. Green Refractories Co	10-16-85	F(157)		
ST86-114	Transcontinental Gas Pipe Line Corp	Campbell Soup Co	10-17-85	F(157)		
ST86-115	Transcontinental Gas Pipe Line Corp	Goldtex, Inc	10-17-85	F(157)		
ST86-116	Transcontinental Gas Pipe Line Corp	VLDC Co	10-17-85	B		
ST86-117	Algonquin Gas Transmission Co	Commonwealth Gas Co	10-17-85	B		
ST86-118	Algonquin Gas Transmission Co	Town of Middleborough	10-17-85	B		
ST86-119	United Gas Pipe Line Co	Mississippi River Transmission Co	10-17-85	G		
ST86-120	ANR Pipeline Co	Pacific Lighting Gas Supply Co	10-18-85	B		
ST86-121	Northwest Pipeline Corp	Public Service Co. of New Mexico	10-18-85	F(157)		
ST86-122	El Paso Natural Gas Co	Public Service Co. of New Mexico	10-18-85	F(157)		
ST86-123	United Gas Pipe Line Co	Stone Container Corp	10-18-85	F(157)		
ST86-124	El Paso Natural Gas Co	Caminco American, Inc	10-18-85	F(157)		
ST86-125	United Gas Pipe Line Co	First Chemical Corp	10-18-85	F(157)		
ST86-126	United Gas Pipe Line Co	City of Alexandria, *et al*	10-18-85	B		
ST86-127	United Gas Pipe Line Co	Mustang Fuel Corp	10-21-85	B		
ST86-128	United Gas Pipe Line Co	Commonwealth Gas Co	10-21-85	B		
ST86-129	Columbia Gulf Transmission Co	Texas Eastern Transmission Corp	10-21-85	G		
ST86-130	Northwest Pipeline Corp	Longview Fibre Co	10-21-85	F(157)		
ST86-131	Northwest Central Pipeline Corp	Miami Pipeline Co	10-21-85	B		
ST86-132	Texas Eastern Transmission Corp	Sabine Gas Transmission Co	10-21-85	B		
ST86-133	Texas Eastern Transmission Corp	UGI Corp., *et al*	10-21-85	B/G		
ST86-134	Texas Eastern Transmission Corp	UGI Corp., *et al*	10-21-85	B/G		
ST86-135	Natural Gas Pipeline Co. of America	Archer-Daniels-Midland Co	10-21-85	F(157)		
ST86-136	Northern Natural Gas Co	Endevco Oil and Gas Co	10-21-85	B		
ST86-137	Tennessee Gas Pipeline Co	Consolidated Edison Co. of NY, Inc	10-21-85	B		
ST86-138	National Fuel Gas Supply Corp	Hammermill Paper Co	10-21-85	F(157)		
ST86-139	United Gas Pipe Line Co	Consolidated Edison Co. of NY, Inc	10-24-85	B		
ST86-140	Northwest Central Pipeline Corp	Miami Pipeline Co	10-22-85	B		
ST86-141	Northwest Central Pipeline Corp	Stepan Co	10-22-85	F(157)		
ST86-142	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	10-22-85	F(157)		
ST86-143	J-W Gathering Co	Mississippi River Transmission Corp	10-22-85	C		
ST86-144	Transcontinental Gas Pipe Line Corp	Hercules, Inc	10-22-85	F(157)		
ST86-145	Transcontinental Gas Pipe Line Corp	Texaco Chemical Corp	10-22-85	F(157)		
ST86-146	Tennessee Gas Pipe Line Co	Texas Gas Transmission Co	10-22-85	G		
ST86-147	Transcontinental Gas Pipe Line Corp	Givaudan Corp	10-22-85	F(157)		
ST86-148	Texas Gas Transmission Corp	Burke Steel	10-22-85	F(157)		
ST86-149	United Gas Pipe Line Co	Elizabethtown Gas Co	10-22-85	B		
ST86-150	United Gas Pipe Line Co	Quivira Gas Co	10-22-85	B		
ST86-151	Texas Eastern Transmission Corp	Columbia Gas Transmission Corp	10-23-85	G		
ST86-152	Panhandle Eastern Pipe Line Co	City of Hillsdale, Board of Public Utilities	10-24-85	F(157)		
ST86-153	Northwest Central Pipeline Corp	Atlas Powder Co	10-23-85	F(157)		
ST86-154	ANR Pipeline Co	Consolidated Packing Corp	10-23-85	F(157)		
ST86-155	Transcontinental Gas Pipe Line Corp	Marcal Paper Mills	10-23-85	F(157)		
ST86-156	Producer's Gas Co	Michigan Gas Utilities	10-23-85	D		
ST86-157	United Gas Pipe Line Co	Humble Gas Transmission Co	10-23-85	B		
ST86-158	Colorado Interstate Gas Co	City of Colorado Springs	10-24-85	B		
ST86-159	Panhandle Eastern Pipe Line Co	Caterpillar Tractor Co	10-24-85	F(157)		
ST86-160	Valero Transmission Co	El Paso Natural Gas Co	10-24-85	C		
ST86-161	Tennessee Gas Pipeline Co	Texas Eastern Transmission Corp	10-24-85	G		
ST86-162	Seagull Energy Corp	Seagull Interstate Corp	10-24-85	C	03-23-86	10.00
ST86-163	Michigan Gas Storage Co	Dunn/SECO Partners	10-16-85	F(157)		
ST86-164	Louisiana-Nevada Transit Co	Mississippi River Transmission Corp	10-17-85	G		
ST86-165	El Paso Natural Gas Co	El Paso Hydrocarbons Co	10-25-85	B		
ST86-166	Columbia Gas Transmission Corp	Al-Tech Specialty Steel Corp	10-25-85	F(157)		
ST86-167	Columbia Gas Transmission Corp	Metropolitan Educational Council	10-25-85	F(157)		
ST86-168	Columbia Gas Transmission Corp	Columbus Board of Education	10-25-85	F(157)		
ST86-169	Columbia Gas Transmission Corp	South-Western City Schools	10-25-85	F(157)		
ST86-170	Columbia Gulf Transmission Co	Al-Tech Specialty Steel Corp	10-25-85	F(157)		
ST86-171	Columbia Gulf Transmission Co	Calgon Carbon Corp	10-25-85	F(157)		
ST86-172	Columbia Gulf Transmission Co	Locke Insulators, Inc	10-25-85	F(157)		
ST86-173	Columbia Gulf Transmission Co	Mobay Chemical Corp	10-25-85	F(157)		
ST86-174	Columbia Gulf Transmission Co	SCM Corp	10-25-85	F(157)		
ST86-175	Texas Gas Transmission Corp	Gates Rubber Co	10-25-85	F(157)		
ST86-176	Texas Gas Transmission Corp	Hunt Wesson Foods, Inc	10-25-85	F(157)		
ST86-177	Texas Gas Transmission Corp	Dow Corning Corp	10-25-85	F(157)		
ST86-178	ANR Pipeline Co	Anamax Corp	10-25-85	F(157)		
ST86-179	ANR Pipeline Co	Bemis Manufacturing Co	10-25-85	F(157)		
ST86-180	ANR Pipeline Co	Brillion Iron Works, Inc	10-25-85	F(157)		
ST86-181	ANR Pipeline Co	Consolidated Papers, Inc	10-25-85	F(157)		
ST86-182	ANR Pipeline Co	Del Monte Corp	10-25-85	F(157)		
ST86-183	ANR Pipeline Co	Hardwoods Corp. of America	10-25-85	F(157)		
ST86-184	ANR Pipeline Co	Owens-Illinois	10-25-85	F(157)		
ST86-185	ANR Pipeline Co	Plastics Engineering Co	10-25-85	F(157)		
ST86-186	ANR Pipeline Co	Schreiber Foods, Inc	10-25-85	F(157)		

Docket No.[1]	Transport/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST86-187	ANR Pipeline Co	University of Wisconsin	10-25-85	F(157)		
ST86-188	ANR Pipeline Co	Wisconsin Dairies Cooperative	10-25-85	F(157)		
ST86-189	Equitable Gas Co	Equitable Gas-Energy Co	10-28-85	F(157)		
ST86-190	United Texas Transmission Co	Pacific Lighting Gas Supply Co	10-28-85	C		
ST86-191	United Gas Pipe Line Co	Texas Gas Transmission Corp	10-28-85	G		
ST86-192	United Gas Pipe Line Co	Southern Connecticut Gas Co	10-28-85	B		
ST86-193	Natural Gas Pipeline Co. of America	Westvaco Corp	10-28-85	F(157)		
ST86-194	Oasis Pipe Line Co	Pacific Lighting Gas Supply Co	10-29-85	C		
ST86-195	Tennessee Gas Pipeline Co	National Railroad Passenger Corp	10-29-85	F(157)		
ST86-196	ANR Pipeline Co	Wisconsin Fuel and Light Co	10-29-85	B		
ST86-197	ANR Pipeline Co	Wisconsin Gas Co	10-29-85	B		
ST86-198	ANR Pipeline Co	Froedtert Malt Corp	10-29-85	F(157)		
ST86-199	ANR Pipeline Co	Interstate Drop Forge	10-29-85	F(157)		
ST86-200	ANR Pipeline Co	Krause Milling	10-29-85	F(157)		
ST86-201	ANR Pipeline Co	Nekoosa Paper	10-29-85	F(157)		
ST86-202	ANR Pipeline Co	Wisconsin Paperboard	10-29-85	F(157)		
ST86-203	Houston Pipe Line Co	HNG Industrial Natural Gas Co	10-30-85	C		
ST86-204	Houston Pipe Line Co	Providence Gas Co	10-30-85	C		
ST86-205	Florida Gas Transmission Co	Houston Pipe Line Co	10-30-85	B		
ST86-206	Northern Natural Gas Co	Corn Products	10-30-85	F(157)		
ST86-207	Tennessee Gas Pipeline Co	Florida Gas Transmission Co	10-30-85	G		
ST86-208	Producer's Gas Co	Northern Illinois Gas Co	10-30-85	D		
ST86-209	Texas Gas Transmission Corp	Michigan Gas Utilities Co., *et al*	10-30-85	B		
ST86-210	Texas Eastern Transmission Corp	Central Illinois Public Service Co	10-30-85	B		
ST86-211	Texas Eastern Transmission Corp	Commonwealth Gas Co	10-30-85	B		
ST86-212	Texas Eastern Transmission Corp	Central Hudson Gas and Elect. Corp	10-30-85	B		
ST86-213	Texas Eastern Transmission Corp	Boston Gas Co	10-30-85	B		
ST86-214	Texas Eastern Transmission Corp	Ohio Cumberland Gas Co	10-30-85	B		
ST86-215	Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	10-30-85	B		
ST86-216	Northwest Pipeline Corp	Oregon Steel Mills	10-24-85	F(157)		
ST86-217	Northern Natural Gas Co	Southwest Gas Corp	10-30-85	B		
ST86-218	Trunkline Gas Co	Northern Illinois Gas Co	10-30-85	B		
ST86-219	Panhandle Eastern Pipe Line Co	Northern Illinois Gas Co	10-30-85	B		
ST86-220	Trunkline Gas Co	Caterpillar Tractor Co	10-24-85	F(157)		
ST86-221	Transcontinental Gas Pipe Line Corp	Garden State Paper, Inc	10-30-85	F(157)		
ST86-222	Northwest Pipeline Corp	Texaco Refining and Marketing, Inc	10-30-85	F(157)		
ST86-223	Producer's Gas Co	Pacific Gas and Electric Co	10-30-85	D		
ST86-224	Panhandle Eastern Pipe Line Co	Ball Glass Corp	10-30-85	F(157)		
ST86-225	Trunkline Gas Co	Ball Glass Corp	10-30-85	F(157)		
ST86-226	Panhandle Eastern Pipe Line Co	Northern Indiana Public Service Co	10-30-85	B		
ST86-227	National Fuel Gas Supply Corp	Jamestown Metal Manufacturing Co	10-30-85	F(157)		
ST86-228	Southern Natural Gas Co	LGS Intrastate, Inc	10-31-85	B		
ST86-229	El Paso Natural Gas Co	Gas Marketing, Inc	10-31-85	B		
ST86-230	Westar Transmission Co	El Paso Natural Gas Co	10-31-85	C		
ST86-231	Sea Robin Pipeline Co	Commonwealth Gas Co	10-31-85	B		
ST86-232	Northwest Pipeline Corp	Petrofina Gas Pipeline Co	10-31-85	B		
ST86-233	Northwest Pipeline Corp	El Paso Natural Gas Co	10-31-85	G		
ST86-234	United Gas Pipe Line Co	Columbia Gas Trans. Co., *et al*	10-31-85	G		
ST86-235	Tennessee Gas Pipeline Co	North Alabama Gas District	10-31-85	B		
ST86-236	ANR Pipeline Co	Wisconsin Public Service Corp	10-31-85	B		
ST86-237	Kentucky West Virginia Gas Co	Columbia Gas of Maryland	10-31-85	B		
ST86-238	El Paso Natural Gas Co	Southern Union Gas Co	10-31-85	B		
ST86-239	El Paso Natural Gas Co	City of Mesa	10-31-85	B		
ST86-240	El Paso Natural Gas Co	Western Gas Interstate Co	10-31-85	G		
ST86-241	Tennessee Gas Pipeline Co	Peoples Gas Light & Coke Co	10-31-85	B		
ST86-242	Transcontinental Gas Pipe Line Corp	City of Alexander City	10-31-85	B		
ST86-243	Transcontinental Gas Pipe Line Corp	City of Bowman	10-31-85	B		
ST86-244	Transcontinental Gas Pipe Line Corp	City of Buford	10-31-85	B		
ST86-245	Transcontinental Gas Pipe Line Corp	City of Butler	10-31-85	B		
ST86-246	Transcontinental Gas Pipe Line Corp	City of Clanton	10-31-85	B		
ST86-247	Transcontinental Gas Pipe Line Corp	City of Commerce	10-31-85	B		
ST86-248	Transcontinental Gas Pipe Line Corp	City of Covington	10-31-85	B		
ST86-249	Transcontinental Gas Pipe Line Corp	East Central Alabama Gas District	10-31-85	B		
ST86-250	Transcontinental Gas Pipe Line Corp	City of Elberton	10-31-85	B		
ST86-251	Transcontinental Gas Pipe Line Corp	City of Hartwell	10-31-85	B		
ST86-252	Transcontinental Gas Pipe Line Corp	City of Lawrenceville	10-31-85	B		
ST86-253	Transcontinental Gas Pipe Line Corp	Town of Liberty	10-31-85	B		
ST86-254	Transcontinental Gas Pipe Line Corp	City of Linden	10-31-85	B		
ST86-255	Transcontinental Gas Pipe Line Corp	City of Madison	10-31-85	B		
ST86-256	Transcontinental Gas Pipe Line Corp	Maplesville Water Works & Gas Board	10-31-85	B		
ST86-257	Transcontinental Gas Pipe Line Corp	City of Monroe	10-31-85	B		
ST86-258	Transcontinental Gas Pipe Line Corp	City of Roanoke	10-31-85	B		
ST86-259	Transcontinental Gas Pipe Line Corp	Town of Rockford	10-31-85	B		
ST86-260	Transcontinental Gas Pipe Line Corp	City of Royston	10-31-85	B		
ST86-261	Transcontinental Gas Pipe Line Corp	City of Social Circle	10-31-85	B		
ST86-262	Transcontinental Gas Pipe Line Corp	City of Sugar Hill	10-31-85	B		
ST86-263	Transcontinental Gas Pipe Line Corp	Water Works & Gas Board of the Town of Thomaston.	10-31-85	B		
ST86-264	Transcontinental Gas Pipe Line Corp	City of Toccoa	10-31-85	B		
ST86-265	Transcontinental Gas Pipe Line Corp	Tri-County Natural Gas Co	10-31-85	B		
ST86-266	Transcontinental Gas Pipe Line Corp	United Cities Gas Co	10-31-85	B		
ST86-267	Transcontinental Gas Pipe Line Corp	Town of Wadley	10-31-85	B		
ST86-268	Transcontinental Gas Pipe Line Corp	The Utilities Board, Wedowee, AL	10-31-85	B		
ST86-269	Transcontinental Gas Pipe Line Corp	City of Winder	10-31-85	B		
ST86-270	Transcontinental Gas Pipe Line Corp	City of Bessemer City	10-31-85	B		
ST86-271	Transcontinental Gas Pipe Line Corp	Blacksburg Natural Gas System	10-31-85	B		
ST86-272	Transcontinental Gas Pipe Line Corp	Clinton-Newberry Natural Gas Authority	10-31-85	B		
ST86-273	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	10-31-85	B		
ST86-274	Transcontinental Gas Pipe Line Corp	City of Danville Gas Department	10-31-85	B		
ST86-275	Transcontinental Gas Pipe Line Corp	Fort Hill Natural Gas Authority	10-31-85	B		
ST86-276	Transcontinental Gas Pipe Line Corp	Town of Fountain Inn	10-31-85	B		
ST86-277	Transcontinental Gas Pipe Line Corp	Comm. Public Works, Greenwood, SC	10-31-85	B		

Docket No.[1]	Transport/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST86-278	Transcontinental Gas Pipe Line Corp	Comm. of Public Works, Greer, SC	10-31-85	B		
ST86-279	Transcontinental Gas Pipe Line Corp	City of Kings Mountain	10-31-85	B		
ST86-280	Transcontinental Gas Pipe Line Corp	Comm. of Public Works, Laurens, SC	10-31-85	B		
ST86-281	Transcontinental Gas Pipe Line Corp	City of Lexington	10-31-85	B		
ST86-282	Transcontinental Gas Pipe Line Corp	North Carolina Gas Service	10-31-85	B		
ST86-283	Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co., Inc	10-31-85	B		
ST86-284	Transcontinental Gas Pipe Line Corp	City of Shelby	10-31-85	B		
ST86-285	Transcontinental Gas Pipe Line Corp	Southwestern Virginia Gas Co	10-31-85	B		
ST86-286	Transcontinental Gas Pipe Line Corp	City of Union	10-31-85	B		
ST86-287	Transcontinental Gas Pipe Line Corp	United Cities Gas Co	10-31-85	B		
ST86-288	Transcontinental Gas Pipe Line Corp	Brooklyn Union Gas Co	10-31-85	B		
ST86-289	Transcontinental Gas Pipe Line Corp	Consolidated Edison Co. of NY, Inc	10-31-85	B		
ST86-290	Transcontinental Gas Pipe Line Corp	Delmarva Power & Light Co	10-31-85	B		
ST86-291	Transcontinental Gas Pipe Line Corp	Frederick Gas Co	10-31-85	B		
ST86-292	Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	10-31-85	B		
ST86-293	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas & Water Co	10-31-85	B		
ST86-294	Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	10-31-85	B		
ST86-295	Transcontinental Gas Pipe Line Corp	Philadelphia Gas Works	10-31-85	B		
ST86-296	Transcontinental Gas Pipe Line Corp	Public Service Electric & Gas Co	10-31-85	B		
ST86-297	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	10-31-85	B		
ST86-298	Transcontinental Gas Pipe Line Corp	UGI Corp	10-31-85	B		
ST86-299	Southern Natural Gas Co	South Carolina Pipeline Corp	10-31-85	B		
ST86-300	Southern Natural Gas Co	Chattanooga Gas Co	10-31-85	B		
ST86-301	Kentucky West Virginia Gas Co	Columbia Gas of Ohio	10-31-85	B		
ST86-302	Midwestern Gas Transmission Co	Ball Glass Corp	10-31-85	F(157)		
ST86-303	Transcontinental Gas Pipe Line Corp	Alcan Powders and Chemicals	10-31-85	F(157)		
ST86-304	Transcontinental Gas Pipe Line Corp	Reichholds Chemicals, Inc	10-31-85	F(157)		
ST86-305	ANR Pipeline Co	Michigan Power Co	10-31-85	B		
ST86-306	Midwestern Gas Transmission Co	Northern Illinois Gas Co	10-31-85	B		
ST86-307	Columbia Gas Transmission Corp	The Inland Gas Co	10-31-85	G		
ST86-308	Columbia Gulf Transmission Co	Celotex Corp	10-31-85	F(157)		
ST86-309	Columbia Gulf Transmission Co	Consolidated Aluminum Co	10-31-85	F(157)		
ST86-310	Columbia Gas Transmission Corp	Mt. Savage Refractories	10-31-85	F(157)		
ST86-311	Columbia Gulf Transmission Co	Eastern Stainless Steel Co	10-31-85	F(157)		
ST86-312	Columbia Gas Transmission Corp	Eastern Stainless Steel Co	10-31-85	F(157)		
ST86-313	Columbia Gas Transmission Corp	Consolidated Aluminum Co	10-31-85	F(157)		
ST86-314	Midwestern Gas Transmission Co	Stepan Co	10-31-85	F(157)		
ST86-315	Midwestern Gas Transmission Co	Northern Gas Co	10-31-85	B		
ST86-316	Texas Gas Transmission Corp	Quaker Oats Co	10-31-85	F(157)		
ST86-317	ANR Pipeline Co	Northern Illinois Gas Co	10-31-85	B		
ST86-318	ANR Pipeline Co	Michigan Gas Utilities Co	10-31-85	B		
ST86-319	ANR Pipeline Co	Stepan Co	10-31-85	F(157)		
ST86-320	Northern Natural Gas Co	Plains Cooperative Oil Mill, Inc	10-31-85	F(157)		
ST86-321	Northern Natural Gas Co	Texas Instruments	10-31-85	F(157)		
ST86-322	Northern Natural Gas Co	Texas Tech University	10-31-85	F(157)		
ST86-323	Northern Natural Gas Co	Frito Lay, Inc	10-31-85	F(157)		
ST86-324	Columbia Gulf Transmission Co	Great Lakes Sugar Co	10-31-85	F(157)		
ST86-325	El Paso Natural Gas Co	Arizona Public Service Co	10-31-85	F(157)		
ST86-326	El Paso Natural Gas Co	El Paso Electric Co	10-31-85	F(157)		
ST86-327	Mountain Fuel Resources, Inc	J.R. Simplot Co	10-31-85	F(157)		
ST86-328	Midwestern Gas Transmission Co	Interlake, Inc	10-31-85	F(157)		
ST86-329	The Inland Gas Co., Inc	Industrial Gas Corp	10-31-85	B		
ST86-330	Southern Natural Gas Co	Georgia Kraft Co	10-31-85	F(157)		
ST86-331	Southern Natural Gas Co	Gulf States Paper Corp	10-31-85	F(157)		
ST86-332	Southern Natural Gas Co	Delta Brick & Tile Co	10-31-85	F(157)		
ST86-333	Southern Natural Gas Co	Allied Corp	10-31-85	F(157)		
ST86-334	Southern Natural Gas Co	Nord Kaolin Co	10-31-85	F(157)		
ST86-335	Tennessee Gas Pipeline Co	Pennsylvania Gas & Water Co	10-31-85	B		
ST86-336	Midwestern Gas Transmission Co	Caterpillar Tractor Co	10-31-85	F(157)		
ST86-341	Panhandle Eastern Pipe Line Co	National Starch & Chemical Co	10-31-85	F(157)		
ST86-342	Panhandle Eastern Pipe Line Co	Anchor Glass Container Corp	10-31-85	F(157)		
ST86-344	Trunkline Gas Co	Cokinos Natural Gas Co	10-31-85	B		
ST86-345	Algonquin Gas Transmission Co	Providence Gas Co	10-31-85	B		
ST86-346	Algonquin Gas Transmission Co	Commonwealth Gas Co	10-31-85	B		
ST86-347	Algonquin Gas Transmission Co	Fall River Gas Co	10-31-85	B		
ST86-348	Gas Transport, Inc	Anchor Hocking Corp	10-31-85	F(157)		
ST86-349	Gas Transport, Inc	Anchor Hocking Corp	10-31-85	F(157)		
ST86-350	Algonquin Gas Transmission Co	Connecticut Natural Gas Corp	10-31-85	B		
ST86-351	Algonquin Gas Transmission Co	Orange & Rockland Utilities, Inc	10-31-85	B		
ST86-352	Algonquin Gas Transmission Co	Boston Gas Co	10-31-85	B		
ST86-353	Algonquin Gas Transmission Co	Central Hudson Gas & Electric Corp	10-31-85	B		

PGP Pipeline filed a Petition for Rate Approval for both ST85-289 and ST85-898 subsequent to their initial reports for these transactions. The rate petition is noticed at this time to give interested parties the appropriate 150-day comment period.

ST85-289	PGP Pipeline	Washington Gas Light Co	10-30-85	D	03-29-86	22.75
ST85-898	PGP Pipeline	Mississippi River Transmission Co	10-30-85	D	03-29-86	22.75

[1] Notice of transactions does not constitute a determination that filings comply with Commission Regulations in accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42372, 10/18/85.

[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to § 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 85-30236 Filed 12-20-85; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 13, 1985.

The Federal Communications Commission has submitted the following information collection requirements to OMB for reivew and clearance under the Paperwork Reduction Act of 1980, Pub. L. 95-111.

Copies of the submissions are available for Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-7231.

OMB Number: 3060-0277
Title: Section 81.223, Station Documents
Action: Extension
Respondents: Public coast radio stations (Maritime Service) using telegraphy
Estimated Annual Burden: 10 Recordkeepers; 80 Hours

OMB Number: 3060-0297
Title: Section 81.352, Cooperative use of facilities
Action: Extension
Respondents: Limited coast radio stations and marine-utility radio stations (Maritime Service)
Estimated Annual Burden: 100 Recordkeepers; 1,600 Hours

OMB Number: 3060-0317
Title: Section 81.36(d), Modification of license
Action: Extension
Respondents: Licensees of radio stations on land in the maritime services and Alaska fixed service
Estimated Annual Burden: 50 Responses; 50 Hours

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-30199 Filed 12-20-85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 85-367; File No. BPCT-850627KI et al.]

Ashford Communications et al.; Hearing Designation Order

In re applications of: Mary AShford d./b./a.

Ashford Communications	MM DOCKET NO. 85-367; File No. BPCT-850627K1.
Sonshine Family TV, Inc.	File No. BPCT-850812KG.
Thomas H. Moffit, Sr., *et. al.* d.b.a. Bethlehem Broadcasting.	File No. BPCT-850814KH.
Leo Jones d.b.a. Haughton Television.	File No. BPCT-850815KF.
William Saunders d.b.a. Lehigh Valley Broadcasting and Communications.	File No. BPCT-850815KG.
William J. Kimbel	File No. BCPT-850815KH.

For Construction Permit Bethlehem, Pennsylvania.

Adopted: November 27, 1985.
Released: December 16, 1985.
By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 60, Bethlehem, Pennsylvania; a petition to deny the application of Ashford Communications filed by Marantha Broascasting, licensee of Stations WFMZ—FM and WFMZ—TV, Allentown, Pennsylvania; a petition to deny the application of Bethlehem Broadcasting filed by Haughton Television; petitions to deny the applications of Sonshine Family TV, Inc., Haughton Television, Lehigh Valley Broadcasting and Communications (Lehigh), and William J. Kimble filed by Bethlehem Broadcasting; [1] and a late-filed amendment submitted by Lehigh. [2]

2. Ashford Communications proposes to mount its antenna on the tower owned by Marantha Broadcasting Company (Marantha), licensee of Stations WFMZ—TV and WFMZ—FM, Allentown, Pennsyvlania. On July 12, 1985, Marantha filed a letter stating that Ashford Communications (Ashford), was not authorized to specify the WFMZ tower as its proposed transmitter site. The letter further states that Marantha told Ashford Communications' consultant that there was no room on the tower for an additional antenna. On August 15, 1985, Marantha filed a petition to deny Ashford Communications' application based on the fact that Ashford misrepresented the availability of its proposed site. In response to the petition, Ashford states that the site specified in its application is not owned or controlled by Marantha but by Franklin Broadcasting. Ashford states that it erroneously specified the geographical coordiantes of the WFM tower and that it was amending its application to correct the coordinates. Ashford has not amended its applicationas of this date. We note, in reviewing the applications in this proceeding, that there is a site owned by Franklin Broadcasting near the Marantha site. Several of the other applicants have also specified the Franklin site. We decline, therefore, to specify a site availability or misrepresentation issue against Ashford on the basis of the information now before us. However, Ashford will be required to submit corrected coordinates for its site as well as a certification as to the current availability of its site in the form required by the Commisison.[3] Ashford wil be given 20 days after the release of this Order to submit the required information.

3. No determination has been reached that the tower height and location proposed by each of the applicants, except William J. Kimbel, would not constitute a hazard to air navigation. Accordingly. an issue regarding this matter will be specified.

4. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose ofdetermining whether a comprative preference should accure to any of the applicants.

5. Section V-C, item 10(e), FCC Form 301, requires an applicant to submit figures for the area and population within its predicted Grade B contour. Haughton Television has not submitted this information. Accordingly, Haughton Television will be required to submit an

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[1] Haughton Television's petition and Bethlehem Broadcasting's petitions are, in essence, pre-designation petitions to specify issues. Since such petitions are no longer permitted, the petitions will each be dismissed. *Revised Procedures for Processing of Contested Broadcasting Applications*, 72 FCC 2d 202 (1979).

[2] Lehigh filed a petition for leave to amend accompanied by the amendment on November 4, 1985, after the "B" cut-off date (September 30, 1985). The amendment corrects minor errors and provides additional supporting information. Good cause exists for granting the petition and accepting the amendment. However, no comparative advantage will accure because of our action herein.

[3] On June 26, 1985, the Commisison issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them.

amendment which specifies the area and population within its predicted Grade B contour, to the presiding Administrative Law Judge, within 20 days after this Order is released.

6. Each of the applicants, except Bethlehem Broadcasting, proposes to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposals pose no interference threat to United States television stations; however, they contravene an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes,* T.I.A.S. 2594 (1952). Accordingly, in the event of a grant of any of the applications, except Bethlehem Broadcasting's application, the construction permit shall be appropriately conditioned.

7. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field patterns, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. William J. Kimble has not supplied this data. Accordingly, Mr. Kimble will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and copies to the Chief, Television Branch, and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

8. The scale of miles on the contour map submitted as Exhibit E-3, by William J. Kimble, is inaccurate. Accordingly, Mr. Kimble will be required to submit a corrective amendment to the presiding Administrative Law Judge, within 20 days after this Order is released.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to each of the applicants, except William J. Kimble, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

11. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

12. It is further ordered, that the petition to deny filed by Marantha Broadcasting is granted to extent indicated and denied in all other respects.

13. It is further ordered, that the petitions to deny filed by Haughton Television and Bethlehem Broadcasting are dismissed.

14. It is further order, that Lehigh Valley Broadcasting and Communications' November 4, 1985, petition for leave to amend is granted and the accompanying amendment is accepted.

15. It is further ordered, that Haughton Television shall submit an amendment which specifies the area and population within its predicted Grade B contour, to the presiding Administrative Law Judge, within 20 days after this Order is released.

16. It is further ordered, that, in the event that Ashford Communications is the successful applicant in this proceeding, the construction permit shall be conditioned as follows: Subject to the condition that operation with effective radiated power in excess of 1000 kW after November 1, 1987 is subject to a further extension of consent by Canada.

17. It is further ordered, that Ashford Communications shall submit the information required by paragraph 2 herein, to the presiding Administrative Law Judge, within 20 days after this Order is released.

18. It is further ordered, that, in the event that Sonshine Family TV, Inc., Haughton Television, Lehigh Valley Broadcasting and Communications, or William J. Kimble is the successful applicant in this proceeding, the construction permit shall be conditioned as follows: Subject to the condition that operation with effective radiated power in excess of 1000 kW is subject to the consent of Canada.

19. It is further ordered, that William J. Kimble shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies to the Chief, Television Branch, and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

20. It is further ordered, that William J. Kimble shall submit an amendment which includes a contour map with an accurate scale of miles, to the presiding Administrative Law Judge, within 20 days after this Order is released.

21. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

22. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-30191 Filed 12-20-85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 85-365, File No. BPCT-850625KH et al.]

Ashley Broadcasting et al.; Hearing Designation Order

In re applications of:

Ramona Ashley d.b.a. ASHLEY BROADCASTING.	MM Docket No. 85-365; File No. BPCT-850625KH.
Etex Telemedia	File No. BPCT-850812KI.
Channel 54 Broadcasting Co.	File No. BPCT-850815KJ.

For Construction Permit Longview, Texas.

Adopted: November 27, 1985.

Released: December 16, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive

applications of Ramona Ashley d.b.a. Ashley Broadcasting (Ashley), Etex Telemedia (Etex), and Channel 54 Broadcasting Co. (CBC) for authority to construct a new commercial television station on Channel 54, Longview, Texas, and an informal objection filed by the Association of Maximum Service Telecasters, Inc.

2. On September 30, 1985, the Association of Maximum Service Telecasters, Inc. filed an informal objection against each of the applications on the ground that each would be short-spaced to Station KLMG–TV, Channel 51, Longview, Texas. Section 73.610 of the Commission's Rules requires a minimum separation of 20 miles between a station operating on Channel 54 and one operating on Channel 51. Ashley's proposed site would be short-spaced to KLMG–TV, Channel 51, by 10 miles, Etex's proposed site would be 11 miles short-spaced and CBC's site would be 6 miles short-spaced. Accordingly, issues will be specified to determine whether circumstances exist warranting a waiver of the rule.

3. Section II, item 3(a), FCC Form 301, inquires whether the applicant is in compliance with the provisions of section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments. Ashley's response indicates that she may not be in compliance with section 310 of the Act. Ashley will be required to submit clarification of her response to the presiding Administrative Law Judge within 20 days after this Order is released.

4. CBC indicated that it is limited partnership. The applicant has identified the general partner; however, none of the limited partners have been disclosed. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), *recon. granted in part*, FCC 85–252, released June 24, 1985, the Commission stated that, henceforth, limited partnership interests were not attributable for the purposes of the multiple ownership rules, if the applicant certifies that the limited partners will "not be involved in any material respect in the management or operation of" the proposed station, 97 FCC 2d at 1023. The Commission defined the degree of noninvolvement in paragraphs 48–50 of the June 24 decision on reconsideration. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards, 97 FCC 2d at 1034. Although changes in the form have not yet been made, there is now no need to provide information as to the limited partners if CBC can submit the necessary certification and showing that its limited partnership interests will be sold only to individuals or entities that are sufficiently insulated. If the certification or showing is not appropriate, of course, the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1030. Accordingly, CBC will be required either to state that its limited partners have or will have no other media interests subject to the cross interest policy or identify the limited partners with such interests, identify the other local media and state the nature and extent of the ownership interest.

5. Section V–C, item 10, FCC Form 301, requires that an applicant submit figures for the area and population within its predicted Grade B contour. CBC did not specify the population within its Grade B contour. Accordingly, CBC will be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge.

6. No determination has been made that the tower height and location proposed each by Ashley and CBC would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

7. On June 26, 1985, the Commission issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them. Ashley has not submitted such a certification. Accordingly, Ashley will be given 20 days from the date of release of this Order to file such a certification, in the form required by the Commission, with the presiding Administrative Law Judge. If the applicant cannot make the certification, she shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

8. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether the applications of Ashley Broadcasting, Etex Telemedia, and Channel 54 Broadcasting Co., are consistent with the minimum mileage separation requirements of § 73.610 of the Commission's Rules and, if not, whether circumstances exist which would warrant a waiver.

2. To determine whether there is a reasonable possibility that the tower height and location proposed each by Ashley Broadcasting and Channel 54 Broadcasting Co. would each constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if any, of the applications should be granted.

10. It is further ordered, That the Association of Maximum Service Telecasters, Inc. is made a party respondent to this proceeding, with respect to issue 1.

11. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding, with respect to issue 2.

12. It is further ordered, That Ramona Ashley d/b/a Ashley Broadcasting shall submit a statement clarifying her response to Section II, item 3(a), FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

13. It is further ordered, that Ramona Ashley d/b/a Ashley Broadcasting shall, within 20 days of after the release of this Order, file with the presiding Administrative Law Judge, a site availability certification, in the form required by the Commission, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

14. It is further ordered, that Channel 54 Broadcasting Co. shall submit the certification, statement and/or information required by paragraph 4, *supra*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

15. It is further ordered, that Channel 54 Broadcasting Co. shall submit an

amendment providing the information required by Section V–C, item 10, FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

16. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the parties respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

17. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85–30195 Filed 12–20–85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 85-363, File No. BPCT-841221KZ et al.]

C.R. Pasquier Associates of Bellevue, Inc. et al.; Hearing Designation Order

In re Applications of MM Docket No. 85–363:

	File No.
C.R. Pasquier Associates of Bellevue, Inc.	BPCT–841221KZ
Bellevue Telecasters, Ltd	BPCT–850215KI
Bellevue Broadcasting Company, Ltd.	BPCT–850215KR
Lezlie Lee, d/b/a Rainier Broadcasting Company.	BPCT–850215KS

For Construction Permit, Bellevue, Washington.

Adopted: November 25, 1985.

Released: December 17, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 51, Bellevue, Washington.

2. An applicant seeking authority to construct a commercial television station is required to afford equal employment opportunity to all qualified persons. See § 73.2080 of the Commission's Rules and Section VI, FCC Form 301. Pursuant to this requirement, an applicant who proposes to employ five or more full-time station employees must establish a program of practices to assure equal employment opportunities. Although Bellevue Telecasters intends to employ at least five full-time employees, it has failed to submit an equal employment opportunity proposal. Therefore, we cannot conclude that Bellevue Telecasters has complied with § 73.2080. Accordingly, Bellevue Telecasters will be required to submit its complete EEO proposal to the presiding Administrative Law Judge within 20 days after this Order is released.

3. Bellevue Telecasters has not certified its financial qualifications.[1] Although the financial standards are unchanged, the Commission requires only certification as to financial qualifications. Accordingly, the applicant will be given 20 days from the date of release of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in Section III, Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

4. In Section V–C, FCC Form 301, Bellevue Telecasters specifies a maximum visual effective radiated power of 5000 kW and an antenna height above average terrain of 2071 feet. This combination of power and height exceeds the maximum permitted by § 73.614 of the Commission's Rules. Accordingly, Bellevue Telecasters must submit a corrective amendment to the presiding Administrative Law Judge, within 20 days after this Order is released.[2]

5. Each of the applicants proposes to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposals pose no interference threat to United States television stations; however, they contravene an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes*, T.I.A.S. 2594 (1952). In the event of a grant of the applications of Bellevue Telecasters, Pasquier or Rainier, the construction permit will contain a condition precluding station operation with maximum visual ERP in excess of 1000 kilowatts, absent Canadian consent. In the event of a grant of the Bellevue Broadcasting application, the construction permit will contain a condition precluding station operation with maximum visual ERP of 1000 kilowatts after June 1, 1987, subject to a further extension of consent by Canada. *South Bend Tribune*, 8 RR 2d 416 (1966).

6. The Canadian Government has informed the Commission that it objects to the amended proposals of Bellevue Telecasters, Rainier, and Pasquier because none of these proposals would provide adequate protection against interference to any Canadian television station which might be authorized to operate on Channel 51 in Kelowna, British Columbia. Canada requests that Bellevue Telecasters be required to reduce its proposed power toward Kelowna by at least 5.1 dB. Canada also states that Pasquier's proposal would be accepted at an ERP of 1580 kilowatts at 31 degrees True (toward Kelowna). With respect to the Rainier application, Canada indicates that it would accept an operation with ERP of 1410 kilowatts at 31 degrees True (toward Kelowna) at the site and at the antenna height presently proposed. The requests are the subject matter of an agreement between the United States and the Canadian Government. The United States cannot, therefore, waive these requirements. Accordingly, the applications must be amended, within 20 days after the release of this Order, to comply with the Canadian requests. See also paragraph 4, *supra*.

7. Bellevue Telecasters' application indicates that the applicant is a limited partnership. Section II, Item 5(a), FCC Form 301, requires that if the applicant is a partnership, the requested information must be given for each general or limited partner. Bellevue Telecasters' application identifies only

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[1] On October 15, 1985, Pasquier, one of the competing applicants in this proceeding, filed a letter urging return, as unacceptable for filing, of the applications of Bellevue Telecasters and Rainier Broadcasting. Pasquier raises financial qualifications and short-spacing questions with respect to Bellevue Telecasters and a short-spacing question with respect to Rainier. Since none of these questions relate to acceptability for filing, the Pasquier letter is, in effect, a petition to specify issues. As such, it will be dismissed because such petitions are no longer permitted.

[2] Reduction of height or power may require the submission of new engineering data such as new contour maps, new vertical tower sketch, and changed area and population figures. If so, this information must be submitted as part of the required amendment.

the general partner and some of the limited partners. An equity interest of 35 percent in the applicant will be held by limited partners to be identified at a later date. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984) *recon. granted in part*, FCC 85-252, released June 24, 1985, the Commission stated that, henceforth, limited partner's interests were not attributable for the purposes of the multiple ownership rules, if the applicant certifies that the limited partners will not be involved in any material respect in the business or operation of the station. 97 FCC 2d at 1023. The applicant has certified that the identified limited partners will not be involved in any material respect in the business or operation of the station, but it has not made a similar certification with respect to the unidentified limited partners. There is now no need to provide information as to the limited partners if Bellevue Telecasters can submit the necessary certification and showing that the unsold limited partnership interests will be sold only to individuals or entities that are sufficiently insulated. If the certification or showing is not appropriate, of course, the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area, 97 FCC 2d at 1030. Accordingly, Bellevue Telecasters, will be required either to state that all limited partners have or will have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature and extent of the ownership interest.

8. Section 73.6859(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. The data supplied by Bellevue Broadcasting is inaccurate and insufficient. The directional antenna tabulation submitted does not accurately reflect the horizontal pattern for the specified antenna; i.e., the relative field values at each azimuth do not agree with the values indicated by the pattern submitted. The applicant, therefore, will be required to recalculate its DA tabulation data and to file a corrected tabulation as an amendment, within 20 days of the release of this Order, to the presiding Administrative Law Judge with a copy each to the Chief, Television Branch, and the Chief, Hearing Branch, Mass Media Bureau.

9. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

10. The Commission is not in receipt of a determination from the Federal Aviation Administration that the tower height and location proposed by each applicant would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually excusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Aministrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to each of the applicants, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, That Bellevue Telecasters, Ltd. shall submit a complete EEO proposal to the presiding Administrative Law Judge within 20 days after this Order is released.

14. It is further ordered, That within 20 days after this Order is released, Bellevue Telecasters, Ltd. shall submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the required certification cannot be made, as may be appropriate.

15. It is further ordered, That Bellevue Telecasters, Ltd. shall submit an amendment to show compliance with § 73.614 of the Commission's rules pertaining to power and height above average terrain, to the presiding Administrative Law Judge, with 20 days after this Order is released.

16. It is further ordered, That, Bellevue Telecasters, Ltd., Rainier Broadcasting Company, and C.R. Pasquier Associates of Bellevue, Inc., shall each submit an appropriate amendment as required by paragraph 6, *supra*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

17. It is further ordred, That, Bellevue Telecasters, Ltd. shall submit the certification, statement and/or information required by Paragraph 7, *supra*, to the presiding Administrative Law Judge, with 20 days after this order is released.

18. It is further ordered, That, Bellevue Broadcasting Company, Ltd. shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy each to the Chief, Television Branch, and Chief, Hearing Branch, Mass Media Bureau, within 20 days of the release of this Order.

19. It is further ordered, That, in the event of a grant of the application of Bellevue Broadcasting Company, Ltd., the construction permit shall be conditioned as follows:

Subject to the condition that operation with effective radiated visual power in excess of 1000 kW after June 1, 1987 is subject to a further extension of consent by Canada.

20. It is further ordered, That in the event of a grant of the application of C.R. Pasquier Associates of Bellevue, Inc., Bellevue Telecasters, Ltd. or Rainier Broadcasting Company, the construction permit shall be conditioned as follows:

Subject to the condition that operation with effective radiated visual power in excess of 1000 kW is subject to the consent of Canada.

21. It is further ordered, That the petition to deny filed by C.R. Pasquier Associates of Bellevue, Inc. against Bellevue Telecasters, Ltd. and Raineir Broadcasting Company is dismissed.

22. It is further ordered, That the Federal Aviation Administration is

made a party respondent to this proceeding with respect to issue 1.

23. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

24. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as rred by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-30192 Filed 12-20-85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 85-364, File No. BPCT-850229KE et al.]

Classic Vision, Inc. et al.; Hearing Designation Order

In re Applicaitons MM Docket No. 85-364:

	File No.
Classic Vision, Inc	BPCT-850529KE
4-A Communications	BPCT-850725KI
Lucky 33 TV	BPCT-850725KJ
El Sol Broadcasting	BPCT-850725KK
M.W.D., Inc	BPCT-850725KM
Venture Broadcasting Company [1].	BPCT-850725KN

For Construction Permit, Las Vegas, Nevada.

Adopted: November 27, 1985.

Released: December 17, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 33, Las Vegas; a late-filed amendment filed by 4-A Communications;[2] a late-filed amendment filed by Margo Shepard (See footnote 1); a petition to dismiss the application of Margo Shepard; and related pleadings.[3]

2. Section V-C, item 10(e), FCC Form 301, requires an applicant to specify the area and population within its Grade B contour. Lucky 33 TV has not given us this information. Additionally, El Sol Broadcasting has not specified the population within its predicted Grade B contour. Accordingly, Lucky 33 TV and El Sol Broadcasting must each provide the information required by item 10(e) to the presiding Administrative Law Judge, within 20 days after this Order is released. The presiding Administrative Law Judge will consider any significant difference in the areas and populations served under the standard comparative issue.

3. No determination has been reached that the tower height and location proposed by Lucky 33 TV, El Sol Broadcasting, and M.W.D., Inc. each would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. Section 73.685(f) of the Commission's Rule's requires an applicant proposing to use a directional antenna to include a tabulation of relative field least every 10 degrees plus any minima or maxima. Classic Vision, Inc. and 4-A Communications have not supplied this data. Accordingly, the applicants will each be required to submit an amendment with the appropriate information to the presiding Administrative Law Judge and copies to the Chief, Television Branch, and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

5. On June 26, 1985, the Commission issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them. Classic Vision, Inc. has not submitted such a certification. Accordingly, Classic Vision, Inc. will be given 20 days from the release date of this Order to file such a certification, in the form required by the Commission, with the presiding Administrative Law Judge. If Classic Vision, Inc. cannot make the certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

6. M.W.D., Inc. proposes a transmitter site that is located 1.93 miles from AM Station KENO, Las Vegas, Nevada. Accordingly, any grant of a construction permit to M.W.D., Inc. will be conditioned to ensure that KENO's radiation pattern will not be adversely affected.

7. Section II, item 8(a) FCC Form 301, inquires whether any parties to the application are related to each other. If the answer to item 8(a) is affirmative, a full disclosure concerning the persons involved, their relationship, the nature and extent of such interest or connection, the number of such application, and the location of such station or proposed station is to be submitted as an exhibit to FCC Form 301. 4-A Communications answered item 8(a) affirmatively. However, no explanation was included with its application. Accordingly, 4-A Communications will be required to submit the exhibit as an amendment to its application, to the presiding Administrative Law Judge, within 20 days after this Order is released.

8. Lucky 33 TV and El Sol Broadcasting have each indicated that it is a limited partnership. Each applicant has identified its general partner. However, neither applicant has identified its limited partners. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for the FCC forms,

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[1] On September 13, 1985, ("B cut-off date), Margo Shepard filed a minor amendment to her application which changed the applicant from a sole proprietorship to a corporation. Ms. Shepard owns 51 percents of the corporation's stock.

[2] The deadline for filing amendments to the above captioned-applications was September 13, 1985 ("B" cut-off date). On September 26, 4-A Communications filed an amendment to its application which brings its proposal into compliance with § 73.685(e) of the Commission's Rules. Good cause exists for accepting the amendment. Accordingly, the amendment will be accepted.

[3] As noted in footnote 1, Venture Broadcasting Company's application was orginally filed on July 25, 1985, by an individual applicant, Margo Shepard. On August 29, 1985 Ms, Shepard filed another application as an amendment. She explains that the July 25 application was not signed by her, but signed for her at her request. She also explains that she was unaware that the procedure was improper. Ms. Shepar requests that the application signed by her be accepted *nunc pro tunc*. On October 2, 1985, 4-A Communications filed a petition to dismiss the application of Margo Shepard on the grounds that the application was not properly executed when it was filed. The application was "substantially complete" when it was filed. Furthermore, the amendment which, corrects a defect, does not constitute a "major change." Clearly, all parties to this proceeding had notice of the application on July 25; therefore, none were prejudiced. These circumstances are governed by a long-standing policy which dictates that the amendment and signature be accepted *nunc pro tunc*. *Communications Gaithersburg, Inc.*, 60 FCC 2d 537 (1976); *B.J. Hart*, 44 FCC 2088 (1960). Therefore, the amended application bearing the original signature of Ms. Shepard will be accepted *nunc pro tunc* and the petition to dismiss will be denied. However, "circumstances surrounding the filing of this application and the applicant's legal qualifications may be appropriate matters for inquiry in hearing . . ." *Communications Gaithersburg, Inc.*, 60 FCC 2d at 542. *See, Jane A. Roberts* 60 FCC 141 (1960). Accordingly, an apporpriate issue will be specified to determine the facts and circumstances surrounding the signing of Venture Broadcasting Company's orignal application.

unless the information is inapplicable. However, in *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), *recon. granted in part*, 58 RR 2d 604 (1985), the Commission stated that henceforth limited partnership interests were not attributable for the purposes of the multiple ownership rules, if the applicant certifies that the limited partners will "not be involved in any material respect in the management or operation of" the proposed station, 97 FCC 2d at 1023. The Commission defined the degree of noninvolvement in paragraphs 48–50 of the June 24 decision on reconsideration. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards, 97 FCC 2d at 1034. Although changes in the form have not yet been made, there is now no need to provide information as to the limited partners if each applicant can submit the necessary certification and showing that limited partnership interests will be sold only to individuals or entities that are sufficiently insulated. If the certification or showing is not appropriate, of course, the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1030. Accordingly, Lucky 33 TV and El Sol Broadcasting, will each be required either to state that the limited partners have or will have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature and extent of the ownership interest.

9. Linda C. Bonnici owns 33⅓ percent of Independent Concepts. Her husband, Anthony Bonnici, is sales manager of Stations KENO(AM) and KOMP(FM), Las Vegas, Nevada. There is a rebuttable presumption that the media interests of spouses are attributable to one another. *Attributio of Ownership Interests, supra.* Mr. Bonnici's connection with the stations may be inconsistent with the Commission's cross-interest Policy. However, Independent Concepts has represented to the Commission that Mr. Bonnici will resign from his positions with Stations KENO and KOMP(FM), if Independent Concepts is the successful applicant for Channel 33. Accordingly, any grant of a construction permit to Independent Concepts will be appropriately conditioned.

10. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exculsive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

11. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Lucky 33 TV, El Sol Broadcasting and M.W.D., Inc., whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine, with respect to Venture Broadcasting Company, all of the facts and circumstances surrounding the signing of its original application and, in light of the evidence adduced, the effect, if any, upon the applicant's basic or comparative qualifications.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

12. It is further ordered, That the amendment filed by 4–A Communications, on September 26, 1985, is accepted.

13. It is further ordered, That the petition to dismiss filed by 4–A Communications is denied.

14. It is further ordered, That 4–A Communications shall submit the exhibit required by Section II, item 8(a), FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

15. It is further ordered, That the amendment filed by Venture Broadcasting Company, on August 29, 1985, is accepted *nunc pro tunc.*

16. It is further ordered, That the Federal Aviation Administration is made a Party respondent to this proceeding with respect to issue 1.

17. It is further ordered, That Licky 33 TV shall submit an amendment which specifies the area and population within its predicted Grade B contour, to the presiding Administrative Law Judge, within 20 days after this Order is released.

18. It is further ordered, That El Sol Broadcasting shall submit an amendment which specifies the population within its predicted Grade B contour, to the presiding Administrative Law judge, within 20 days, after this Order is released.

19. It is further ordered, That Lucky 33 TV and El Sol Broadcasting shall each submit the certification, statement and/or information required by paragraph 8, *supra*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

20. It is further ordered, That Classic Vision, Inc. and 4–A Communications shall each submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies to the Chief, Television Branch, and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

21. It is further ordered, That Classic Vision, Inc. shall file a site availability certification, in the form required by the Commission, with the presiding Administrative Law Judge or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate, within 20 days after this Order is released.

22. It is further ordere, That, in the event that M.W.D., Inc. is the successful applicant in this proceeding, the construction permit shall be conditioned as follows:

During the installation of the antenna authorized here, AM Station KENO, Las Vegas, Nevada, shall determine operating power by the indirect method and, if necessary, request temporary authority from the Commission in Washington to operate with parameters at variance in order to maintain monitoring point values with authorized limits. Upon completion of the installation, common point impedance measurements on the AM array shall be made and a partial proof of performance, as defined by Section 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the submitted to the Commission (along with a tower sketch of the installation) in an application for the AM station to return to the direct method of power determination.

23. It is further ordered, That, in the event that Independent Concepts is the successful applicant in this proceeding, the construction permit shall be conditioned as follows:

Prior to commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Anthony Bonnici has servered all connections with the

licensee of Stations KENO (AM) and KOMP (FM), Las Vegas, Nevada.

24. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

25. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-30193 Filed 12-20-85; 8:45 am]

BILLING CODE 6712-01-M

Community Service Telecasters, Inc. et al.; Hearing Designation Order

In re Applications of MM Docket. No. 85-366:

	File No.
Community Service Telecasters, Inc.	BPCT-850426KM
East Coast Media, Limited...	BPCT-850701KZ
Dr. James Wingate, d/b/a Winard Broadcasting.	BPCT-85070KE

For Construction Permit, Greenville, North Carolina.

Adopted: November 27, 1985.
Released: December 16, 1985.
By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 38, Greenville, North Carolina.[1]

2. On June 26, 1985, the Commission issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them. None of the applicants has submitted such a certification. Accordnigly, each applicant will be given 20 days from the release date of this Order to file such a certification, in the form required by the Commission, with the presiding Administrative Law Judge. If an applicant cannot make the certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

3. No determination has been reached that the tower height and location proposed by Winard Broadcasting would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. Our review of the technical data submitted by Community Service Telecasters, Inc. indicates that a grant of the application would constitute a major environmental action as defined by § 12.1305(a) of the Commission's Rules. However, Community Service Telecasters did not submit the environmental impact information described in § 1.1311. Accordingly, Community Service Telecasters will be required to file, within 20 days of the release of this Order, its enivironmental narrative statement with the presiding Administrative Law Judge and a copy to the Chief, Hearing Branch. In addition, a copy shall be filed with the Chief, Television Branch, who will then proceed in accordance with the provisions of § 1.1313(b). Accordingly, Section 1.1317 of the Rules will be waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Crop.*, 71 FCC 2d 229 (1979), *recon. denied sub nom Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

5. James McManus, a limited partner in East Coast Media, Limited, is President and General Manager of Greenville Broadcasting, Inc., licensee of Station WBZQ (AM), Greenville, North Carolina. The application also includes the following representation: "Mr. McManus will act in accordance with Commission Rules as to removal in the event instant application is granted."[2] We do not know what this statement means. There is no indication that Mr. McManus will be sufficiently insulated so as to avoid attribution of his interest in the applicant here. See *Multiple Owership (Attribution)*, 58 R.R. 2d 604, 619-20 (1985). Thus, in the absence of an appropriate showing, we assume an attributable interest. As an officer of the licensee of Station WBZQ, Mr. McManus also has an attributable interest in that station as well. We note, however, that under the rule these two interests do not *require* removal of Mr. McManus from either position. The only requirement imposed is that the applicant make an appropriate "one-to-a-market" showing. We shall specify an appropriate issue to permit such a showing here. Further, Mr. McManus' connection with the station may violate the Commission's cross-interest policy since the AM station and the proposed television station are in the same community. Accordingly, an issue will be specified to determine if East Coast Media, Limited's proposal is consistent with the Commission's cross-interest policy and, if not, whether grant of its application would be consistent with the public interest.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Winard Broadcasting, whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

2. If a final environmental impact statement is issued with respect to Community Services Telecasters, Inc. which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment:

(a) To determine whether the applicant's proposal is consistent with the National Environmental Policy Act, as implemented by § 1.1301-1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[1] Winard Broadcasting filed a facsimile copy of its application. Therefore, it did not have the original signatures of Dr. Wingate and its technical consultant, Mr. Mowers. Winard Broadcasting will, therefore, be required to submit verification of the signatures in Sections V-C, V-G, and VI, to the presiding Administrative Law Judge, within 20 days after this Order is released.

[2] The decision to divest, until the end of the period when amendments can be made as a matter of right, is for the applicant to make, not the Commission. The applicant did not make an unqualified divestment pledge and it cannot now upgrade its comparative posture.

3. To determine, with respect to East Coast Media, Limited, whether its proposal is consistent with § 73.3555 of the Commission's Rules and the Commission's cross-interest policy and, if not, whether grant of its application would be consistent with the public interest.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That the Federal Aviation Administration is made a party Respondent to this proceeding with respect to issue 1.

9. It is further ordered, that each applicant shall file a site availability certification, in the form required by the Commission, with the presiding Administrative Law Judge, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate, within 20 days after this Order is released.

10. It is futher ordered, that Winard Broadcasting shall submit an amendment which contains verification of the signatures in Section V-C, V-G, and VI of its application, to the presiding Administrative Law Judge, within 20 days after this Order is released.

11. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate,a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

12. It is futher ordered, that the applicant herein shall, pursuant to § 311(a)(2) of the Communcations Act of 1934 as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-30194 Filed 12-20-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0146.

Title: State Administrative Plan for Individiual and Family Grant Program.

Abstract: The paln is reqiuired to facilitate monitoring of the IFG program since the program is State administered, but cost shared (25 percent State and 75 percent Federal). In also provides a guide for State personnel responsible for administering the program.

Type of respondents: State of Local Governments.

Number of respondents: 56.

Burden hours: 224.

Copies of the above information collection request and supporting doumentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C. Street, SW., Washington, DC 20472.

Comments should br directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 12, 1985.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85-3028 Filed 12-20-85; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-756-DR]

Florida; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA-756-DR), dated December 3, 1985, and related determinations.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of Florida, dated December 3, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 3, 1985: Franklin, Gadsden, Gulf, Leon, Liberty, and Wakulla Counties for Public Assistance. Leon County as an adjacent county for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated; December 13, 1985.

Samuel W. Speck,

Associate Director, State and Local Program and Support.

[FR Doc. 85-30205 Filed 12-20-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-756-DR]

Florida; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA-756-DR), dated December 3, 1985, and related determinations.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of Florida, dated areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 3, 1985: Calhoun, Jefferson, and Liberty Counties as adjacent counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: December 11, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-30206 Filed 12-20-85; 8:45 am]

BILLING CODE 6718-02-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0049.
Title: Request for Advance or Reimbursement.
Abstract: This form is used to disburse to the applicant the necessary fund advances and final payment for costs related to public assistance, temporary housing and Individual Family Grant.
Type of respondents: State or Local Governments; Non-Profit Institutions.
Number of respondents: 2,500.
Burden hours: 1,250.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Make Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 11, 1985.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85-30207 Filed 12-20-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-462]

Old Colony Bank, a Federal Savings Bank, Providence, RI; Final Action; Approval of Conversion Application

Dated: December 17, 1985.

Notice is hereby given that on *December 12, 1985,* the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Old Colony Bank, a federal savings bank, Providence, Rhode Island, for permission to convert to the stock of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Boston, One Financial Center, P.O. Box 9106, Boston, Massachusetts 02205-9106.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 30276 Filed 12-20-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Kodiak National Wildlife Refuge Comprehensive Conservation Plan; Environmental Impact Statement and Wilderness Review, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service has prepared, for public review, a draft Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Kodiak National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The draft CCP/EIS describes four strategies for long-term management of the 1,865,000-acre refuge on Kodiak Island. Three alternatives identify lands that would be suitable for addition to the National Wilderness Preservation System.

DATES: Remarks on the draft CCP/EIS must be submitted on or before March 21, 1986, to receive consideration in the preparation of the final CCP/EIS and Wilderness Review.

As scheduled below, one formal public hearing and five public meetings will be held to receive comments on the draft CCP/EIS:

Public hearing:
- Clark Junior High School, 150 S. Bragaw, Anchorage, AK—February 5, 1986, 7 p.m.

Public meetings:
- Kodiak Island Borough Assembly, 700 Mill Bay Road, Kodiak, AK—January 22, 1986, 7 p.m.
- Communities of Karluk, Larsen Bay, Akhiok, and Old Harbor on Kodiak Island, AK—End of January, 1986

Dates, times, and places for the village meetings will be advertised by the poster, use of the news media, and letters to the mayors well in advance of the assigned time period. Written and oral testimony will be accepted at the public hearing and will be transcribed for the official record. Written and oral comments will also be accepted at the public hearings. All comments and testimony, both oral and written, received prior to date listed above will be considered in preparation of the final CCP/EIS.

ADDRESS: Remarks should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1101 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

A draft CCP/EIS has been prepared for general distribution. Copies of the draft have been forwarded to all agencies that participated in the scoping process and to agencies and persons who have already requested copies. Those wishing to review the draft may obtain a copy by contacting Mr. Knauer. Copies of the draft CCP/EIS are also available for review at the office of the Regional Director, at the above address; at the headquarters of the Kodiak National Wildlife Refuge, Buskin River Road, Kodiak, Alaska, and at the following locations:

- U.S. Fish and Wildlife Service, Division of Refuge Management, U.S. Department of the Interior Bldg., 18th and C Streets, NW, Washington, DC 20240
- U.S. Fish and Wildlife Service, Wildlife Resources, 500 NE Multnomah Street, Suite 1692, Portland, OR 97232
- U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103
- U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111
- U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell Federal Bldg., 75 Spring Street, Atlanta, GA 30303
- U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158
- U. S. Fish and Wildlife Service, Wildlife Resources, 134 Union Blvd., Lakewood, CO 80225

SUPPLEMENTARY INFORMATION: The draft CCP/EIS for the Kodiak National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior, to fulfill the requirements of sections 304 and 1317 of ANILCA relating to preparation of comprehensive conservation plans. In addition, the draft CCP/EIS and Wilderness Review also describe the general wilderness suitability of various

acreages of non-wilderness refuge lands, under each of the management alternatives, in order to comply with the requirements of section 1317(a) of ANILCA. This requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his/her recommendations to the President by 1987.

Major issues addressed by the plan focus on fish and wildlife management; problems with increasing recreational use in an island community with unique fish and wildlife habitats; potential conflicts between off-refuge commercial, sport, and subsistence harvest of fishery resources; lack of resource data; potential offshore oil and gas exploration/development; development and use of adjacent State and private lands; and management of refuge inholdings. Overall goal of the plan is to maintain historical subsistence use of the area, to maintain fish and wildlife populations in their present state, and to provide opportunities for hunting, fishing, and other recreation uses.

This plan describes four alternatives for management of the Refuge; the process pursued in their development; and the environmental consequences of implementing each alternative. The alternatives vary in their management emphasis. Alternative A, the current situation, would maintain the Refuge in an undeveloped state. Alternative B would provide for development of support facilities to support commercial fishing and increased public, recreational use. Alternative C, the Fish and Wildlife Service's preferred alternative, would maintain key fish and wildlife populations and habitats, provide for traditional access and for continued subsistence use, and would afford additional opportunities for guided and outfitted use in the Refuge.

For all of the alternatives the Service is proposing management objectives for Native lands within the refuge boundary, pursuant to the provisions of section 22(g) of the Alaska Native Claims Settlement Act. The plan identifies where important areas for fish and wildlife are on the Native lands, and establishes the Service's management intent for those lands. A process is outlined in the plan for determining those uses and activities that would be appropriate on Native lands.

Section 1008(a) of the Alaska National Interest Lands Conservation Act (ANILCA) directs the Secretary of the Interior to establish an oil and gas leasing program on federal lands in Alaska, except where prohibited by law or in those areas where oil and gas development would be incompatible with refuge purposes. Areas where oil and gas leasing would be incompatible with the purposes of Kodiak Refuge identified for all of the alternatives.

The draft plan also describes the general wilderness suitability of differing acreages of non-wilderness refuge lands under each management alternative. This complies with section 1317(a) of ANILCA which requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his/her recommendations to the President by 1987. Currently, no part of the Refuge's 1,865,000 acres is designated as wilderness. A range of recommendations is included in the plan's four alternative management strategies. Alternative A proposes none of the refuge for wilderness designation. Alternatives B and C both propose about 73 percent of the refuge. Alterntive D proposes 100 percent of the Refuge for addition to the National Wilderness Preservation System.

Other government agencies and the general public contributed to the development of this draft CCP/EIS and Wilderness Review. The Notice of Intent to prepare the draft CCP/EIS was published in the **Federal Register**, April 20, 1983. Scoping meetings were held on Kodiak Island, in Kodiak, May 7, 1983, and in Old Harbor, Akhiok, Larsen Bay, and Karluk, during the period May 16–24, 1983. During mid-March 1985 a couple of workshops were held in Kodiak and Anchorage, plus meetings in Karluk (April 1, 1985), Akhiok (April 3, 1985), Larsen Bay (April 5, 1985), and Old Harbor (April 23, 1985) to help define issues involving refuge resources. In addition, two Open Houses were held in Kodiak, March 15 and 17, 1985, and one in Anchorage, March 21, 1985.

Dated: December 17, 1985.

Robert E. Gilmore,

Regional Director.

[FR Doc. 85-30259 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Indian Affairs

Plan for the Use and Distribution of the Cherokee Nation of Oklahoma Indians Judgment Funds in Docket 262-83L Before the United States Claims Court

December 6, 1985.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on August 9, 1984, in satisfaction of the award granted to the Cherokee Nation of Oklahoma before the United States Claims Court in Docket 262-83L. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated August 5, 1985 and was received (as recorded in the Congressional Record) by the Senate on September 9, 1985, and by the House of Representatives on September 4, 1985. The plan became effective on November 8, 1985 as provided by the 1973 Act, as amended by Pub. L. 97-458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

For the Use and Distribution of the Judgment Funds Awarded to the Cherokee Nation of Oklahoma in Docket 262-83L Before the United States Claims Court

The funds of the Cherokee Nation (Oklahoma) appropriated August 9, 1984 in Docket 262-83L before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as follows:

The funds shall be invested in securities with a minimum of A rating by the Secretary of the Interior and only the interest and investment income accrued shall be utilized by the tribal governing body on a budgetary basis subject to the approval of the Secretary for governmental operation and social and economic programs with a maximum maturity date of ten (10) years. The funds shall be audited each year as part of the annual audit of the Cherokee Nation of Oklahoma. Upon maturity of the funds, the funds may be reinvested or the principal portion utilized for programming purposes, subject to the approval of the Secretary.

None of the funds made available under this plan for programming shall be subject to Federal or State income taxes, nor shall such funds nor the availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita

shares or dividend payments in excess of $2,000, any Federal or federally assisted programs.

Ronald L. Esquerra,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85-30213 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[Serial No. I-010387]

Idaho; Order Providing for Opening of Public Lands

December 9, 1985.

Because of a lack of use for which the following-described lands were originally patented under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869; 869-4) the Palisades Ward LDS Church has reconveyed these lands to the United States.

The lands involved in the reconveyance are:

Boise Meridian

T. 1 N., R. 43 E.,
sec. 1, lots 63, 64, 65, 74, 75, 76, 94 and 95.
The area described contains 10 acres.

The land is located at Swan Valley in Bonneville County, Idaho.

Subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable laws, the lands will at 9:00 a.m. on January 21, 1986, be open to the operation of the public land laws.

Inquiries concerning the lands should be addressed to the Chief, Realty Operations Section, 3380 Americana Terrace, Boise, Idaho 83706.

William E. Ireland,

Chief Realty Operations Section.

[FR Doc. 85-30274 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-GG-M

New Mexico; Notice of Filing of Plat of Survey

December 6, 1985.

The plats of surveys described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on December 6, 1985.

A survey representing the dependent resurvey of portions of the south and east boundaries and the subdivision of sections 25 and 36, and the survey of certain parcels within Township 3 North, Range 5 East, and the survey of parcels A and B, Township 3 North, Range 6 East, of the New Mexico Principal Meridian, New Mexico, under Group 825 NM . This survey was requested by the National Park Service.

A survey representing the dependent resurvey of a portion of the Seventh Standard Parallel North through Range 11 West, a portion of the subdivisional lines, and the survey of the subdivision of certain lots in section 9, Township 28 North, Range 11 West, New Mexico Principal Meridian, New Mexico, under Group 849 NM. This survey was requested by the District Manager, Albuquerque District, Bureau of Land Management.

The plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 85-30273 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-FB-M

Wyoming; Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of Plats of Survey.

SUMMARY: The plats of surveys of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 A.M., December 6, 1985.

Sixth Principal Meridian

T. 41 N., R. 69 W.
The plat showing a subdivision of certain sections, T. 41 N., R. 69 W., Sixth Principal Meridian, Wyoming, was accepted December 4, 1985.

T. 43 N., R. 70 W.
The plat showing a subdivision of certain sections, T. 43 N., R. 70 W., Sixth Principal Meridian, Wyoming, was accepted December 4, 1985.

T. 44 N., R. 70 W.
The plat showing a subdivision of certain sections, T. 44 N., R. 70 W., Sixth Principal Meridian, Wyoming, was accepted December 4, 1985.

T. 41 N., R. 71 W.
The plat showing a subdivision of certain sections, T. 41 N., R. 71 W., Sixth Principal Meridian, Wyoming, was accepted December 4, 1985.

T. 40 N., R. 72. W.
The plat showing a subdivision of certain sections, T. 40 N., R. 72 W., Sixth Principal Meridian, Wyoming, was accepted December 4, 1985.

T. 44 N., R. 72 W.
The plat showing a subdivision of 14 and 15 section, T. 44 N., R. 72 W., Sixth Principal Meridian, Wyoming, was accepted December 4, 1985.

These supplemental plats were prepared to meet certain administrative needs of this Bureau.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: December 9, 1985.

Richard L. Oakes,

Chief Cadastral Surveyor for Wyoming.

[FR Doc. 85-30272 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-22-M

Public Meeting; Folsom Resource Area; Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Folsom Resource Area of the Bakersfield District in California is in the initial stages of preparing an amendment to the Sierra Management Framework Plan (MFP). This amendment involves BLM-administered lands in the counties of Amador, Calaveras, El Dorado, Mariposa, Nevada, Placer, Tuolumne, and Yuba.

Pursuant to 43 CFR 1610.2, the Folsom Resource Area will hold meetings to inform the public of the proposed change in management planning activities and provide the opportunity for the public to have input on proposed actions and Bureau programs.

DATES: The public meetings will be held at 7:30 p.m. at the following locations:

1. January 22, 1986—Tahoe National Forest, Supervisor's Office, Hwy. 49 & Coyote Street, Nevada City, California.

2. January 28, 1986—Stanislaus National Forest, Supervisor's Office, 19777 Greenley Road, Sonora, California.

3. January 29, 1986—Mariposa County High School Auditorium, 5074 Old Highway North, Mariposa, California.

SUPPLEMENTARY INFORMATION: The major change in the Sierra MFP to be discussed will be land retention and intensive management versus low level management and/or transfer to nonfederal ownership. In addition, discussions will be held concerning Wild and Scenic River eligibility for the Merced River lands administered by BLM.

FOR FURTHER INFORMATION CONTACT: D.K. Swickard, Folsom Resource Area Manager, 63 Natoma Street, Folsom, California 95630; (916) 985-4474.

Dated: December 10, 1985.

D.K. Swickard,

Area Manager.

[FR Doc. 85-30275 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-40-M

Minerals Management Service

Development Operations Coordination Document; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1256, Block 172, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on December 12, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 16, 1985.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-30226 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Shell Offshore, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it prosposes to conduct on Lease OCS-G 1039, Block 274, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Venice and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on December 11, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 13, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-30227 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the collection of information requirement and supporting documentation may be obtained by contacting the Bureau Clearance Officer at the phone number listed below. Comments and suggestions on the collection of information should be made within 30 days directly to the Bureau Clearance Collection Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395-7313; with copies to David A Schuenke; Chief, Rules, Orders, and Standards Branch; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091.

Title: Oil and Gas Operations in the Outer Continental Shelf, 30 CFR Part 250 (17 submissions—see individual titles below).

Abstract: Rules governing oil and gas operations in the Outer Continental Shelf (OCS) currently contained in regulations, OCS Orders, and Minerals Management Service (MMS) Standards are being proposed for revision in a new 30 CFR Part 250. Twelve of the subparts of the proposed rule contain narrative information collection requirements which are being submitted to OMB for approval. In addition, requirements are proposed to be changed for five of the forms in use in 30 CFR Part 250. Those five forms are being submitted for approval. The information collection is necessary to enable MMS to ensure safety, protection of the environment, and protection of correlative rights for oil and gas operations in the OCS.

Bureau Form Number: Various—see Items 13-17.

Frequency: Various.

Description of Respondents: Outer Continental Shelf oil and gas lessees.

Bureau Clearance Officer: Dorothy Christopher, telephone (703) 435-6213.

1. Subpart A, General—Annual Responses: 524. Annual Burden Hours: 2,702.
2. Subpart B, Exploration and Development and Production Plans—Annual Responses: 1,168. Annual Burden Hours: 512,718.
3. Subpart C, Pollution Prevention and Control—Annual Responses: 2,513. Annual Burden Hours: 43,978.
4. Subpart D, Drilling Operations—Annual Responses: 1,810. Annual Burden Hours: 23,128.
5. Subpart E, Well-Completion Operations—Annual Responses: 2,378. Annual Burden Hours: 1,518.
6. Subpart F, Well-Workover Operations—Annual Responses: 2,378. Annual Burden Hours: 1,518.

Note.—Subpart G, Abandonment of Wells, has no information collection requiring OMB approval.

7. Subpart H, Production Safety Systems—Annual Responses: 645. Annual Burden Hours: 2,838.
8. Subpart I, Platforms and Structures—Annual Responses: 308. Annual Burden Hours: 10,042.
9. Subpart J, Pipelines and Pipeline Rights-of-Way—Annual Responses: 3,805. Annual Burden Hours: 95,720.
10. Subpart K, Production Rates—Annual Responses: 1,033. Annual Burden Hours: 4,602.
11. Subpart L, Production Measurement, Commingling, and Security—Annual Responses: 22,720. Annual Burden Hours: 51,075.
12. Subpart M, Unitization—Annual Responses: 213. Annual Burden Hours: 5,115.

Note.—Subpart N, Remedies and Penalties, has no information collection requiring OMB approval.

13. Form MMS-331, Sundry Notices and Reports on Wells—Annual Responses: 6,756. Annual Burden Hours: 3,378.
14. Form MMS-331C, Application for Permit to Drill, Deepen, or Plug Back—Annual Responses: 1,590. Annual Burden Hours: 795.
15. Form MMS-1866, Reservoir Data—Request for Reservoir MER—Annual Responses: 600. Annual Burden Hours: 600.
16. Form MMS-2867, Request for Well Maximum Production Rate (MPR)—Annual Responses: 4,000. Annual Burden Hours: 1,000.
17. Form MMS-1868, Well Potential Test Report—Annual Responses: 4,000. Annual Burden Hours: 8,000.

In addition to the information collection changes contained in the proposed rule, MMS requests comments concerning the need for the following possible rule changes:

1. A provision to allow the lessee to provide the manufacturers name, the model number, and the model year of standardized equipment in lieu of specifications and descriptions for such standardized items.
2. A provision to allow the lessee to reference information from previously submitted documents that is readily available to MMS and State reviewing agencies to avoid duplication of the information.
3. A provision to enable States to collect information directly from lessees in the OCS when such information is collected solely for the States.

Dated: October 30, 1985.

Richard B. Krahl,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 85-30228 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-MR-M

Royalty Management Advisory Committee; Meeting

AGENCY: Minerals Management Service, (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Royalty Management Advisory Committee will hold a meeting to brief committee members on the Royalty Management Program and organize technical working panels. Notice of this meeting is required under the Federal Advisory Committee Act.

Name: Organizaiton Session of Royalty Management Advisory Committee.

Date and Time: January 9, 1986, at 8:30 a.m. to 4:00 p.m.; January 10, 1986, at 8:00 a.m. to 4:00 p.m.

Place: Sheraton Inn Lakewood, Morrison and Golden Room, 360 Union Boulevard, Lakewood, Colorado 80228.

Agenda: January 9: Opening Remarks, Royalty Management Program Overview and Management Action Plan Review.

January 10: Secretary of the Interior Comments, Issue Briefing, Organize Working Panels, Public Comments, and Closing Remarks.

This meeting will be open to the public. Public attendance may be limited by the space available. Questions and answers from the public will be addressed at the close of the meeting. Written statements should be submitted by January 3, 1986, to Mr. Todd McCutcheon, Minerals Management Service, P.O. Box 25165, MS 660, Denver Federal Center, Building 85, Denver, Colorado 80225. Questions regarding arrangements for this meeting may be forwarded to Mr. Todd McCutcheon at the same address or by telephoning Mr. Todd McCutcheon at (303) 231-3360. Minutes of this meeting will be available for public inspection and copying by March 31, 1986, at the above address.

Dated: December 17, 1985.

William D. Battenberg,

Director, Minerals Management Service.

[FR Doc. 85-30270 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Hopewell Furnace National Historic Site; Notice of Park Name Change

AGENCY: National Park Service; Hopewell Furnace National Historic Site.

ACTION: Notice of park name change.

SUMMARY: Notice is hereby given that effective September 19, 1985, Hopewell Village National Historic Site which was designated by Secretarial Order of August 3, 1938 (3 FR 2039), pursuant to the Historic Sites Act of August 21, 1935 (49 STAT. 666) is hereby redesignated by Secretarial Order as Hopewell Furnace National Historic Site.

SUPPLEMENTARY INFORMATION: Historically, the area was never known as Hopewell Village. During the period of furnace operations (1771-1883), the industrial complex was referred to on maps and by merchants dealing with the furnace as "Hopewell Furnace" or "Hopewell". Therefore, the redesignation of Hopewell Village National Historic Site to Hopewell Furnace National Historic Site will describe the significance of the site more effectively.

Dated: December 9, 1985.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region

[FR Doc. 85-30306 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-274)]

Burlington Northern Railroad Co., Abandonment in Adair and Cass Counties, IA; Findings

The Commission has issued a certificate authorizing the Burlington Northern Railroad Company to abandon its 25.86-mile rail line between Greenfield (milepost 21.15) and Cumberland (milepost 47.01) and Adair and Cass Counties, IA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has

offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-30224 Filed 12-20-85; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Notice of Hearing

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of a public hearing of the National Commission for Employment Policy in the auditorium of the Murry Bergtraum High School for Business Careers, 411 Pearl Street, New York, New York.

DATE: Thursday, January 9, 1986, 9:00 a.m. to 12:00 p.m.

STATUS: This hearing is open to the public.

MATTERS TO BE DISCUSSED: Commission members will hear testimony from various local government, business, education and community witnesses regarding basic skills remediation and dropout prevention for New York City youth. Witnesses will testify on the importance of basic academic skills to young people's success in the job market.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy ReMine Trego, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97-300). The Act gives the Commission the broad responsibility of advising the President and the Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. No public testimony will be authorized except by those asked to do so prior to the hearing date. However, written testimony for the record will be accepted at the Commission offices through January 17, 1986.

Copies of the testimony and materials prepared for the hearing will be available for public inspection at the Commission's offices, 1522 K St. NW, Suite 300, Washington, DC 20005.

Signed this 18th day of December 1985.

Carol J. Romero,

Acting Director.

[FR Doc. 85-30189 Filed 12-20-85; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON ARTS AND HUMANITIES

Artists in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Artists in Education Advisory Panel (Artists Residency Grants) to the National Council on the Arts will be held on January 8 and 9 from 8:30 a.m.—8:00 p.m. and on January 10, from 9:00 a.m.-5:00 p.m. in room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be Artist Residency Grant applications and policy issues.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: December 13, 1985.

John H. Clark,

Director Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-30209 Filed 12-20-85; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Prescreening Section) to the National Council on the Arts will be held on January 6-8, 1986, from 9:00 a.m.-6:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: December 13, 1985.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-30210 Filed 12-20-85; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Opera-Musical Theater Overview Section) to the National Council on the Arts will be held on January 7-9, 1986 from 9:00 a.m.-5:30 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW. Washington, DC.

A portion of this meeting will be open to the public on January 7, from 10:30 a.m.-5:30 p.m. and on January 8 and 9 from 9:00 a.m.-5:30 p.m. to discuss guidelines, the Five-Year Plan and other policy issues.

The remaining sessions of this meeting on January 7, from 9:00 a.m.-10:30 a.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of

February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constitutencies, National Endowment for the Arts, 1100 Pennsylvania, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further infomration with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: December 13, 1985.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-30211 Filed 12-20-85; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences.

Date and time: January 7, 1986 9AM-5PM.

Place: Nile Room, Shamrock Hilton Hotel, Houston, Texas.

Type of meeting: Open.

Contact person: Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 202/357-9488.

Summary minutes: May be obtained from the contact person at the above address.

Purpose of committee: In the light of recent technological advances and large telescopes being planned in the U.S. and elsewhere; the subcommittee is asked to examine the scientific rationale and current plans and to advise on appropriate future directions for the Foundation's support of technology development and planning for a large optical/infrared telescope for the remainder of the decade.

Agenda: 9 AM-5 PM—Discussion of draft report.

M. Rebecca Winkler,

Committee Management Officer.

December 18, 1985.

[FR Doc. 85-30278 Filed 12-20-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Population Biology and Physiological Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation Announces the following meeting:

Name: Advisory Panel for Population Biology and Physiological Ecology.

Date and time January 16 & 17, 1986-8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, DC 20550.

Type of meeting: Part Open. Open 01/17/86, 11:00 a.m. to 12:00 noon. Closed 01/16/86, 8:30 a.m. to 5:00 p.m. and 01/17/86, 8:30 a.m. to 11:00 a.m. and 12:00 noon to 5:00 p.m.

Contact person: Dr. James P. Collins, Program Director, Population Biology and Physiological Ecology (202) 357-9728, Room 1140, National Science Foundation, Washington, DC 20550.

Purpose of panel: To provide advice and recommendations concerning support for research in populaiton biology and physiological ecology.

Agenda: Closed; To reveiw and evaluate research proposals and projects as part of the selection process of awards. Open: 01/17/86, 11:00 a.m. to 12:00 noon. Discussion to include long-range planning in population biology and physiological ecology.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

Authoirty to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

December 18, 1985.

[FR Doc. 85-30280 Filed 12-20-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Systematic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Biology.

Date and time: January 13 & 14, 1986—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1242B, National Science Foundation, 1800 G St., NW., Washington, DC 20550.

Type of meeting: Part Open. Open 01/14/86, 2:00 p.m. to 3:00 p.m. Closed 01/13/86, 8:30 a.m. to 5:00 p.m. and 01/14/86, 8:30 a.m. to 11:00 a.m. and 12:00 noon to 5:00 p.m.

Contact person: Dr. James E. Rodman, Program Director, Systematic Biology, (202) 357-9588, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of panel: To provide advice and recommendations concerning support for research in systematic biology.

Agenda: Closed: To review and evaluate research proposals and projects as part of the selection process of awards. Open: 01/14/86, 2:00 p.m. to 3:00 p.m. Discussion to include long-range planning in systematic biology.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

December 18, 1985.

[FR Doc. 85-30281 Filed 12-20-85; 8:45 am]

BILLING CODE 7555-01-M

Materials Research Advisory Committee; Closed Meetings

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Materials Research Advisory Committee

Place: Rooms 540, 523, National Science Foundation, 1800 G Street, NW., Washington, DC 20550

Date: Monday, January 13, 1986 and Tuesday, January 14, 1986

Time: 9:00 a.m.-5:00 p.m., each day

Type of meeting: Closed

Contact person: Dr. Lewis H. Nosanow, Director, Division of Materials Research, Room 408, National Science Foundation, Washington, DC, 20550, Telephone: (202) 357-9794

Summary minutes: May be obtained from the Contact Person, Dr. Lewis H. Nosanow, at the above stated address.

Purpose of subcommittee: To provide advice and recommendations concerning support of materials research.

Agenda Closed

Monday, January 13, 1986—9:00 to 5:00 p.m.

9:00 a.m.—Introduction and explanation of work plan for meeting, including peer review and grant award details—Lewis H. Nosanow.

9:30 a.m.—Staff Briefing on Programs and related proposals and reviews.

- Overview, Condensed Matter Sciences Section—Donald U. Gubser
- Solid State Physics—Jack E. Crow
- Solid State Chemistry—Fred E. Stafford
- Low Temperature Physics—Donald H. Liebenberg
- Condensed Matter Theory—Joseph W. Serene

12:00 noon—Working Lunch, Organization of Subcommittee work.

1:00 p.m.—Subcommittee Meetings. Separate meetings to discuss details of individual programs and related grants, a review of the peer review process as applied to actions, and a review of supporting documentation.

5:00 p.m.—Adjourn.

Closed

Tuesday, January 14, 1986—9:00 a.m. to 5:00 p.m.

9:00 a.m.—Administrative matters.

9:15 a.m.—Subcommittee Meetings—Continue Separate meetings to discuss programs and practices on section-wide basis.

12:00 noon—Working Lunch.

1:00 p.m.—Meetings with Division Director, Separate meetings of Subcommittees with Division Director to discuss findings.

2:00 p.m.—Report preparation.

5:00 p.m.—Adjourn.

Reasons for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10 (d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

December 18, 1985.

[FR Doc. 85-30279 Filed 12-20-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-346]

Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the withdrawal of an application dated November 5, 1984, filed by Toledo Edison Company (the licensee). The application requested amendment to Facility Operating License No. NPF-3 for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio. The proposed amendment would have deleted the low pressure switch interlocks in the main steam lines to the Auxiliary Feedwater Pump inlets. The Commission issued a Notice of Consideration of Issuance of Amendment in the **Federal Register** on March 27, 1985 (50 FR 12165). By letter dated October 25, 1985, the licensee withdrew the application for the proposed amendment. The Commission has considered the licensee's October 25, 1985, letter and has determined that permission to withdraw the November 5, 1984, application for amendment should be granted.

For further details with respect to this action, see (1) the application for amendment dated November 5, 1984, (2) the licensee's letter dated October 25, 1985, withdrawing the application for license amendment, and (3) our letter to Toledo Edison Company dated December 2, 1985.

All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Bethesda, Maryland, this 2nd day of December 1985.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, PWR Project Directorate No. 6, Division of PWR Licensing-B.

[FR Doc. 85-30287 Filed 12-20-85; 8:45 am]

BILLING CODE 7590-01-M

[CLI-85-18; Docket No. LRP]

Inquiry Into Three Mile Island, Unit 2 Leak Rate Data Falsification; Order and Notice of Hearing

Commissioners: Nunzio J. Palladino, Chairman, Thomas M. Roberts, James K. Asselstine, Frederick M. Bernthal, Lando W. Zech, Jr.

In an Order issued February 25, 1985, CLI-85-2, 21 NRC 282, the Commission stated that it would institute a separate hearing apart from the Three Mile Island, Unit 1 restart proceeding to develop the facts surrounding the reactor coolant system ("RCS") leak rate data falsifications at Three Mile Island, Unit 2 (TMI-2) prior to the March 28, 1979 accident, in sufficient detail to determine the ultimate status of those likely involved, which includes those segregated from TMI-1 and those now working at other facilities. The Commission herein specifies the procedures to govern the separate hearing, which will be a legislative format hearing designed solely to gather information. This order also identifies the steps to be taken, after the Presiding Board issues a recommended decision setting forth the facts, in order for the Commission to determine what action, if any, will be taken.

A. Background

Harold Hartman, a control room operator at TMI-2 prior to the accident, alleged that RCS leak rate surveillance tests, which were used to assess whether primary system leakage surpassed limits contained in the facility's technical specifications, were at times purposely manipulated and records of unacceptable results were discarded at TMI-2 prior to the accident to cover up the fact that over an extended period of time the results of the tests exceeded technical specification limits for unidentified leakage. Hartman alleged that the computer program for calculating leak rates was unreliable, frequently yielding unrealistic results. This made it more difficult to get "good" leak rates. Hartman further alleged that the operators at TMI-2 sometimes manipulated the RCS leak rate test results by inputting wrong data into the computer, adding hydrogen gas to the make-up tank during leak rate tests, adding water to the make-up tank during a leak rate test and not inputting the addition into a computer, and leaking water into the make-up tank while performing water transfer operations involving other tanks. Hartman specifically alleged that shift supervision was aware of such improper conduct. After a preliminary investigation into Hartman's allegations, the NRC in April of 1980 referred the matter to the Department of Justice for criminal investigation.

After a Grand Jury investigation and indictment of Metroplitan Edison Company, the TMI-2 licensee at the time of the accident, the Department of Justice began prosecution of the criminal charges against Metropolitan Edison Company.

On February 29, 1984, Metropolitan Edison Company entered into a plea agreement with the United States which ended the criminal prosection. Metropolitan Edison pleaded guilty to one count of the indictment charging it with failure to establish, implement, and maintain an accurate and meaningful reactor coolant system water inventory balance procedure to demonstrate that unidentified leakage was within the

allowable limits. The company also pleaded no contest to six other counts of the indictment, including those which charged the Company with improper manipulation of TMI-2 leak rate test to generate results that would fulfill the Company's license requirements. In urging the Court to accept the plea agreement, U.S. Attorney David Queen stated the evidence developed in the Grand Jury inquiry did not indicate that any of the directors and officers of GPU Nuclear from its inception in 1982 (as successor to Metropolitan Edison) to the date of the indictment, or any of the directors of Metropolitan Edision "participated in, directed, condoned, or was aware of the acts or admissions that are the subject of the indictment." [1]

After the Court accepted the plea agreement, the Department of Justice on behalf of the Commission asked the Court to provide the NRC access to the record of the Grand Jury proceeding. The Court denied the request. *United States v. Metropolitan Edison Company*, 594 F. Supp. 117 (M.D. Pa) (1984).

The Commission also asked its Office of Investigations ("OI") to examine whether Michael Ross, Manager of Operations at TMI-1, had participated in, directed or condoned leak rate falsifications at TMI-2. Prior to the accident Ross was licensed at both TMI-1 and TMI-2. OI interviewed Ross and many others under oath regarding Ross' involvement at Unit-2, reviewed pertinent records and concluded that Ross' role at TMI-2 was minimal, that during the period falsifications took place he was present at TMI-2 only the minimum time necessary to maintain his TMI-2 license, and that he was not involved in the falsifications.

B. Purpose and Scope of Hearing

1. The purpose of this hearing is to develop the fact surrounding the leak rate falsifications that occurred at TMI-2 from February 2, 1978 (the date TMI-2 received its operating license) until March 28, 1979, in sufficient detail to determine the involvement of any individual who may now work, or in the future work, at a nuclear facility licensed by the Commission.

2. The specific issues which the Presiding Board is to address and limited to the following:

(a) How were the Technical Specification 3.4.6.2 requirements for reactor coolant system unidentified leakage interpreted and implemented by control room operators (CROs), shift foremen, shift supervisors and on-site and of-site management? Following the discovery by an NRC inspector in October 1978 that Technical Specification 3.4.6.2 requirements were not properly interpreted or implemented, what corrective action was taken by management personnel? Was the corrective action taken sufficient to insure compliance with the Technical Specification 3.4.6.2 by the personnel performing and reviewing the leak rate surveillance tests?

(b) What difficulties, if any, were operators experiencing when conducting leak rate surveillance tests required by Technical Specification 4.4.6.2.d? Who knew about these difficulties? What corrective actions were taken? Did operators feel pressure to obtain leak rate surveillance tests results which did not exceed technical specification limits? If so, what type of pressure was perceived or exerted and who was responsible?

(c) Were unacceptable leak rate surveillance test results required by technical Specification 4.4.6.2.d discarded? If so, who knew of, condoned or directed this practice? Were unacceptable leak rate surveillance test results discarded in an attempt to hide them from the NRC?

(d) Did operators manipulate data or take other actions during leak rate surveillance testing in an attempt to improperly influence test results? Who performed, condoned, dircted or was knowledgeable of data manipulation or other improper actions during leak rate surveillance testing? This would include, but is not limited to the following:

(i) Inputting the wrong data into the plant computer;

(ii) Adding hydrogen gas to the make-up tank during the test in an attempt to influence make-up tank level indication;

(iii) Adding water to the make-up tank during the test and either not including the addition in the computer calculation or underrecording the addition in the computer;

(iv) Taking advantage of differences or inaccuracies in plant instrumentation (*e.g.*, make-up tank level indicators) in an attempt to influence parameters critical to the leak rate surveillance test calculation;

(v) Taking or failing to take any action in violation of technical specification requirements?

(e) The Commission has accepted the findings of the U.S. Attorney that the 24 individuals mentioned in footnote 1, *supra*, were not involved in the leak rate falsifications. It has also accepted the OI finding that Michael Ross similarly was not involved. Accordingly, the Commission has decided that these individuals are outside of the scope of the hearing.[2] Therefore, the Presiding Board shall not address any issue regarding any alleged knowledge or involvement of these individuals in the falsifications that occurred at the TMI-2 reactor from February 2, 1978 until March 28, 1979.

(f) The Presiding Board is not to entertain issues other than those set forth in (a)-(d) above without the prior authorization of the Commission.

C. Procedures

1. The Chief Administrative Judge, Atomic Safety and Licensing Board Panel, is to appoint a three-person Presiding Board to rule on petitions to intervene, to conduct any prehearing procedures and the hearing, and to render a recommended decision setting forth the facts surrounding the falsifications and identifying those individuals who participated in, or knew of and condoned, or by their dereliction or culpable neglect allowed the leak rate falsifications at TMI-2.

2. Any person who has an interest which may be affected by this hearing may petition to intervene. Petitions to intervene shall include the name of the party, how the party's interest may be affected by the proceeding, and how the party expects to contribute to the development of an adequate record. Petitions are to be filed within 45 days of the date of this Order and Notice of Hearing. Petitions shall be granted if the Presiding Board determines that the petitioner has an interest that may be affected and petitioner will likely contribute to development of an adequate record.

3. The hearing will be held in the Washington, D.C. area, although the Presiding Board may hold portions of the hearing in other places consistent with the convenience of the parties or their representatives and the public interest.

4. The NRC staff will not participate as a party. Instead, it will make available to the parties and to the

[1] The individuals thereby cleared by the U.S. Attorney are William G. Kuhns, Herman M. Dieckamp, Robert C Arnold, James S. Bartman, Shepard Bartnoff, Frederick D. Hafer, Richard Heward, Henry D. Hukill, Edwin E. Kintner, James R. Leva, Bernard H. Cherry, Philip R. Clark, Verner H. Condon, Walter M. Crietz, Robert Fasulo, Ivan R. Finfrock, William L. Gifford, Robert L. Long, Frank Manganaro, Ernest M. Schleicher, Floyd J. Smith, William, A. Verrochi, Raymond Werts, and Richard F. Wilson

[2] If the Presiding Board believes that any of these individuals have pertinent information to provide on issues falling within the scope of the hearing, it may call them as witnesses at mutually convenient times or, if necessary, issue a subpoena requiring their attendance and testimony. The Board is not to make unreasonable demands on the time of these individuals or upon other persons playing key roles in the operation of any nuclear facility.

Presiding Board, relevant documentary material within its possession as soon as practicable after issuance of this Order and Notice of Hearing. Disclosure of material is to be consistent with the Commission's Statement of Policy, "Investigations, Inspections, and Adjudicatory Proceedings," 49 FR 36032 (September 13, 1984). The NRC staff will also provide whatever testimony or other assistance the Presiding Board requests to ensure that the hearing record is fully developed. All orders, petitions, submissions to the Presiding Board and other pertinent material shall be served on the NRC staff.

5. This hearing will not be conducted under 10 CFR Part 2, Subpart G, except that, in addition to the powers granted by this Order and Notice of Hearing, the Presiding Board shall have the powers specified in 10 CFR 2.718 (a), (e), (f), (h), (i), (j) and (k). The hearing will be conducted using a legislative hearing format, as specified below.

(a) Only relevant, material, and reliable oral and documentary evidence which is not repetitious should be admitted into evidence. Only the Presiding Board will be able to call witnesses or to question them. Witnesses will testify under oath.

(b) No discovery will be conducted. Instead, it is the Commission's intent that the hearing itself serve as the fact-finding mechanism.

(c) The presiding Board may issue subpoenas if necessary to compel attendance of witnesses. The Presiding Board will make available to the parties lists of the individuals that it intends to call as witnesses. Parties will be invited by the Presiding Board to submit recommendations regarding whether additional individuals should be called to testify.

(d) Before each witness testifies, the Presiding Board will invite the parties to submit questions in writing to the Presiding Board which they believe should be posed to the witness. The Presiding Board has the discretion to use the questions suggested by the parties.

(e) After the hearing has been completed, the Presiding Board is to invite the parties to file proposed findings of fact and conclusions of law.

(f) The Presiding Board is to issue a recommended decision which sets forth its findings on who participated in, had knowledge of and condoned, or by their dereliction or culpable neglect allowed the leak rate falsifications, and the facts surrounding any such involvement in sufficient detail to determine the involvement of any individual who may now work, or in the future work, at a nuclear facility. The Board's decision shall address each of the issues set out in Part B of this Order. The Presiding Board is not to make recommendations regarding whether any actions should be taken.

(g) The Presiding Board's recommended decision will not be subject to review by an Atomic Safety and Licensing Appeal Board.

(h) The Presiding Board is not to deviate from the procedures set forth above without prior authorization from the Commission. If the Presiding Board should determine that these procedures will not lead to the development of an adequate hearing record, and that other procedures, such as discovery or cross-examination, are necessary for the development of an adequate hearing record, the Presiding Board is to request authorization from the Commission to use more formal procedures. The Presiding Board in its request to the Commission is to specify in detail those issues which cannot be fully developed under the procedures in the Order and Notice of Hearing, what procedures it desires to use, and how use of those additional procedures will result in the development of the needed information.

On the basis of the Presiding Board's recommended decision and taking into account any other information which it believes is appropriate for Commission consideration, the NRC staff shall make recommendations to the Commission regarding what action, if any, should be taken. The NRC staff is to provide its recommendations to the Commission within sixty days after issuance of the Presiding Board's decision. Those recommendations are to include whether the Commission should remove the condition imposed in the TMI-1 restart proceeding barring certain individuals from certain positions at TMI-1.

After reviewing the Board's recommended decision and the NRC staff's recommendations, the Commission will decide what further steps, if any, need to be taken with regard to involved individuals. This will include consideration of whether to remove TMI-1 employment constraints and whether to initiate formal enforement action or take any licensing action with regard to involved individuals. If as a result of its review the Commission institutes a formal enforcement proceeding[3] or takes any licensing action, the facts found by the Presiding Board and Commission in the hearing ordered here will not be binding in the subsequent enforcement or licensing proceeding.

It is so ordered.

Commissioners Asselstine and Bernthal disapproved this Order and provided separate views.

Dated at Washington, D.C., this 18th day of December 1985.

For the Commission.[4]

Samuel J. Chilk,

Secretary of the Commission.

Separate Views of Commissioner Asselstine

I cannot agree with the hearing procedures established by the Commission in this order.

First, the Commission should simply hold an adjudicatory hearing on this issue rather than setting up some sort of ersatz legislative proceeding. Since the Commission will not do that, however, they should at least have modified some of the more unreasonable provisions. At a minimum any party to the TMI-1 Restart proceeding who wishes to participate in this proceeding should be automatically admitted as a party without having to establish standing. Further, holding the "hearing" in the Washington, D.C. area seems to needlessly make participation in this proceeding more difficult than it should be.

Second, the Commission should not exclude consideration of the involvement of all upper-level GPUN management. I explained in more detail my reasons for believing that the scope of this hearing should not be limited in my dissenting views on CLI 85-2 so I will not repeat them here. Suffice it to say that in my view relying solely on the statement of the U.S. Attorney at a court hearing on a bargained plea agreement is not a valid jusification for ignoring management responsibility for the leak rate falsifications.

Separate Views of Commissioner Bernthal

I dissented from the path the majority chose in respect to the number and scope of additional hearings in relation to the Commission's restart of TMI-1. I continue to believe that the overriding consideration in the denouement of the TMI-1 restart proceeding is public confidence—the need for the public to be provided, to the extent reasonably possible, with all the facts relevant to the TMI accident and its aftermath.

I consider this hearing as ordered by the Commission unlikely to prove adequate for that important purpose.

[FR Doc. 85-30284 Filed 12-20-85; 8:45 am]

BILLING CODE 7590-01-M

[3] Because the leak rate falsification events to be addressed in this Board hearing are more than five years old, the five-year statute of limitations set forth in 28 U.S.C. 2462 may bar the NRC from subsequently instituting an enforcement proceeding for involvement in the events that are the subject of this hearing. However, the information developed in the hearing may be used for other purposes, for example, in evaluating whether an individual's operator license should be renewed.

[4] Commissioner Bernthal was absent when this order was affirmed. He had previously disapproved the Order and had he been present he would have affirmed his prior vote.

[Docket No. 50-276]

Environmental Assessment and Finding of no Significant Environmental Impact Regarding Proposed Order Relating to Termination of Facility Operating License No. R-111; Georgia Institute of Technology

The Nuclear Regulatory Commission (the Commission) is considering issuance of an Order authorizing disposition of all reactor components and terminating Facility Operating License No. R-111 for the AGN-201 reactor facility on the Campus of Georgia Institute of Technology in Atlanta, Georgia. A single Order is considered appropriate because removing all fuel from this type of reactor leaves an intact, portable, non-radioactive entity.

The Order would authorize disposal of the reactor components and terminate the Operating License in accordance with the licensee's application dated September 26, 1984, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License published in the Federal Register on November 21 1984 at 49 FR 45939. No request for a hearing or petition to intervene was filed following notice of the proposed action.

Environmental Assessment

Identification of Proposed Action

The Order would authorize disposition of all non-fueled reactor components and terminate Facility Operating License No. R-111, issued for the AGN reactor at the Georgia Institute of Technology in Atlanta, Georgia.

Need for the Proposed Action

Pursuant to 10 CFR 50.82, the licensee has requested that the Commission terminate the Operating License. The final radiological inspection has been completed, showing that all relevant regulatory requirements have been satisfied. Therefore, there is no longer any need for the Operating License to remain in effect.

Environmental Impacts of Proposed Action

The fuel has been removed form the reactor and authorization to retain it has been transferred to another Facility Operating License, and residual contamination is within acceptable levels. Also, the remainging components are essentially portable, so removing them will cause no distrubance of buildings and grounds. Therefore, termination of the license is the next appropriate administrative action. This action will have no environmental impact.

Alternative Use of Resources

The proposed action does not involve any unresolved conflicts concerning alternatives uses of available resources.

Agencies and Persons Consulted

The NRC staff reviewed and approved the licensee's decommissioning plan and conducted the final inspection of the site. No other agencies or persons were consulted.

Finding of no Significant Impact

On the basis of the Environmental Assessment, the Commission has concluded that termination of the license will have no significant environmental impact. The Commission has determined not to prepare an Environmental Impact Statement for the proposed action.

For further details with respect to this action see the licensee's request for authorization to dismantle and for termination of the Facility Operating License dated September 26, 1984, and the Commission's Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and terminating Facility License dated November 21, 1984, (49 FR 45939), which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Dated at Bethesda, Maryland, this 17th day of December 1985.

For the Nuclear Regulatory Commission.

Dominic Tondi,

Acting Director Standardization and Special Projects Directorate, Division of PWR Licensing-B.

[FR Doc. 85-30288 Filed 12-20-85; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, CE 304-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Standard Format and Content of Decommissioning Plans for 10 CFR Parts 30, 40, and 70 Licensees" and is intended for Division 3, "Fuels and Materials Facilities." It is being developed to identify the information needed by the NRC staff for evaluating decommissioning plans. The guide also provides a format for submitting this information.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. Comments will be most helpful if received by February 17, 1986.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washinton, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission

approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 16th day of December 1985.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 85-30285 Filed 12-20-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244]

Rochester Gas & Electric Corp.; R.E. Ginna Nuclear Power Plant, Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 12 to Facility Operating License No. DPR-18 issued to Rochester Gas and Electric Corporation (the licensee) which revised the Technical Specifications for operation of the R.E. Ginna Nuclear Power Plant (the facility), located in Wayne County, New York. The amendment was effective as of the date of its issuance.

The amendment revised the Technical Specifications to authorize storage of consolidated spent fuel in the spent fuel pool and to authorize use of the auxiliary building crane to move consolidated fuel canisters.

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.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on November 13, 1985. No request for a hearing or petition for leave to intervene was filed following this notice.

An "Environmental Assessement and Finding of No Significant Impact" was Published in the **Federal Register** on December 16, 1985 (50 FR 51317) in connection with this action.

For further details with respect to this action see (1) the application for amendment dated February 27, 1985 as supplemented on June 10, June 26, and July 11, 1985, (2) Amendment No. 12 to Facility Operating License No. DPR-18, 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, DC, and at the Rochester Public Library, 115 South Avenue, Rochester, New York 14610. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-A, NRR.

Dated at Bethesda, Maryland, this 16th day of December 1985.

For the Nuclear Regulatory Commission.

George E. Lear,

Director, Project Directorate #1, Division of PWR Licensing.

[FR Doc. 85-30288 Filed 12-20-85; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A86-3; Order No. 644]

Chatham, Mississippi 38731 (Mrs. Callie Mosley et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Issued November 13, 1985.

Docket number: A86-3

Name of affected post office: Chatham, Mississippi 38731

Name(s) of petitioner(s): Mrs. Callie Mosley; George W. Stone, Sr.

Type of determination: Closing

Date of filing of first appeal papers: November 6, 1985

Categories of issues apparently raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(A)].
2. Effect on the community [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before November 21, 1985.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix—Docket No. A86-3, Chatham, Mississippi 38731

November 6, 1985: Filing of Petition

November 13, 1985: Notice and Order of Filing of Appeal

December 2, 1985: Last day for filing petitions to intervene [*see* 39 CFR 3001.111(b)].

December 12, 1985: Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].

January 2, 1986: Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

January 17, 1986: (1) Petitioners' Reply Brief should Petitioners choose to file one [*see* 39 CFR 3001.115(d)].

January 24, 1986: (2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

March 6, 1986: Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 85-30212 Filed 12-20-85; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14854]

Application and Opportunity for Hearing; Hartford Variable Annuity Life Insurance Company—Variable Account "B"

December 16, 1985.

Notice is hereby given that Hartford Variable Annuity Life Insurance Company—Variable Account "B" ("Applicant"), Hartford Plaza, Hartford, Connecticut 06115, an insurance company separate account registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on July 22, 1985, and an amendment thereto on November 7, 1985, pursuant to section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and referred to the

Act and the rules thereunder for the applicable provisions.

On April 24, 1981, Applicant filed a notification of registration on Form N-8A and a registration statement on Form S-6. The registration statement was declared effective May 7, 1984.

Hartford Variable Annuity Life Insurance Company ("HVA") wons 100% of the outstanding units of interest of the Applicant. There had been approximately 15 contractholders whose premium payments had totaled approximately $225,000. These separate account assets were fully invested in Depository Accounts. In late 1984, HVA management decided to discontinue sale of the contracts and to terminate all existing contracts. Accordingly, contractholders were offered the option of either surrendering out their contracts or transferring their funds (original purchase payment plus interest on such amount) to Variable Account "A", another HVA unit investment trust. During the period from February through March 1985, approximately half of the contractholders surrendered their contracts for full refund, while the other half transferred to Variable Account "A." Liquidations for purposes of repayment to contractholders or transfer to Variable Account "A" were made at the then current unit value from the assets of the Applicant. No sales or brokerage commission were paid.

Applicant states that its assets consist of investments in Depository Accounts maintained at national banking institutions, and at September 30, amounted to $149,582, and that these assets have been retained by the Applicant in order to earn interest income. Liabilities represent mortality expenses which will be paid upon liquidation. As of September 30, 1985, these amounted to $1,455, due to HVA. Applicant states that upon liquidation, it will settle any existing liabilities and distribute to HVA the full liquidation value of its holdings at the unit value then computed.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 13, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20459. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30290 Filed 12-20-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14848; 811-3192]

Application and Opportunity for Hearing; IDS Life Capital Resource Fund I, Inc.

December 13, 1985.

Notice is hereby given the IDS Life Capital Resource Fund I, Inc. ("Applicant"), 1000 Roanoke Building, Minneapolis, Minnesota 55474, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on October 31, 1985, for an order of the Commission pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company, All intersted persons are referred to the appication on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for the applicable provisions.

On May 29, 1981, Applicant filed a notification of registration on Form N-8A and a registration statement on Form N-1. The registration statement was declared effective on November 10, 1981. Applicant states that it is the investment vehicle for Accounts C, D, and E, separate accounts of the IDS Life Insurance Company registered as unit investment trust under the Act, and for Accounts 1, 2, and 3, separate accounts of IDS Life Insurance Company of New York, which are also so registered.

Applicant states that the initial public offering commenced on October 13, 1981, and Applicant's separate existence as a corporation terminated on August 30, 1985, upon the filing of the Agreement of Merger in the state of incorporation, Nevada. Applicant further states that it has not transferred any of its assets to a separate trust within the last 18 months. Applicant represents that no distributions were made to securityholders and Applicant has not retained any assets.

Applicant maintains that no debts or other liabilities remain outstanding and that is not a party to any litigation or administrative proceedings. Applicant further represents that it has no securityholders and is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

The application states that as of August 30, 1985, it had 2,048,776 shares of common stock outstanding with a net value per share of $14,487. Applicant submits that all expenses of the merger were borne by IDS Life Insurance Company, that all securityholders' interests have been transferred into the Surviving Corporation, IDS Life Capital Resource Fund, Inc., ("Surviving Corporation") and that all portfolio securities and any other assets of the Applicant were transferred into the Surviving Corporation. Applicant further states that: (1) Its Board of Dirctors, including a majority of the directors who are not interested persons of either the Applicant or IDS Life Capital Resource Fund II, Inc. recommended the merger of the two funds on May 9, 1985; (2) on July 10, 1985, shareholders voted, on the instuctions of the contractowners, to approve the merger between Applicant and IDS Life Capital Resource Fund II, Inc. The affirmative vote represented at least a majority of the issued and outstanding capital stock of Applicant, and that thereby the Agreement of Merger was duly adopted; and (3) proxy material was distributed to contractowners and filed with the Commission regarding the proposed merger.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 8, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should 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 with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30291, Filed 12-20-85 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14849; 811-3191]

Application and Opportunity for Hearing; IDS Life Special Income Fund I, Inc.

December 13, 1985.

Notice is hereby given that IDS Life Special Income Fund I, Inc. ("Applicant"), 1000 Roanoke Building, Minneapolis, Minnesota 55474, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on October 31, 1985, for an order of the Commission pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for the applicable provisions.

On May 29, 1981, Applicant filed a notification of registration on Form N-8A and a registration statement on Form N-1. The registration statement was declared effective on November 10, 1981. Applicant states that it is the investment vehicle for Accounts C, D, and E, separate accounts of the IDS Life Insurance Company registered as unit investment trusts under the Act, for Accounts 1, 2, and 3, separate accounts of IDS Life Insurance Company of New York, which are also so registered.

Applicant states that the initial public offering commenced on October 13, 1981, and Applicant's separate existence as a corporation terminated on August 30, 1985, upon the filing of the Agreement of Merger in the state of incorporation, Nevada. Applicant further states that it has not transferred any of its assets to a separate trust within the last 18 months. Applicant represents that no distributions were made to securityholders and Applicant has not retained any assets.

Applicant maintains that no debts or other liabilities remain outstanding and that it is not a party to any litigation or administrative proceedings. Applicant further represents that it has no securityholders and is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

The application states that as of August 30, 1985, it had 3,403,916 shares of common stock outstanding with a net asset value per share of $11,278. Applicant submits that all expenses of the merger were borne by IDS Life Insurance Company, that all securityholders' interests have been transferred into the Surviving Corporation, IDS Life Special Income Fund, Inc. ("Surviving Corporation"), and that all portfolio securities and any other assets of the Applicant were transferred into the Surviving Corporation. Applicant further states that: (1) Its Board of Directors, including a majority of the directors who are not interested persons of either the Applicant or IDS Life Special Income Fund II, Inc. recommended the merger of the two funds on May 9, 1985; (2) on July 10, 1985, shareholders voted, on the instructions of the contractowners, to approve the merger between Applicant and IDS Life Special Income Fund II, Inc. The affirmative vote represented at least a majority of the issued and outstanding capital stock of Applicant, and that thereby the Agreement of Merger was duly adopted; and (3) proxy material was distributed to contractowners and filed with the Commission regarding the proposed merger.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 8, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should 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 with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30292 Filed 12-20-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14852; (File No. 811-3892)]

Institutional Telephone Trust, First Exchange Series (A Unit Investment Trust); Application for an Order Declaring that Applicant Has ceased to be an Investment Company

December 16, 1985.

Notice is hereby given that International Telephone Trust, First Exchange Series (A Unit Investment Trust) ("Trust"), c/o Bank of New England, N.A., Corporate Agency Office, One Washington Mall, Boston, MA 02109, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on November 12, 1985, pursuant to Section 8(f) of the Act, and Rule 8f-1 thererunder, for an order declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the pertinent statutory provisions.

Trust is organized as a common law trust in accordance with the laws of the Commonwealth of Massachusetts, pursuant to a trust agreement, dated as of November 28, 1983 ("Trust Agreement"), between SEI Financial Services Company ("SEI") as sponsor and depositor, and Bank of New England, N.A., as trustee, dividend agent, and redemption agent. On October 28, 1983, Trust filed with the Commission a Notification of Registration on Form N-8A, and a Registration Statement on Form N-8b-2 under the Act. On October 31, 1983, Trust filed a Registration Statement on Form S-6 under the Securities Act of 1933 ("Securities Act"), and on November 28, 1983, Trust filed Amendment No. 1 to its Form S-6 Registration Statement, which was declared effective on that date. The Registration Statement covered an indefinite number of units of beneficial interest in the Trust, and the initial public offering of the Trust's units commenced on November 28, 1983, continuing until December 31, 1983.

It is further stated that the Trust's units were offered to holders of American Telephone & Telegraph Company ("AT&T") common stock in exchange for their AT&T shares, during an exchange period running from November 28, 1983, to December 31, 1983. The exchange ratio was one unit of the Trust for each share of AT&T tendered and during the exchange

period, 1,132,012 units were issued in exchange for a like number of AT&T shares of common stock. The AT&T shares received were placed in the custody of Bank of New England, N.A.

The Trust Agreement provided that the Trust's units could be redeemed in kind, in which case the uniholder would receive the number of whole shares of AT&T represented by the redeemed units. Pursuant to the Trust Agreement, SEI, as sponsor, directed Bank of New England, as trustee, to terminate the Trust as of September 6, 1985, as the value of the underlying securities (as defined in the Trust Agreement) at August 21, 1985 ($8,276,295) was less than 40% of the aggregate value of the underlying securities deposited in the Trust during the exchange period ($74,712,792). Accordingly, the balance, excluding 1,883 shares which were liquidated on the New York Stock Exchange, of the underlying securities were thereupon distributed in kind to the holders of the Trust's 46,435 units as of September 6, 1985.

The assets of the Trust presently consist of dividends receivable in the amount of $31,866, which are being retained by Applicant as a reserve for winding-up expenses; such assets will not be invested in any securities, it is stated. It is stated further that, other than winding-up expenses in an amount not exceeding $27,473, the Trust has no debts or other liabilities which remain outstanding. The Trust is not a party to any litigation or administrative proceeding, it has no securityholders, and it is not engaged nor does it propose to engage in any business activity other than that necessary to the winding-up of its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 10, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon an Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30293 Filed 12-20-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14853; (File No. 812-6217)]

Mortgage Bankers Financial Corporation II; Application For an Order

December 16, 1985.

Notice is hereby given that Mortgage Bankers Financial Corporation II ("Applicant"), 1718 Connecticut Avenue, NW., Washington, DC 20009, a Delaware corporation, filed an application on October 2, 1985, 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 to enable it to issue bonds secured by certain mortgage-related collateral. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the relevant statutory provisions.

Applicant was organized under Delaware law on September 23, 1985, as a wholly-owned, limited purpose finance subsidiary of Mortgage Bankers Financial Corporation, a Delaware corporation engaged in the mortgage finance business. Applicant will operate as a financing entity providing a source of funds to home builders, mortgage bankers, thrift institutions, commercial banks, insurance companies and other entities engaged in real estate and mortgage finance.

Specifically, Applicant will be engaged in the issuance of bonds, or other evidences of indebtedness ("Bonds") secured by certain borrowing arrangements (described below, and hereinafter referred to as "Funding Agreements"), and by certain securities derived from residential mortgages (described below, and hereinafter referred to as "Mortgage Collateral"). Applicant will lend the proceeds obtained from the issuance of Bonds to borrowers for use in connection with the funding or acquisition of Mortgage Collateral and in connection with other activities incidental to, or necessary or convenient for such purposes. Applicant will have no significant assets other than Funding Agreements and Mortgage Collateral.

The Bonds will be issued pursuant to an indenture drawn between Applicant and an independent trustee ("Trustee"), and will be registered under the Securities Act of 1933 ("Securities Act"). Bonds may consist of several classes, or may all be of a single class, and will be sold to institutional or retail investors through one or more investment banking firms. Bonds may be issued in separate series, and as required by Applicant's certificate of incorporation, any issuance of Bonds will be rated by a nationally-recognized statistical rating organization in the highest bond rating category. To the extent that Bonds are to be secured by Mortgage Collateral, Applicant will issue Bonds and apply the proceeds of sale to the direct purchase of Mortgage Collateral. To the extent that a series of Bonds is to be secured by Funding Agreements, Applicant will enter into a Funding Agreement with each borrower participating in such series, pursuant to which, upon the issuance of Bonds by Applicant, (i) Applicant will lend a proportionate share of the proceeds of the Bonds to each borrower; (ii) the borrower will pledge Mortgage Collateral to Applicant as security for its loan; (iii) the borrower will be obligated to repay the loans made to it by Applicant by causing payments on the Mortgage Collateral to be made directly to the Trustee on behalf of Applicant in such amounts as are necessary to pay a proportionate share of the principal of and interest on the Bonds as they become due; and (iv) if so provided in the Funding Agreement, the borrower will issue one or more promissory notes to evidence the borrower's obligation to repay the loan.

Mortgage Collateral will consist of (i) fully modified pass-through certificates guaranteed as to payment of principal and interest by the Government National Mortgage Association ("GNMA Certificates"), (ii) mortgage pass-through certificates issued by the Federal National Mortgage Association ("FNMA Certificates"), (iii) mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), and (iv) any reserve funds, credit supports and collection accounts serving as additional collateral for the Bonds (GNMA Certificates, NFMA Certificates and FHLMC Certificates are collectively referred to hereinafter as "Mortgage Certificates"). Under the Indenture, Applicant will have a limited right to substitute new Mortgage Collateral ("Substitute Collateral") for Mortgage Collateral initially pledged as security for the Bonds. Substitute Collateral will

be required to have payment terms similar to, and in no event scheduled cash flows less than, those of the Mortgage Collateral in replaces. It will be a further condition of any such substitution that the outstanding ratings of the Bonds not be effected by such substitution. Each Mortgage Certificate may only be substituted for a like type of Mortgage Certificate. Applicant does not anticipate that substitution of Mortgage Collateral will occur frequently.

Applicant does not intend to require that Mortgage Certificates relate to "whole pools". It is asserted that any distinction between "whole pool" and "partial pool" Mortgage Certificates is irrelevant insofar as the investment is concerned. Each Mortgage Certificate evidences a fractional undivided interest in the underlying pool of mortgages, and payments with respect to such mortgages are passed through pro rata to the Mortgage Certificates by the issuer, or in the case of a default, by GNMA, FNMA, or FHLMC. A holder of Bonds collateralized by "partial pool" Mortgage Certificates has exactly the same investment experience as a holder of Bonds collateralized by "whole pool" Mortgage Certificates.

Applicant will assign to the Trustee, as security for the Bonds, its entire right, title and interest in the Funding Agreements (except its right to indemnification), the Mortgage Collateral pledged thereunder, and the Mortgage Collateral it purchases directly. Payments on Mortgage Collateral will be the primary source of funds for payments of principal and interest due on the Bonds. The scheduled available principal and interest payments on the Mortgage Collateral securing the Bonds, plus income received thereon, will be sufficient to make the interest payments on and amortize the principal of, the Bonds by their stated maturity.

It is further stated that the Bonds will provide under certain circumstances for their mandatory and discretionary redemption by Applicant. The Bonds may also provide for redemptions at the option of Bondholders, but only to the extent that payments received on the Mortgage Collateral are available for such redemptions. Under no circumstances will Bondholders be entitled to compel the liquidation of the Mortgage Collateral in order to redeem the Bonds prior to maturity.

Neither Applicant nor the Trustee will be able to impair the Bondholder's security afforded by the Mortgage Collateral. Without the consent of each Bondholder to be affected, neither Applicant nor the Trustee will be able to (1) change the stated maturity on any Bond; (2) reduce the principal amount, or the rate of interest on any Bond; (3) change the priority of repayment of any class of Bonds within a series; (4) impair or adversely affect the Mortgage Collateral securing a series of Bonds; (5) permit the creation of any lien ranking prior to or on a parity with the lien of the Indenture with respect to the Mortgage Collateral; or (6) otherwise deprive Bondholders of the security afforded by the lien of the Indenture.

With regard to Applicant's status under the Act, Applicant states that in general it will not be engaged in a business activity sufficient to bring it within the definition of investment company set forth in sections 3(a)(1) or 3(a)(3) of the Act, that the Funding Agreements and Mortgage Collateral are not among the types of investments intended to be covered by the Act, and that even if they were deemed to be such investments, the circumstances under which Applicant holds the Funding Agreements and the Mortgage Collateral do not constitute investing, reinvesting, holding, or trading in securities within the meaning of either sections 3(a)(1) or 3(a)(3) of the Act.

Applicant further assets that even if it were determined that it falls within either or both of the aforesaid Section 3(a) definitions of investment company, it should be deemed to come within the exception to those definitions afforded by section 3(c)(5)(C) of the Act. That is, Applicant believes that as a substantive matter, the Funding Agreements and Mortgage Certificates constitute liens on real estate within the meaning of section 3(c)(5)(C). Applicant further states that it will not *issue* any of the securities prescribed by section 3(c)(5)(C), and that it will be engaged in the business of facilitating the financing of mortgage loans. Although Applicant will not, under the Funding Agreements, acquire legal title to the Mortgage Collateral—which will remain the property of the borrowers—Applicant will acquire a security interest in such Mortgage Collateral to secure payment of the loans made to such borrowers pursuant to the Funding Agreements. Therefore, it is asserted, Applicant will have direct or indirect liens on and other interests in real estate.

Thus, while Applicant believes that the Funding Agreements are not securities within the purview of Section 3 of the Act, and further, that the Funding Agreements represent liens on, or interests in, real estate as contemplated by the provisions of section 3(c)(5)(C) of the Act, Applicant has filed a request for exemption pursuant to section 6(c) of the Act to eliminate any uncertainty as to its status under the Act. In support of this request for exemption, Applicant states that investors will be protected both by the terms of the Indenture establishing a Trustee qualified to protect investors' interests, and by the security afforded by Mortgage Collateral. It is stated further that Applicant will not trade or deal in securities, or engage in any activities other than those incidental to and necessary for the issuance of the Bonds. Under the Indenture, at the time a series of Bonds is issued, the principal amount and the collateral value of the Mortgage Collateral for such series will be at least equal to the principal amount of the Bonds. Each pool of Mortgage Collateral securing a series of Bonds will be fixed, except for the limited right of substitution herein described, at the time of issuance of such Bonds. The pool will not be subject to investment discretion exercisable by any participant in the proposed transaction. Accordingly, neither the proposed operations of Applicant, nor the proposed offering and sale of Bonds resemble those of a typical investment company, which has the authority to invest, reinvest and trade with investors' funds.

Applicant further states that there are important policy reasons for granting the exemptive relief it requests, in that its activities will supply capital to builders and other institutions engaged in the real estate and mortgage markets, and thereby facilitate the financing of housing, a critical national need. The development of an active, efficient secondary market for residential mortgages has long been an important objective of national housing policy. The secondary mortgage market provides capital for primary mortgage lenders by allowing mortgage lenders to sell mortgages or mortgage-backed securities.

Applicant further states that a number of large builders and thrift institutions have been able to raise funds either through the direct issuance of mortgage-backed bonds, or through the issuance of such bonds by wholly-owned finance companies. Applicant will make it possible for a number of small home builders, thrift institutions and other mortgage lenders to achieve the same economies of scale in their financing efforts as those of larger builders, thrift institutions and other mortgage lenders. Therefore, to require Applicant to register under the Act would be to impose higher financing costs on these smaller entities. Applicant asserts that there is no public policy reason for doing so, and that sound reasons rooted

in equality of treatment exist for granting Applicant the requested exemption.

Notice is further given that any interested person wishing to request a hearing on the applicant may, not later than January 10, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon an Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30294 Filed 12-20-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23950; 70-6513]

New England Energy Inc.; Notice of Proposal by Fuel Subsidiary to Make Investments in Oil and Gas Exploration and Development up to $6 Million.

December 16, 1985.

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01582, a fuel subsidiary of New England Electric System ("NEES"), a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration in this proceeding pursuant to Sections 6(a), 7, 9(a), 10, 12 and 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 90 and 91 thereunder.

NEEI is engaged in various activities relating to fuel supply for the NEES system. By order dated December 30, 1980 (HCAR No. 21862), NEEI was authorized to enter into an oil and gas exploration and development partnership ("Partnership") with Dorchester Exploration, Inc. ("Dorchester"). On Deceber 29, 1981, NEEI terminated the Partnership with Dorchester, and the affairs of the partnership were wound-up on March 13, 1985, resulting in assignments to NEEI of its interests in partnership properties, both producing and undeveloped. NEEI intends to sell, farm-out or develop these properties in order to maximize returns. For these purposes, NEEI requests authority to invest up to $6 million in such development from January 1, 1986 through December 31, 1987.

The application-declaration and any amendment thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by January 10, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of attorney at law, by certificate) should be filed with the request. Any request for a hearing must identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, it ordered, and will receive a copy of any notice or order issued in this matter. After said date, the amended application-declaration, as filed or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30297 Filed 12-20-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23949; 70-7123]

Middle South Energy, Inc., et al.; Supplemental Notice of Proposal Issue and Sell $300 Million of First Mortgage Bonds, Pursuant to Negotiated Private or Public Placements

December 16, 1985.

Middle South Energy, Inc. ("MSE"), P.O. Box 61000, New Orleans, Louisiana 70161, Arkansas Power & Light Company ("AP&L"), P.O. Box 551, Little Rock, Arkansas 72203, Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39205, Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174, New Orleans Public Service Inc., ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, and their parent Middle South Utilities, Inc. ("MSU"), P.O. Box 61005, New Orleans, Louisiana 70161, a registered holding company, has filed declaration with this Commission pursuant to Sections 6, 7, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

The transactions proposed herein relate to the issuance and sale by Middle South Energy, Inc. in one or more series, from time to time, not later than July 31, 1986 of not to exceed $300 million aggregate principal amount of its first mortgage bonds ("Bonds"), by means of negotiated private or public offerings. MSE was incorporated under the laws of the State of Arkansas on February 11, 1974 to construct, finance and own certain base-load generating units for the subsidiaries of Middle South Utilities, Inc. ("Middle South System").

In it original filings, MSE stated that for several reasons it did not believe it would be possible to issue and sell the Bonds at competitive bidding as required by Rule 50 under the Act. The reasons include the large size of the issue(s) relative to the market for securities of comparable quality; MSE's short earnings and operating history; the complexity of MSE's present financing arrangements and legal and regulatory proceedings; and the overall risk and uncertainty associated with nuclear plant construction. MSE feels that all of these factors might inhibit, delay or prevent MSE from issuing and selling the Bonds at competitive bidding.

For the foregoing reasons, MSE now requests that the Commission grant it an exception from the competitive bidding requirements of Rule 50 under the Act so that MSE may negotiate the terms of the offering(s) of the Bonds, and arrange for their sale through public or private placements. MSE states that such negotiations will provide the flexibility required to detemine the appropriate terms for the Bonds in light of MSE's circumstances and the needs of purchasers, and will enhance MSE's ability to obtain operating and construction funds for the Grand Gulf Station in accordance with its financing plans. Subject to obtaining any necessary regulatory approval, MSE proposes to retain an investment banker(s) to assist in negotiating the terms of the Bonds, and arranging the sale of the Bonds.

MSE may negotiate the terms of the proposed issuance and sale of up to $300 million of its Bonds by private of public placement.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by January 10, 1986, to the Secretary, Securities and Exchange

Commission, Washington, DC 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the respect. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30296 Filed 12-20-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22720; File No. SR-PSE-85-34]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Incorporated; Relating to the adjustments in the Specialist Evaluation Systems as adopted under the Rules of the Pacific Stock Exchange in the "Pilot Program" for the Evaluation of Specialist Performance

Pursuant to section 19(b)(1) of Securities Exchange Act of 1934, 15 U.S.C. 78s(L)(1), notice is hereby given that on November 20, 1985, The Pacific Stock Exchange, Inc., ("PSE" or "Exchange") filed with the Secrities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE filed its Pilot Program for the Appointment and Evaluation of Specialists and the Creation of New Specialist Post ("Pilot Program") with the Commission on May 4, 1981. The Pilot Program was amended in 1982, and is currently scheduled to terminate on December 31, 1985. The Board of Governors of the PSE has decided to amend the structure of the Pilot Program by instituting changes in the Specialist Evaluation System. These changes will include revisions relating to the guidelines used for specialist evaluation which will be based on National Market System Quote Performance (45% of total score), Specialist Evaluation Questionnaire (45% of total score), and SCOREX Limit Order Acceptance (10% of total score). The PSE now requests that the Commission adopt the amendments and revisions to these PSE Rules concerning specialist evaluation. The Board has also voted to request that the Pilot Program be extended through the first two quarters of 1986 so as to allow for a proper evaluation of these changes in the Specialist Evaluation System.

In connection with these proposed adjustments in the Specialist Evaluation System, the PSE also proposes to amend sections 1(1) and 11(t) of Rule II of the Rules of the Board of Governors of the PSE, so as to conform to these changes. The PSE also proposes to amend Rule II, Section 11(s) to conform to adoption of a new Specialist Evaluation Questionnaire Survey.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Pilot Program was initially filed with the Commission on May 4, 1981, and approved for a period of one year on May 27, 1981. In December 1982, the Pilot Program was amended. The term of the Pilot Program has been extended several times by the Commission. It is currently scheduled to terminate on December 31, 1985.

The PSE's Board of Governors and the Equity Allocation Committee have reviewed certain proposed modifications to the structure of the Pilot Program in preparation for its adoption as part of the Specialist Evaluation System. The Exchange has proposed modifications as they relate to the methods and limits used to evaluate the performance of the specialists as they are described in Rule II, section 11(a) of the Rules of the Board of Governors. The PSE has also voted to amend Rule II, Sections 1(1) and 11(t) to conform to the request to provide an adequate period to evaluate the modified Specialist Evaluation System. In addition, Rule II, section 11(s) will be amended to conform to the newly adopted Specialist Evaluation Questionnaire Survey. The PSE has voted to request that the Pilot Program be extended through the first two quarters of 1986 in order to evaluate these adjustments in the Specialist Evaluation System.

The PSE believes that the proposed rule change is consistent with section 6(b) of the Act in general, and in particular section 6(b)(5) and 6(b)(7).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

In response to a notification of proposed changes in the specialist evaluation system, the PSE received comments from several specialist's expressing their concern over the new guidelines in the National Market System Quote Performance.[1]

The concern was expressed that requiring the specialist to make a 500 share market, 50% of the time would prove to be unrealistic with many stocks. In light of these concerns the Board of Governors of the PSE approved a criteria calling for a 500 share, or the primary market, whichever is less (with a 200 share minimum) 40% of the time. This was felt to be more flexible and more realistic in today's market conditions than the proposed criteria, or the previously used 200 share market/50% of the time, as has been used under the Pilot Program.

Other comments involved general approval of the new Specialist Evaluation Questionnaire, as being a more accurate measurement of the specialist performance.

Two comment letters asserted that the questionnaire portion of the specialist evaluation should remain at a weight of 40% instead of being raised to 45%, claiming that the questionnaire reflects more on popularity than performance.

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[1] The PSE received three comment letters addressing the proposal which are attached to the Commission's file.

III. Date of Effectiveness of the Proposed Rule Change and Time Period for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit writter data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commisson, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE.

All submissions should refer to the file number in the caption above and should be submitted by January 13, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

Dated: December 16, 1985.

[FR Doc. 85-30289 Filed 12-20-85; 8:45 a.m.]

BILLING CODE 8010-01-M

[Release No. IC-14851; (File No. 812-6243)]

Putnam High Income Government Trust, and Putnam Option Income Trust II; Application for an Order Granting Exemption

December 16, 1985.

Notice is hereby given that Putnam High Income Government Trust ("Government Trust") and Putnam Option Income Trust II ("Option II") (Government Trust and Option II together, "Applicants"), One Post Office Square, Boston, Massachusetts 02109, registered under the Investment Company Act of 1940 ("Act") as open-end, diversified, management investment companies, filed an application on November 5, 1985, for an order of the Commission pursuant to section 6(c) of the Act exempting Applicants from the provisions of section 19(b) of the Act, and Rule 19b-1 thereunder, to permit Applicants to make quarterly distributions of long-term capital gains from certain options transactions. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of the pertinent statutory provisions.

Government Trust's investment objective is to seek a high current return, consistent with preservation of capital, by investing in debt securities issued or guaranteed by the United States Government or any of its agencies or instrumentalities ("U.S. Government Securities"). In order to enhance its current return, or to hedge against changes in interest rates, Government Trust may write covered options, purchase options and purchase and sell futures contracts and related options with respect to U.S. Government Securities and enter into closing transactions with respect to such futures contracts and options.

Government Trust pays dividends from net investment income monthly and distributes net realized short-term capital gains quarterly. Government Trust distributes net long-term capital gains realized during a fiscal year after such fiscal year closes on September 30.

Option II's primary investment objective is to seek high current return by investing in dividend-paying common stocks, securities convertible into common stocks and U.S. Government Securities, and by writing covered call and put options with respect to part or all of its portfolio. As a secondary investment objective, Option II seeks to achieve relative stability of principal by hedging against changes in market prices through the purchase and writing of put and call options on portfolio securities and related futures contracts. Option II also purchases options and writes call options on stock indices and stock index futures contracts.

Option II pays dividends from net investment income quarterly and currently distributes net realized short-term capital gains quarterly. Option II distributes any net long-term capital gains realized during a fiscal year after such fiscal year closes on Novermber 30.

The Tax Reform Act of 1984 amended section 1256 of the Internal Revenue Code ("Code") and significantly altered the tax treatment of capital gains from certain types of options transactions. Prior to the 1984 amendments to section 1256, all gain or loss recognized with respect to options was treated as short-term capital gain or loss. Under section 1256, as amended, options with respect to U.S. Government Securities and options on broad-based stock indices are treated differently: 60% of any option gains or losses are treated as long-time capital gains or losses, and 40% are short-term capital gains or losses.

Applicants note that section 1256 was amended in order to eliminate certain tax abuses relating to the realization of short-term capital losses from options transactions, and that there is no evidence that Congress intended the amendment to limit the frequency with which registered investment companies may distribute capital gains from options transactions. Nevertheless, Applicants state, the new characterization of 60% of the gain from certain options transactions as long-term capital gain causes such gain to fall within section 19(b) of the Act, and Rule 19b-1 promulgated thereunder.

Applicants further state that realization of gains from options transactions is an integral part of their investment objectives and policies, and that they follow the practice followed by other registered investment companies with similar objectives and policies by making distributions of short-term capital gains quarterly. Applicants state further that, prior to the recent amendment to section 1256, such distributions would have included all gains derived from options. Applicants believe that, notwithstanding the amendment to section 1256, such gains continue to be of a "short-term" nature from an investment point of view, and that shareholders of Applicants generally would wish to receive such gains as part of their quarterly distributions.

Section 19(b) prohibits registered investment companies from distributing long-term capital gains in contravention of rules, regulations, or orders of the Commission more often than once every

twelve months. Rule 19b-1 prohibits registered investement companies from distributing more than one capital gains dividend, as defined in section 852(b)(3)(C) of the Code, in any taxable year, with certain limited exceptions.

Applicants argue that none of the purposes of section 19(b) and Rule 19b-1 would be served by a strict application of these provisions to the portion of capital gains from options transactions that is now treated as long-term capital gain under section 1256 of the Code. Applicants state that, because their investment objectives and policies are specifically directed to current return (achieved in part by options transactions), the distribution of these long-term capital gains together with investment income is not likely to result in confusionor misunderstanding among their shareholders. Applicants state that they intend to make quarterly distributions of short-term capital gains from options transactions in any event, and that they will continue clearly to distinguish any distribution of capital gains from distributions out of net interest or dividend income in an accompanying notice to shareholders. Therefore, the Applicants state, it is unlikely that merely including in these regular guarterly distributions the portion of capital gain from options transactions that is now classified as long-term capital gain under Section 1256 along with the portion classified as short-term capital gain would increase the likelihood that shareholders will confuse such distributions with dividend or interest income.

Applicants state that section 19(b)and Rule 19b-1 were also devised to prevent investment companies from churning their portfolios in contravention of their goal of long-term capital appreciation. Applicants explain that the characterization of 60% of the capital gain from certain options transactions to which section 1256 applies as long-term capital gain is not expected to affect the investment decisions or distribution practices of Applicants, each of which has an investment objective of high current return, not long-term capital appreciation. Therfore, Applicants conclude, there is no need for the protective mechanism of section 19(b) and Rule 19b-1.

Applicants also state that the quarterly distribution of long-term capital gains from options transactions to which section 1256 applies will not increase administrative expenses because Applicants already make, and expect to continue to make, quarterly distributions of short-term capital gains.

Applicants state further that they believe that designating an appropriate part of each quarterly distribution of gains from options transactions to which Section 1256 applies as long-term capital gain is in the best interest of their shareholders since it will spread the benefit of the lower capital gains tax rate to persons who are shareholders at various points during the year. Applicants also state that regular quarterly distribution of both long-term and short-term options gains is likely to be more satifactory to shareholders than three smaller quarterly distributions of short-term gains alone, followed by a single disproportionately large distribution, including a year's accumulation of long-term gain. They conclude that, because Applicants are designed for shareholders seeking high current return, a relatively steady, consistent stream of current income in the form of more nearly even quarterly distributions woud appear to be in the best interest of Applicants' investors.

Applicants conclude that an order granting each of them an exemption from section 19(b) of the Act and Rule 19b-1 thereunder to enable them to make quar terly distributions of long-term capital gains that arise with respect to options to which section 1256 applies would be appropriate, in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 10, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon an Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30295 Filed 12-20-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/919]

Shipping Coordinating Committee; Subcommittee on Safety of Safety of Life at Sea Working Group on Safety of Navigation; Announcement of Meeting and Correction of two Meetings

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will hold an open meeting on February 25, 1986 at 9:30 AM in Room 6319 of the U.S. Coast Guard Headquarters, Transport Building, 2100 second street, SW., Washington, DC.

The purpose of the meeting will be to prepare the U.S. position relating to the below listed agenda items to be considered at the 32nd session of the Subcommittee on Safety of Navigation of the International Maritime Organization to be held in London, March 17-21, 1986.

Routing of ships
Additional interpretation of the 1972 Collision Regulations
Matters concerning search and rescue
Navigational aids and related equipment
Information to be included in the maneuvering booklet
Units of wind speed in international meteorological messages
Infringement of safety zones around offshore structures
Warning signals for vessels leaking dangerous cargo
Seaspeak manual

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G-WWM), Washington, DC 20593, Telephone: (202) 426-4958.

Subcommittee on Safety of Life at Sea Notice of Two Meetings: Correction

Members of the public are advised that the dates for the Shipping Coordinating Committee's Subcommittee on Safety of Life at Sea (SOLAS) meeting announced in the Friday, December 6, 1985 issue of the **Federal Register**, Pg. 50030, have been changed. The meeting to discuss final preparations for the 52nd Session of the Maritime Safety Committee (MSC) will be held on January 15 instead of January 16 as originally announced. Time and location remain as previously announced. Also changed is the date of the meeting of the Working Group on Ship Design and Equipment of the SOLAS Subcommittee. This group will now meet on January 16 rather than

January 15. Time and location remain as previously announced.

Dated: December 16, 1985.

William H. Dameron,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 85-30260 Filed 12-20-85; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/920]

Shipping Coordinating Committee; Subcommittee on UNCTAD; Meeting

The Subcommittee on the United Nations Conference on Trade and Development of the Shipping Coordinating Committee (SHC) will hold an open meeting at 2:30 PM on January 9, 1985, in Room 1105 of the Department of State, 2201 C Street, NW., Washington, DC.

The purpose of the meeting is to discuss United States preparations for the United Nations Conference on Conditions for Registration of Ships from January 20-February 7, 1985. In particular, the Subcommittee will discuss the development of U.S. positions on the composite text that emerged at the previous session of the Conference in July, 1985. Of special concern will be the issues of ownership, management, and manning.

Members of the public may attend up to the seating capacity of the room. Those wishing to attend the meeting are requested to arrive at the C Street entrance of the Department of State, from where they will be escorted to the meeting room.

For further information, contact Mr. Michael McNaull, Office of Maritime and Land Transport, Room 5826, Department of State, 2201 C Street, NW., Washington, DC 20520, Telephone: (202) 632-2655.

Dated: December 16, 1985.

William H. Dameron,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 85-30261 Filed 12-20-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

[Docket 43657]

State of Arizona 55 MPH Speed Limit Compliance Proceeding; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge William A. Kane, Jr. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg, 400 7th Street, SW., Washington, DC 20590, telephone (202) 426-5560.

Dated Washington, DC, December 17, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85-30303 Filed 12-20-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 43657]

State of Arizona 55 MPH Speed Limit Compliance Proceeding; Prehearing Conference

Notice is hereby given that pursuant to the Order of the Secretary of Transportation dated December 9, 1985, instituting the above-titled proceeding and the December 17, 1985 notice of assignment by the Chief Administrative Law Judge a prehearing conference will be held on January 8, 1986, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC, before the undersigned administrative law judge.

In order to facilitate the conduct of the conference the parties and prospective participants will furnish each other in writing, with three copies to the judge, their positions, statements of the issues, stipulations, requests for evidence in addition to that required under Appendix A to the Secretary's order and proposals for procedural dates supplementing those contained in that Appendix. In addition, the FHWA/NHTSA Litigating Staff furnish copies of all exhibits on which it intends to rely, a list of the witnesses it intends to call and a summary of their testimony. The Litigating Staff's material shall be in the hands of the judge and the other parties and prospective participants by January 6, 1986. The material from the other parties and prospective shall be furnished to each other, the Litigating Staff and the judge no later than the commencement of the prehearing conference.

Dated at Washington, DC, December 17, 1985.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 85-30301 Filed 12-20-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43656]

State of Maryland 55 MPH Speed Limit Compliance Proceeding; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge John M. Vittone. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transporation, Office of Hearing, M-50, Room 9400A, Nassif Bldg, 400 7th Street, SW., Washington, DC. 20590, telephone (202) 426-5560.

Dated: Washington, DC., December 17, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85-30304 Filed 12-20-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43658]

State of Vermont 55 MPH Speed Limit Compliance Proceeding; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg. 400 7th Street, SW., Washington, DC. 20590, telephone (202) 426-5560.

Dated: Washington, DC., December 17, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85-30305 Filed 12-20-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43658]

State of Vermont 55 MPH Speed Limit Compliance Proceeding; Prehearing Conference

Notice is hereby given that the prehearing conference in the above-entitled matter is assigned to be held on January 7, 1986, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC, 20590, before the undersigned administrative law judge.

Dated at Washington, D. December 17, 1985.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 85-30302 Filed 12-20-85; 8:45 am]

BILLING CODE 4910-62-M

VETERANS ADMINISTRATION

Advisory Committee on Cemeteries and Memorials; Meeting

The Veterans Administration gives notice that a meeting of the Administrator of Veterans Affairs' Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 1001, will be held at the Central Office of the

Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, on February 27, 1986.

The session will begin at 9:00 a.m. to conduct routine business. The meeting will be open to the public up to the seating capacity which is about twenty persons. Those wishing to attend should contact Mrs. Ann Stone in the Office of the Chief Memorial Affairs Director (phone 202-389-2396) not later than 12 noon, EST January 30, 1986.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Chief Memorial Affairs Director (40) at 810 Vermont Avenue, NW., Washington, DC 20420. In any such letters, the writers must fully identify themselves and state the organization or association or person they represent. Also, to the extent practicable, letters should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to the Chief Memorial Affairs Director. Letters and written statements as discussed above must be mailed or delivered in time to reach the Chief Memorial Affairs Director by 12 noon EST January 30, 1986. Oral statements will be heard only between 9 and 10 a.m.

Dated: December 12, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-30257 Filed 12-20-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 246
Monday, December 23, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:00 a.m., January 14, 1986.

PLACE: Forbes, Inc., 60 Fifth Avenue, New York, New York 10011.

STATUS: Closed, pursuant to 5 U.S.C. 552(b)(c)(1) 22 CFR 1302.4(c) and (h) of the Board's rules (42 FR 9388, March 12, 1977).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Walter R. Roberts, Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036, 202-254-8040.

[FR Doc. 85-30354 Filed 12-19-85; 2:01 pm]

BILLING CODE 6155-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:40 a.m. on Tuesday, December 17, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: December 18, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-30351 Filed 12-19-85; 1:57 pm]

BILLING CODE 6714-01-M

federal register

Monday
December 23, 1985

Part II

Office of Management and Budget

Financial Management Division; Cognizant Agency Assignments; Notice

OFFICE OF MANAGEMENT AND BUDGET

Financial Management Division; Cognizant Agency Assignments

AGENCY: Office of Management and Budget, Financial Management Division.

ACTION: Final notice.

SUMMARY: This notice transmits a revised list of Federal agencies responsible for administering the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments," and OMB Circular A-128, "Audits of State and Local Governments."

FOR FURTHER INFORMATION CONTACT: Marvin E. Saunders, Financial Management Division, (202) 395-3993.

John J. Lordan,

Deputy Associate Director for Financial Management.

SUPPLEMENTARY INFORMATION:

Office of Management and Budget

Federal Agencies Responsible for Cost Negotiation and Audit of State and Local Governments

Agency: Office of Management and Budget.

Action: Notice of Cognizant Agency Assignments.

Summary: This notice transmits a revised list of Federal agencies responsible for administering the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments," and OMB Circular A-128, "Audits of State and Local Governments."

In the past OMB has assigned cognizance separately for cost allocation and for audit. The revised list combines the assignments and makes one Federal agency responsible for both requirements. Federal agencies assigned cognizance under this notice shall remain cognizant for a period of three years.

The revised list replaces cognizant agency assignments published in the **Federal Register** on February 28, 1980, and October 6, 1980. The revised list also replaces audit assignments for local governments included in the Director of OMB's Memorandum to Departments and Agencies dated March 2, 1982.

For Further Information Contact: Marvin E. Saunders, Financial Management Division, Office of Management and Budget, Washington, DC 20503, (202) 395-3993.

Supplemental Information: On February 27, 1985, OMB requested comments from the major grantmaking agencies on a proposed revision to the cognizant agency assignments. Comments received from the agencies were analyzed and considered in developing the revised list included in this notice.

The revised list assigns cognizance under Circulars A-87 and A-128 for most governmental units included in the 1980 and 1982 lists. Where organizational changes have occurred at the State and local levels, appropriate cognizant agency assignments have been made for the new government entities. Cognizant agency assignments have been made for all States, including State agencies. Territorial governments, Indian tribal governments, and larger local governments are also included. Those State departments and local units of government not listed should deal with the Federal agency providing them the most funds.

Generally, the new assignments make the same Federal agency responsible for cost negotiation and for audit. The only exception is for statewide cognizance. Under Circular A-87, the Department of Health and Human Services has negotiated statewide cost allocation plans for all States, plus the District of Columbia and Puerto Rico. OMB sees no reason for change. Consequently, in many cases the Federal agencies assigned statewide responsibility for cost negotiation and the lead agency [1] for audit will be different.

The following Federal agencies will continue to be responsible for audit and approval of cost allocation plans and general oversight of single audits.

Indian tribal governments	DOI
Territorial governments	DOI
Special districts:	
Airport authorities	DOT
Economic development districts	DOC
Hospital, library, and health districts.	HHS
Housing and urban development districts.	HUD
Park and recreation districts	DOI
Port authorities	DOT
School districts	ED
Transit districts	DOT
Water and sewer districts	EPA

Because of frequent changes in Federal agency funding levels of State and local recipients requiring changes in cognizant assignments, several agencies have suggested that the term of the cognizance assignments be fixed. OMB agrees that this would be usefu and has established the period of assignments at three years. During that time cognizant agencies requiring help in accomplishing its assignments may request assistance from other agencies. However, the assigned cognizant agency shall continue to be responsible under this directive. After three years the Federal agency or the recipient may request OMB to consider a change in the cognizant assignment if circumstances warrant.

James C. Miller III,

Director.

[1] Lead agencies for audit are designated in the list by an asterisk. For local governments the asterisk also indicates the Federal agency responsible for negotiating cost allocation plans. Federal agencies assigned as lead agencies should represent the interest of other Federal audit agencies in carrying out the cognizant agency responsibilities for single audit of State and local governments. Federal agencies assigned audit cognizance for State and local departmental units shall cooperate with and assist the lead agency in carrying out the requirement for the single audit.

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128

	Cognizant Federal agency
ALABAMA	
State agencies:	
Aging Commission	HHS
Agriculture and Industry	USDA
Archives and History	DOI
Civil Defense	FEMA
Conservation and Natural History	DOI
Corrections	DOJ
Development	HUD
Economic and Community Affairs	DOL
Education	ED
Education-Voc Rehab Service	ED
Environmental Management	EPA
Forestry Commission	USDA
Governor's Office	HUD
Geological Survey	DOI
Highway	DOT
Industrial Relations	DOL
Labor	DOL
Law Enforcement Planning Agency	DOJ
Medical Services Administration	HHS
Mental Health	HHS
Military	DOD
Pensions and Securities	HHS
Planning and Federal Programs	HUD
Public Health	HHS
Youth Services	HHS
Counties:	
Calhoun	HHS
Dallas	HHS
Etowah	HHS
Houston	HHS
Jefferson	EPA
Lauderdale	HHS
Madison	HHS
Mobile	HHS
Montgomery	EPA
Morgan	HHS
Talladega	HHS
Tuscaloosa	DOL
Walker	HHS
Cities:	
Birmingham	HUD
Gadsden	HHS
Huntsville	DOL
Mobile	HUD
Montgomery	HUD
Tuscaloosa	HUD
ALASKA	
State agencies:	
Commerce and Economic Development	DOE
Community and Regional	DOL
Corrections	DOJ
Education	ED
Environmental Conservation	USDA
Fish and Game	DOI

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Governor's Office	HHS
Health and Social Services	HHS
Housing Authority	HUD
Labor	DOL
Military and Veteran Affairs	DOD
Natural Resources	DOI
Public Safety	DOJ
Transportation and Public Facilities	DOT
Vocational Rehabilitation	HHS
Counties: Greater Anchorage	HHS
Cities: Anchorage	HHS
AMERICAN SAMOA	
State agencies: All departments and agencies	DOI
ARIZONA	
State Agencies:	
Corrections	DOJ
Economic Security	HHS
Education	ED
Emergency and Military Affairs	DOD
Game and Fish	DOI
Governor's Office	DOL
Health Services	HHS
Industrial Commission	DOL
Land	USDA
Mine Inspector	DOL
Public Safety	DOJ
State Parks	DOI
Transportation	DOT
Counties:	
Cochise	HHS
Maricopa	HUD
Pima	HHS
Pinal	HHS
Cities:	
Phoenix:	
Aviation	DOT [1]
Community Development	HUD
Housing	HUD
Human Resources/Relations	DOL
Parks and Recreation	DOI
Police	DOJ
Public Works	DOT
Sewer Utility	EPA
Transit	DOT
Tucson	HUD
ARKANSAS	
State agencies:	
Corrections	DOJ
Education	ED
Emergency Services Office	FEMA
Energy Office	DOE
Forestry Comission	USDA
Game and Fish Commission	DOI
Governor's Office	DOL
Health	HHS
Highway and Transportation	DOT
Human Services	HHS
Labor	DOL
Natural and Cultural Heritage	DOI
Parks and Tourism	DOI
Pollution Control and Ecology	EPA
Workers' Compensation Commission	DOL
Veterans Affairs	VA
Counties:	
Jefferson	HHS
Mississippi	HHS
Pulaski	HUD
Sebastian	EPA.
Washington	HHS
Cities:	
Fort Smith	HUD
Little Rock:	
Community Improvement	DOL
Human Resources	HUD
Parks	DOI [1]
North Little Rock	EPA
CALIFORNIA	
State agencies:	
Aging	HHS [1]
Air Resources Board	EPA
Alcohol and Drug Abuse Programs	HHS
Conservation	EPA
Corrections	HHS
Developmental Services	HHS
Economic and Business Development	DOC
Education	ED
Emergency Services Office	FEMA
Employment Development	DOL
Energy Commission	DOE
Finance	HUD
Fish and Game	DOI
Food and Agriculture	USDA
Forestry	USDA
Governor's Office	DOJ
Health Services	HHS
Housing and Community Development	HUD
Industrial Relations	DOL
Justice	DOJ
Mental Health	HHS
Military Department	DOD
Parks and Recreation	DOI
Post Secondary Education Commission	ED
Planning and Research Office	HUD
Rehabilitation	ED
Resources Agency	EPA
Social Services	HHS
Solid Waste Management Board	EPA
Transportation	DOT
Veterans Affairs	VA
Water Resources Control Board	EPA
Youth Authority	HHS
Counties:	
Alameda:	
District Attorney	HHS [1]
Health/Human Services	HHS
Planning	HUD
Probation	DOJ
Sheriff	DOJ
Social Services	HHS
Streets	DOT
Contra Costa	HHS
Fresno	HHS
Kern	HHS
Los Angeles:	
Community and Senior Citizens/Services	HHS [1]
Community Development Commission	HUD
Courts	DOJ
District Attorney	HHS
Health Services	HHS
Mental Health	HHS
Parks and Recreation	USDA
Public Social Services	HHS
Public Works	DOT
Regional Planning	DOT
Sheriff	DOJ
Merced	HHS
Monterey	HHS
Orange:	
Airport	DOT
Criminal Justice	DOJ
Courts	DOL
District Attorney	HHS [1]
Environmental Affairs/Protection	HUD
Health/Human Services	HHS
Probation	HHS
Senior Citizens/Services	HHS
Sheriff	HHS
Riverside	HHS
Sacramento	HHS
San Bernardino:	
Community Development	HUD
Environmental Public Works	EPA
Health/Human Services	HHS [1]
Human Resources/Relations	HHS
Law and Justice	DOJ
Manpower	DOL
San Buenaventura	HHS
San Diego	HHS
San Joaquin	HHS
San Luis Obispo	HHS
San Mateo	HHS
Santa Cruz	HHS
Sonoma	HHS
Stanislaus	HHS
Tulare	HHS
All other counties	HHS
Cities:	
Alameda	HUD
Alhambra	HHS
Anaheim	HHS
Bakersfield	EPA
Berkeley	HUD
Burbank	HHS
Butte	HHS
Carson	DOT
Compton	HUD
Downey	HHS
Fresno	HUD
Fullerton	HHS
Garden Grove	HHS
Glendale	HHS
Hayward	HUD
Inglewood	HHS
Lakewood	HHS
Long Beach	HUD
Los Angeles:	
Airport	DOT
Building and Safety	HUD
Community Development	HUD
Council	DOT
Sacramento	HUD
General Services	HUD
Housing Authority	HUD
Mayor's Office	DOC
Parks and Recreation	HUD
Personnel	DOL [1]
Public Works	EPA
Redevelopment Agency	HUD
Transportation	DOT
Norwalk	HHS
Oakland	HUD
Palo Alto	EPA
Pasadena	HHS
Pomona	HUD
Richmond	HUD
Riverside	HUD
Fire Services	FEMA
San Bernardino	HUD
San Diego:	
General Services	DOT
Housing Commission	HUD
Streets	HUD
Utilities	EPA [1]
San Francisco:	
Administrative Office	EPA
Arts	DOI
Health/Human Services	HHS
Mayor's Office	DOL [1]
Parks and Recreation	DOI
Planning	DOC
Police	DOJ
San Jose	USDA
San Leandro	HHS
San Mateo	HUD
Santa Ana	HUD
Santa Barabara	HUD
Santa Clara:	
Justice	DOJ
Planning	HUD [1]
Santa Monica	HHS
Southgate	HHS
Stockton	HUD
Sunnyvale	HHS
Torrance	HHS
Vallejo	HUD
Ventura	HHS
West Covina	HHS
COLORADO	
State agencies:	
Agriculture	USDA
Education	ED
Governor's Office	DOE
Highways	DOT
Institutions	HHS [1]
Labor and Employment	DOL
Local Affairs	HUD
Natural Resources	DOI
Health	HHS
Public Safety	DOT
Public Utilities Commission	DOT
Social Services	HHS
State Planning and Budgeting Office	HUD

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Counties:	
Adams	HHS
Arapaho	HHS
Boulder	HHS
El Paso:	
Parks	DOI
Social Services	HHS [1]
Jefferson	HHS
Larimer	HHS
Mesa	HHS
Pitkin	DOT
Pueblo	HHS
Weld	HHS
Cities:	
Colorado Springs:	
Airport	DOT
Community Development	HUD
Housing Authority	HUD [1]
Parks and Recreation	DOI
Police	DOJ
Public Works	DOT
Utilities/Utilities Authority	EPA
Pueblo:	
Airport	DOT [1]
Community Development	HUD
Human Resources/Relations	HHS
Parks	DOI
Public Works	EPA
Regional Planning	DOT
Transportation	DOT
Denver	HHS
CONNECTICUT	
State agencies:	
Aging	HHS [1]
Agriculture	USDA
Children and Youth Services	HHS
Consumer Protection	DOC
Correction	DOJ
Economic Development	DOC
Education	ED
Environmental Protection	EPA
Governor's Office	DOJ
Health Services	HHS
Historical Commission	DOI
Housing	HUD
Human Resources	HHS
Income Maintenance	HHS
Labor	DOL
Mental Health	HHS
Mental Retardation	HHS
Military	DOD
Policy and Management Office	HHS
Public Safety	DOJ
Transportation	DOT
Veterans Home and Hospital	VA
Cities:	
Bridgeport	HUD
Hartford:	
Aging	DOL
Community Improvement	DOL
Education	ED
Health/Human Services	HHS
Housing	HUD [1]
Parks and Recreation	DOL
Planning	HUD
Public Works	DOC
Redevelopment	HUD
Meriden	EPA
New Britain	HHS
New Haven:	
Development Administration	HUD [1]
Education	ED
Human Resources	HHS
Police	DOJ
Public Works	EPA
Norwalk	HHS
Stamford	HHS
Waterbury	HUD
Towns:	
Greenwich	HHS
West Hartford	HUD
DELAWARE	
State agencies:	
Agriculture	USDA
Community Affairs	DOC
Employment Security Commission	DOL
Governor's Office	DOJ
Health and Social Services	HHS
Labor	DOL
National Guard	DOD
Natural Resources and Environmental Control	DOI
Public Instruction	ED [1]
State	DOJ
Transportation	DOT
Counties:	
Kent	HHS
New Castle	HUD
Sussex	EPA
Cities: Wilmington	HUD
DISTRICT OF COLUMBIA	
State agencies:	
Corrections	DOJ
Employment Services	DOL
Housing and Community Development	HUD
Human Services	HHS
Mayor's Office	HUD
Metropolitan Police	DOJ
Public Library	HHS
Public Schools	ED
Public Works	DOT
Recreation	DOI
FLORIDA	
State agencies:	
Administration	HUD
Agriculture and Consumer Services	USDA
Commerce	DOC
Community Affairs	DOJ
Education	ED [1]
Environmental Regulation	EPA
Game and Fresh Water Commission	DOI
Governor's Office	ED
Health and Rehabilitative Services	HHS
Labor and Employment Security	DOL
Law Enforcement	DOJ
Military Affairs	DOD
Natural Resources	DOI
State	ED
Transportation	DOT
Counties:	
Akaloosa	HHS
Alachua	DOL
Basy	HHS
Brevard	DOL
Broward	HUD
Dade	DOT
Duval/Jacksonville	EPA
Escambia	HUD
Hillsborough	HHS
Lake	HHS
Lee	HUD
Leon	DOL
Manatee	DOL
Marion	HHS
Orange	DOL
Palm Beach:	
Area Planning Board	EPA [1]
Criminal Justice	DOJ
Employment Training	DOL
Engineering	DOC
Health	HHS
Housing and Community Development	HUD
Human Resources	HHS
Transit Authority	DOT
Water and Sewer	EPA
Pasco	DOL
Pinellas	HUD
Polk	HUD
Sarasota	DOL
Seminole	DOL
Volusia	DOL
Cities:	
Gainesville	HUD
Fort Lauderdale	EPA
Hialeah	HHS
Miami	HUD
Miami Beach	HHS
Orlando	HUD
Pensacola	EPA
St. Petersburg	HUD
Tallahassee	EPA
Tampa	EPA
West Palm Beach	HUD
GEORGIA	
State agencies:	
Agriculture	USDA [1]
Community Affairs	DOJ
Defense	FEMA
Education	ED
Forestry Commission	USDA
Governor's Office	DOE
Highway Safety Office	DOT
Human Resources	HHS
Industry and Trade	HUD
Labor	DOL
Natural Resources	DOI
Offender Rehabilitation	DOJ
Planning and Budget Office	HUD
Public Safety	DOJ
Transportation	DOT
University Regents Board	HHS
Veterans Service	VA
Counties:	
Bobb	HHS
Cobb	EPA
Chatham	HHS
De Kalb	EPA
Dougherty	HHS
Floyd	HHS
Gwinnett	HUD
Fulton	HHS
Muskogee/Columbus	HHS
Richmond	HHS
Cities:	
Albany	HUD
Atlanta:	
Aviation	DOT
ourts	DOJ
nvironment and Streets	EPA [1]
uman and Community Development	HUD
ayor's Office	DOL
arks and Recreation	DOI
ublic Safety	DOC
GUAM	
State agencies: All departments and agencies	DOI
HAWAII	
State agencies:	
Agriculture	USDA
Attorney General	DOJ
Budget and Finance	HHS
Commerce and Consumer Affairs	DOC
Defense	DOD
Education	ED
Governor's Office	HHS
Health	HHS
Labor and Industrial Relations	DOL
Land and Natural Resources	DOI
Planning and Economic Development	DOC
Social Services and Housing	HHS
Transportation	DOT
Counties: Hawaii	DOL
Cities:	
Honolulu:	
Building	DOC
Community Development and Housing	HUD
Human Resources/Relations	DOL
Police	DOJ
Prosecuting Attorney	DOJ
Public Works	EPA [1]
Transportation	DOT
IDAHO	
State agencies:	
Adjutant General	DOD
Agriculture	USDA
Education	ED
Employment	DOL
Fish and Game	DOI
Governor's Office	HHS
Health and Welfare	HHS
Historical Society	DOI
Industrial Commission	DOL

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Labor and Industrial Services	DOL
Lands	USDA
Parks and Recreation	DOI
Transportation	DOT
Water Resources	DOT
Counties:	
Ada	HHS
Canyon	HHS
ILLINOIS	
State agencies:	
Aging	HHS
Agriculture	USDA
Atomic Energy Commission	DOE
Board of Education	ED
Children and Family Services	HHS
Commerce and Community Affairs	HHS
Conservation	DOI
Corrections	DOJ
Emergency Services and Disaster Agency	FEMA
Energy and Natural Resources	DOE
Environmental Protection Agency	EPA
Governor's Office	DOL
Human Rights	DOJ
Labor	DOL
Law Enforcement	DOJ
Mental Health and Developmental Disabilities	HHS
Military and Naval	DOD
Mines and Minerals	DOI
Public Aid	HHS
Public Health	HHS
Rehabilitation Services	HHS
Sanitary Board	EPA
Transportation	DOT
Veterans Affairs	VA
Counties:	
Adams	HHS
Champaign	HUD
Cook:	
Community Development	HUD
Environmental Control/Resources	DOE
Manpower	DOL
Sheriff	DOJ
De Kalb	EPA
Du Page	HUD
Kane	HHS
Kankakee	HHS
Knox	HHS
Lake	HUD
La Salle	HHS
Macon	HHS
Madison	HHS
McHenry	HHS
McLean	HHS
Peoria	HHS
Rock Island	HHS
Sangamon	HHS
St. Clair	HUD
Tazewell	HHS
Vermilion	HHS
Whiteside	HHS
Will	HHS
Winnebago	HHS
Cities:	
Aurora	HHS
Berwyn	HHS
Chicago:	
Community Development and Housing	HUD
Consumer Services	EPA
Economic Development/Opportunity	HUD
Employment and Training	DOL
Health/Human Services	HHS
Housing	HUD
Mayor's Office	DOT
Planning	HUD
Police	DOJ
Public Safety	DOJ
Public Works	DOT
Senior Citizens/Services	HHS
Cicero	HHS
Decatur	HHS
East St. Louis	HHS
Evanston	HHS
Joliet	EPA
Oak Park	HHS

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Peoria:	
Community Development	HHS
Community Improvement	DOL
Public Works	EPA
Rockford	HHS
Rock Island	HUD
Skokie	HHS
Springfield	EPA
Waukegan	EPA
Towns:	
Aurora	HHS
Berwyn	HHS
Bloom	HHS
Breman	HHS
Capital	HHS
Decatur	HHS
Downers Grove	HHS
E. St. Louis	HHS
Eligin	HHS
Evanston	HHS
Joliet	HHS
Leyden	HHS
Lyons	HHS
Maine	HHS
Milton	HHS
New Trier	HHS
Niles	HHS
Oak Park	HHS
Proviso	HHS
Rockford	HHS
Thornton	HHS
Waukegan	HHS
Wheeling	HHS
INDIANA	
State agencies:	
Aging and Community Services	HHS
Civil Defense and Emergency Management	FEMA
Commerce	DOE
Correction	DOJ
Education	ED
Employment Security Division	DOL
Governor's Office	HHS
Health Board	HHS
Highways	DOT
Housing Board	HUD
Labor Division	DOL
Mental Health	HHS
Military	DOD
Natural Resources	DOI
Public Service Commission	DOT
Public Welfare	HHS
Regional Planning Commissions	DOC
Rehabilitation Service Agency	HHS
State Police	DOJ
Transportation	DOT
Veteran Affairs	VA
Counties:	
Allen	HHS
Clark	HHS
Delaware	HHS
Elkhart	HHS
Floyd	HHS
Grant	HHS
Howard	HHS
Lake	HHS
La Porte	HHS
Madison	HHS
Marion	HHS
Monroe	HHS
Porter	HHS
St. Joseph	HHS
Tippecanoe	HHS
Vanderburgh	HHS
Vigo	HHS
Wayne	HHS
Cities:	
East Chicago	HHS
Evansville:	
Community Development	HUD
Planning	DOC
Transportation	DOT
Fort Wayne	EPA
Gary	HUD
Hammond	EPA
Indianapolis	HUD

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Muncie	HHS
South Bend	HUD
Terre Haute	HUD
Towns:	
Anderson	HHS
Calumet	HHS
Center-Kokomo	HHS
Center-Muncie	HHS
Gary	HHS
Harrison	HHS
Knight	HHS
North-Hammond	HHS
Pigeon	HHS
Portage	HHS
Warren	HHS
Washington	HHS
Wayne-Fort Wayne	HHS
Wayne-Indianapolis	HHS
Wayne-Richmond	HHS
IOWA	
State agencies:	
Aging Commission	HHS
Agriculture	USDA
Commerce Commission	DOT
Conservation Commission	DOI
Corrections	DOJ
Development Commission	HUD
Governor's Office	DOL
Health	HHS
Historical	DOI
Human Services	HHS
Job Service	DOL
Labor Bureau	DOL
Planning and Programming	HHS
Public Defense	FEMA
Public Instruction	ED
Public Safety	DOJ
Transportation	DOT
Veterans' Affairs	VA
Water, Air, and Waste Management	EPA
Counties:	
Black Hawk	HHS
Clinton	HHS
Dubuque	HHS
Johnson	HHS
Linn	HHS
Polk	HHS
Pottawattamie	HHS
Scott	HHS
Woodbury	HHS
Cities:	
Cedar Rapids	EPA
Council Bluffs	HHS
Davenport	HHS
Des Moines	HUD
Dubuque	EPA
Sioux City	HUD
Waterloo	HHS
KANSAS	
State agencies:	
Adjutant General	FEMA
Aging	HHS
Agriculture Board	USDA
Corrections	DOJ
Education	ED
Economic Development	HUD
Fish and Game Commission	DOI
Forestry	DOI
Governor's Office	USDA
Health and Environment	HHS
Highway Patrol	DOT
Historical Society	DOI
Human Resources	DOL
Park and Resources Authority	DOI
Social and Rehabilitation Services	HHS
Transportation	DOT
Water Resources Board	DOI
Counties:	
Johnson	HHS
Reno	HHS
Saline	HHS
Sedgwick	HHS
Shawnee	HHS
Wyandotte	HHS

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Cities:	
Kansas City	EPA
Topeka	HHS
Wichita	DOT
KENTUCKY	
State agencies:	
Agriculture	USDA
Appalachian Regional Commission	DOC
Commerce	DOC
Corrections	DOJ
Education and Humanities	ED
Energy	DOE
Governor's Office	HUD
Housing Corporation	HUD
Human Resources	HHS
Justice	DOJ
Labor	DOL
Local Government	DOI
Military Affairs	DOD
Natural Resources and Environmental Protection.	USDA
Public Protection and Regulation	DOL
Tourism	DOI
Transportation	DOT [1]
Counties:	
Boyd	HHS
Campbell	HHS
Christian	HHS
Daviess	HHS
Hardin	HHS
Harlan	HHS
Jefferson	EPA
Kenton	HHS
Lexington-Fayette	EPA
McCracken	HHS
Pike	HHS
Cities:	
Covington	HUD
Lexington	EPA
Louisville	DOL
LOUISIANA	
State agencies:	
Agriculture	USDA
Commerce	DOC
Corrections	DOJ
Culture, Recreation and Tourism	DOI
Education	ED [1]
Environmental Quality	EPA
Governor's Office	DOC
Health and Human Resources	HHS
Justice	DOJ
Labor	DOL
Military	DOD
National Resources	EPA
Public Safety	DOJ
Transportation and Development	DOT
Urban and Community Affairs	HUD
Veterans Affairs	VA
Wildlife and Fisheries	DOI
Counties (Parishes):	
Bossier	HHS
Caddo	HHS
Calcasieu	HHS
Iberia	HHS
Jefferson	HHS
Lafayette	HHS
Lafourche	HHS
Quachita	HHS
Rapides	HHS
St. Landry	HHS
Tangipahoa	HHS
Terrebonne	EPA
Cities:	
Baton Rouge	HUD
Lake Charles	EPA
Monroe	HUD
New Orleans	HUD
Shreveport:	
Parks and Recreation	USDA
Public Affairs/Services	DOL
Public Works	DOT
Sportron	DOT
Urban Development	EPA [2]
Water/Sewer	HUD

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Slidell	HHS
MAINE	
State agencies:	
Agriculture, Food, and Rural Resources	USDA
Conservation	USDA
Corrections	DOJ
Defense and Veteran Services	VA
Educational and Cultural Services	ED
Environmental Protection	EPA
Governor's Office	HHS
Human Services	HHS
Housing Authority	HUD
Inland Fisheries and Wildlife	DOI
Labor	DOL
Mental Health and Mental Retardation	HHS
Public Safety	DOJ
Transportation	DOT
Counties:	
Androscoggin	HHS
Cumberland	HHS
Kennebec	HHS
Penobscot	HHS
York	HHS
Cities:	
Bangor	HHS
Portland	HHS
MARYLAND	
State agencies:	
Aging Office	HHS
Agriculture	USDA
Children and Youth Office	HHS
Economic and Community Development	HUD
Education	ED
Employment and Training	DOL
Environmental Services	EPA
Governor's Office	DOJ
Health and Mental Hygiene	HHS
Human Resources	HHS
Law Enforcement and Administration on Justice Commission.	DOJ
Licensing and Regulation	HHS
Military	DOD
Natural Resources	DOI
Public Safety and Correctional Services	FEMA
Public Service Commission	DOT [1]
State Planning	HUD
Transportation	DOT
Veterans Commission	VA
Counties:	
Allegany	HHS
Anne Arundel:	
Administrative Office	DOJ
Aging	HHS
Domestic Relations	HHS
Planning and Zoning	HUD
Public Works	EPA [1]
Baltimore	EPA
Caroline	DOT
Carroll	EPA
Frederick	HHS
Harford	EPA
Horward	DOT
Kent	DOT
Montgomery	HUD
Prince Georges:	
Aging	HHS
Circuit Court	HHS
Emergency Preparedness	DOE
Health and Human Services	DOJ
Personnel	DOL [1]
Planning and Economic Development	HUD
Police	DOJ
State's Attorney	HHS
Queen Annes	DOT
St. Marys	DOT
Washington	EPA
Wicomico	DOT
Cities:	
Baltimore:	
Aging	HHS
Education	ED
Criminal Justice	DOJ
Health and Human Services	HHS
Hospitals	HHS

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Housing and Community Conservation	HUD
Manpower	DOL
Mayor's Office	HUD
Parks and Recreation	DOI
Planning	HUD
Public Works	DOT [1]
Social Services	HHS
State's Attorney	DOJ
MASSACHUSETTS	
State agencies:	
Administration and Finance Executive Office	HHS
Communities and Development	HUD
Consumer Affairs and Business Regulation	DOC
Economic Affairs	DOC
Educational	ED
Elder Affairs	HHS
Energy Resources	DOE
Environmental Affairs	DOI
Environmental Management	EPA
Food and Agriculture	USDA
Governor's Office	DOJ
Labor and Industries	DOL
Mental Health	HHS
Public Safety	DOJ
Public Welfare	HHS
Public Works	DOE
Social Services	HHS
State	DOI
Transportation and Construction Office	DOT [1]
Veterans Services Office	VA
Counties:	
Barnstable	HHS
Berkshire	HHS
Bristol	HHS
Essex	HHS
Franklin	HHS
Hampden	HHS
Hampshire	HHS
Middlesex	HHS
Norfolk	HHS
Plymouth	HHS
Worcester	HHS
Cities:	
Boston:	
Education	ED [1]
Health and Hospitals	HHS
Mayor's Office	DOL
Parks and Recreation	DOI
Police	DOJ
Public Works	DOT
Brockton:	
Community Improvement	DOL
Education	ED [1]
Cambridge	HUD
Chicopee	EPA
Fall River	ED
Holyoke	HUD
Lawrence:	
Airport	DOT
Community Development	HUD [1]
Education	ED
Highways	DOT
Lowell	HHS
Lynn	HUD
Malden	HHS
Medford	HHS
New Bedford	HUD
Newton	HHS
Pittsfield	EPA
Quincy	HHS
Somerville	HUD
Springfield	HHS
Waltham	HHS
Worcester	HUD
Town: Brookline	HHS
State Agencies:	
MICHIGAN	
Aging office	HHS
Attorney General	HHS
Agriculture	USDA
Commerce	HUD
Corrections	DOJ
Education	ED
Governor's Office	DOJ

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Labor	DOL
Management and Budget	HHS
Mental Health	HHS
Military Affairs	DOD
Natural Resources	DOI
Police	DOT
Public Health	HHS
Social Services	HHS
State	DOI
Transportation	DOT
Counties:	
Allegan	HHS
Bay	HHS
Berrien	EPA
Calhoun	HHS
Genesee	HHS
Ingham	HHS
Jackson	HHS
Kalamazoo	HHS
Kent	EPA
Lenawee	HHS
Macomb	HHS
Madison	EPA
Marquette	HHS
Midland	HHS
Monroe	HHS
Muskegon	HHS
Oakland	HUD
Ottawa	EPA
Saginaw	EPA
Shiawassee	HHS
St. Clair	EPA
Washtenaw	HHS
Wayne	HHS
Cities:	
Ann Arbor	HUD
Bay City	HUD
Dearborn	HHS
Dearborn Heights	HHS
Detroit:	
Community and Economic Development	HUD
Employment and Training	DOL
Finance	HUD
Health and Human Services	HHS[1]
Historical	HUD
Neighborhood Services	HHS
Planning	HUD
Police	DOJ
Public Works	HUD
Recreation	DOI
Senior Citizens/Services	HHS
Transportation	DOT
Flint:	
Community Development	HUD[1]
Community Improvement	DOL
Public Works	DOC
Water/Sewer	EPA
Grand Rapids	EPA
Jackson	HHS
Kalamazoo	EPA
Lansing	EPA
Lincoln Park	HHS
Livonia	HHS
Pontiac	HUD
Roseville	HHS
Royal Oak	HHS
St. Clair Shores	HHS
Saginaw	HUD
Westland	HUD
Warren	HHS
Towns:	
Dearborn	HHS
Redford	HHS
MINNESOTA	
State agencies:	
Administration	HHS
Aging Board	HHS
Agriculture	USDA[1]
Commerce	DOC
Corrections	DOJ
Council for the Handicapped	HHS
Economic Security	DOL
Education	ED
Employment Security	DOL
Energy and Economic Development	USDA
Governor's Office	HHS
Health	HHS
Historical Society	HUD
Housing Finance Agency	HUD
Human Services	HHS
Labor and Industry	DOL
Military Affairs	DOD
Natural Resources	DOI
Planning Agency	HHS
Pollution Control Agency	EPA
Transportation	DOT
Veterans Affairs	VA
Counties:	
Anoka	HHS
Dakota	HHS
Hennepin	HHS
Olmsted	HHS
Ramsey	HHS
Stearns	HHS
St Louis	HHS
Washington	HHS
Cities:	
Bloomington	HHS
Duluth	HHS
Minneapolis:	
Community Action Agency	HHS
Contract Management	HUD[1]
Employment and Training	DOL
Riverfront Development	DOI
St. Paul	HUD
MISSISSIPPI	
State agencies:	
Agriculture and Commerce	USDA
Archives and History	DOI
Economic Development	DOC
Education	ED
Employment Security Commission	DOL
Energy and Transportation	DOE
Forestry Commission	USDA
Governor's Office	HHS[1]
Health	HHS
Highway	DOT
Human Development	HHS
Medicaid Commission	HHS
Mental Health	HHS
Military	DOD
Natural Resources	DOI
Public Safety	DOJ
Public Welfare	HHS
Rehabilitative Services	HHS
Veterans Affairs Commission	VA
Wildlife Conservation	DOI
Youth Services	ED
Counties:	
Bolivar	HHS
Forrest	HHS
Harrison	HHS
Hinds	HHS
Jackson	HHS
Jones	HHS
Lauderdale	HHS
Washington	HHS
Cities:	
Jackson	HUD
MONTANA	
State agencies:	
Agriculture	USDA
Arts Council	HHS[1]
Commerce	DOC
Education	ED
Fish, Wildlife and Parks	DOI
Governor's Office	HHS
Health and Environmental Science	HHS
Highways	DOT
Institutions	DOJ
Justice	DOJ
Labor and Industry	DOL
Library	HHS
Military Affairs	DOD
Natural Resources and Conservation	DOI
Social and Rehabilitation Services	HHS
State Lands	DOI
Counties:	
Cascade	HHS
Yellowstone	HHS
Cities:	
Billings	HHS
Great Falls	HHS
NEBRASKA	
State agencies:	
Aging	HHS
Aeronautics	DOT
Agriculture	USDA
Correctional Services	DOJ
Economic Development	HUD
Education	ED
Energy Office	DOE
Environmental Control	EPA
Game and Parks Commission	DOI
Governor's Office	HHS
Health	HHS
Historical Society	DOI
Justice	DOJ
Labor	DOL
Law Enforcement and Criminal Justice Commission	DOJ
Military	DOD
Policy Research Office	DOC
Public Institutions	HHS
Social Services	HHS
State Patrol	DOT
Roads	DOT
Veterans Affairs	VA
Water Resources	DOI
Counties:	
Douglas	HHS
Lancaster	HUD
Cities:	
Lincoln	DOT
Omaha	HUD
NEVADA	
State agencies:	
Agriculture	USDA
Commerce	DOC
Community Services Office	HHS
Conservation and Natural Resources	DOI
Education	ED[1]
Employment Security	DOL
Governor's Office	DOL
Human Resources	HHS
Industrial Commission	DOL
Military Department	DOD
Motor Vehicle	DOJ
Traffic Safety	DOT
Transportation	DOT
Wildlife	DOI
Counties:	
Clark	HHS
Lancaster	HUD
Cities:	
Las Vegas	EPA
Reno	HUD
NEW HAMPSHIRE	
State agencies:	
Adjutant General	DOD
Aging Council	HHS
Agriculture	USDA
Air Resources Agency	DOI
Corrections	DOJ
Education	ED
Employment Security	DOL[1]
Fish and Game	DOI
Governor's Office	DOJ
Health and Welfare	HHS
Housing Finance Authority	HUD
Labor	DOL
Public Works and Highways	DOT
Resources and Economic Development	DOI
Safety	DOJ
Veterans Council	VA
Counties:	
Hillsboro	HHS
Merrimack	HHS
Rockingham	HHS
Strafford	HHS
Cities: Manchester	HUD

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
NEW JERSEY	
State agencies:	
Agriculture	USDA
Community Affairs	HHS [1]
Commerce and Economic Development	HUD
Corrections	DOJ
Defense	DOD
Delaware Valley Regional Planning Commission.	DOT
Education	ED
Energy	DOE
Environmental Protection	DOT
Governor's Office	HHS
Health	HHS
Human Services	HHS
Labor	DOL
Law Enforcement Planning Agency	DOJ
Law and Public Safety	DOJ
Port Authority of New York and New Jersey	DOT
Transportation	DOT
Counties:	
Atlantic	HHS
Bergen:	
Aging	HHS [1]
Children's Services	HHS
Community Action Planning	HHS
Community Development	HUD
Hospital	HHS
Housing Authority	HUD
Mental Health/Retardation	HHS
Planned Parenthood	HHS
Utilities/Utilities Authority	EPA
Burlington	HHS
Camden	HHS
Cumberland	HHS
Essex	HHS
Gloucester	HHS
Hudson	HHS
Hunterdon	HHS
Mercer	HHS
Middlesex	HHS
Monmouth:	
Aging	HHS [1]
Community Improvement	DOL
Planning	HUD
Prosecuting Attorney	DOJ
Morris	HHS
Ocean	HHS
Passaic	HHS
Salem	HHS
Somerset	HHS
Union:	
Human Resources/Relations	DOL
Planning and Engineering	HUD
Probation	HHS [1]
Warren	HHS
Cities:	
Atlantic City	HUD
Bayonne	HHS
Bloomfield	HHS
Camden	HUD
Clifton	HHS
East Orange	HUD
Elizabeth	HHS
Irvington	HHS
Jersey City	HUD
Newark:	
Employment and Training	DOL
Engineering	DOC
Health/Human Services	HHS [1]
Mayor's Office	HUD
Police	DOJ
Passaic	HHS
Paterson	DOL
Trenton	HUD
Union	HHS
Towns:	
Hamilton	HHS
Union	HHS
Woodbridge	HHS
NEW MEXICO	
State agencies:	
Adjutant General-Emergency Preparedness	FEMA
Aging	HHS
Agriculture	USDA
Corrections	DOJ
Economic Development and Tourism	DOC
Education	ED
Employment Security	DOL
Energy and Minerals	DOE
Finance and Administration	HUD
Fish and Game	DOI
Governor's Office	DOL
Health and Environment	HHS
Highway	DOT
Human Services	HHS
Natural Resources	USDA
Transportation	DOT
Counties:	
Bernalillo	HHS
Chaves	HHS
Dona Ana	DOT
Eddy	HHS
San Juan	HHS
City: Albuquerque	DOT
NEW YORK	
State agencies:	
Aging Office	HHS [1]
Agriculture and Markets	USDA
Alcohol and Substance Abuse Office	HHS
Commerce	DOC
Correctional Services	DOJ
Consumer Protection Board	HHS
Education	ED
Energy Office	DOE
Environmental Conservation	EPA
Governor's Office	DOC
Health	HHS
Housing and Community Renewal Division	HUD
Labor	DOL
Mental Health Office	HHS
Military and Naval Affairs Division	DOD
Motor Vehicles	DOT
Parks, Recreation and Preservatation Office	DOI
Port Authority of New York and New Jersey	DOT
Social Services	HHS
State	DOE
State Police	DOT
Transportation	DOT
Urban Development Corp	HUD
Youth Division	HHS
Counties:	
Albany	HHS
Broome:	
Aviation	DOT
Community Improvement	DOL
Health/Human Services	HHS [1]
Parks	HHS
Public Works	DOT
Sheriff	DOT
Social Services	HHS
Transportation	DOT
Cattaraugus	HHS
Cayuga	HHS
Chautaugua	HHS
Chemung	HHS
Clinton	HHS
Cortland	HHS
Dutchess:	DOL
Community Improvement	DOL [1]
Health/Human Services	HHS
Mental Health/Retardation	HHS
Social Services	HHS
Transportation	HHS
Erie	HHS
Fulton	HHS
Genesee	HHS
Herkimer	HHS
Jefferson	HHS
Madison	HHS
Montgomery	HHS
Monroe:	
Community Affairs/Services	DOI
Community Development	HUD
Health/Human Services	HHS [1]
Public Works	EPA
Social Services	HHS
Water Quality	EPA
Nassua:	
Housing and Intergovernmental Affairs	HUD
Planning	DOT
Public Workds	EPA
Social Services	HHS [1]
Youth Employment	DOL
Niagara	HHS
Oneida	HHS
Onondaga	HHS
Ontario	HHS
Orange	HHS
Otsego	HHS
Oswega	HHS
Renesselaer	HHS
Rockland	HHS
Saratoga	HHS
Schenectady	HHS
St. Lawrence	HHS
Steuben	HHS
Suffolk:	
Aging	HHS [1]
Community Development	HUD
Criminal Justice	DOJ
Health/Human Services	HHS
Labor Resources	DOL
Public Assistance	EPA
Social Services	HHS
Transportation	DOT
Tompkins	HHS
Ulster	HHS
Wayne	HHS
Westchester	HHS
Cities:	
Albany	HHS
Binghamton	EPA
Buffalo:	
Community Development	HUD [1]
Economic Development	HUD
Education	ED
Housing Authority	HUD
Human Resources	DOL
Parks	DOI
Police	DOJ
Public Works	EPA
Sewer Authority	EPA
Transportation	ED
Urban Renewal	HUD
Youth	DOI
Water	EPA
Cheektowaga	HHS
Mount Vernon	HUD
New Rochelle	HHS
New York:	
Aging	HHS [1]
Board of Education	ED
Criminal Justice Coordinating Council	DOJ
Economic Development Administration	DOC
Employment	DOL
Environmental Protection	EPA
Health	HHS
Housing Preservation and Development	HUD
Human Resources Administration	HHS
Mayor's Office	HUD
Mental Health	HHS
Parks	DOI
Transportation	DOT
Niagara Falls	HHS
Rochester	HUD
Schenectady	HHS
Syracuse	HHS
Troy	HHS
Utica	HHS
White Plains	HUD
Yonkers	HUD
Towns:	
Amherst	HHS
Babylon	HHS
Brookhaven	HUD
Colonie	HHS
Greenburgh	HHS
Hempstead	HUD
Huntington	HHS
Irondequiot	HHS
Islip	HHS
North Hempstead	HHS
Oyster Bay	HHS
Smithtown	HHS
Tonawanda	HHS

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Union	HHS
NORTH CAROLINA	
State agencies:	
Administration	HHS [1]
Agriculture	USDA
Commerce	DOE
Community Colleges	ED
Correction	HHS
Cultural Resources	ED
Crime Control and Public Safety	DOJ
Public Education	ED
Employment Security Commission	DOL
Governor's Office	HUD
Human Resources	HHS
Labor	DOL
Natural Resources and Community Development.	DOL
Transportation	DOT
Wildlife Resources Commission	DOI
Counties:	
Alamance	DOL
Buncombe	HUD
Burke	HHS
Cabarrus	HHS
Catawba	HHS
Cleveland	HHS
Craven	HHS
Cumberland	DOL
Davidson	DOL
Durham	HHS
Edgecombe	HHS
Forsyth	HHS
Gaston	HHS
Guilford	HHS
Halifax	HHS
Iredell	HHS
Johnston	HHS
Lenoir	HHS
Mecklenburg	HHS
Nash	HHS
New Hanover	HHS
Onslow	DOL
Pitt	HHS
Randolph	HHS
Robeson	DOC
Rockingham	HHS
Rowan	HHS
Wake	DOL
Wayne	HHS
Wilson	HHS
Cities:	
Asheville	HUD
Charlotte	HUD
Durham	HUD
Greensboro	EPA
High Point	HUD
Raleigh	HUD
Winston-Salem	HUD
NORTH DAKTA	
State agencies:	
Adjutant General	DOD
Agriculture	USDA
Combined Law Enforcement Council	DOJ
Forest Service	DOI
Game and Fish	DOI
Governor's Office	DOL
Government Affairs Bureau	HUD
Health	HHS
Highway	DOT
Highway Patrol	DOT
Human Services	HHS
Housing Finance Agency	HUD
Institutions Director	HHS
Job Service	DOL
Labor	DOL
Management and Budget	HUD
Parks and Recreation	DOI
Parole and Probation	DOJ
Public Instruction	ED [1]
State Government and Outdoor Recreation	DOI
Veteran Affairs	VA
Vocational Rehabilitation	HHS
Water Commission	DOI

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Counties: Cass	HHS
OHIO	
State agencies:	
Adjutant General	DOD
Aging Commission	HHS
Agriculture	USDA
Development	DOE
Education	ED
Employment Services Bureau	DOL
Environmental Protection Agency	EPA
Governor's Office	HHS
Health	HHS
Highway Safety	DOT
Human Services	HHS
Industrial Relations	DOL
Mental Health	HHS
Natural Resources	DOI
Public Utilities	DOT
Rehabilitation and Correction	DOJ
Transportation	DOT
Youth Service	HHS
Counties:	
Allen	HHS
Ashtabula	HHS
Belmont	HHS
Butler	HHS
Clark	HHS
CLermont	HHS
Columbiana	HHS
Cuyahoga:	
Aging	HHS [1]
Commissioners	DOC
Community and Economic Development	DOL
Community Development	HUD
Courts	DOJ
Sanitation	EPA
Sheriff	DOJ
Welfare	HHS
Erie	HHS
Fairfield	HHS
Franklin	HHS
Greene	HHS
Hamilton:	
Community Development	DOL
Community Improvement	HUD [1]
Hancock	HHS
Jefferson	HHS
Lake	HHS
Lawrence	HHS
Licking	HHS
Lorain	HHS
Lucas:	
Community Commissioners	DOI
County Engineer	DOT
Courts	DOJ
Sanitary Engineer	EPA
Welfare	HHS [1]
Mahoning	HHS
Marion	HHS
Medina	HHS
Miami	HHS
Montgomery:	
Community Development	HUD
Community Services	HHS [1]
Engineering	DOT
Parks and Recreations	DOI
Sanitary	EPA
Muskingum	HHS
Portage	HHS
Richland	HHS
Ross	HHS
Sandusky	HHS
Scioto	HHS
Seneca	HHS
Stark	HHS
Summit	HHS
Trumbull	HHS
Tuscarawas	HHS
Warren	HHS
Washington	HHS
Wayne	HHS
Wood	HHS
Cities:	
Akron	EPA

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Canton:	
Community Development	HUD
Health/Human Services	EPA [1]
Mayor's Office	DOL
Water Pollution Control	EPA
Cincinnati:	
Community Improvement	DOL
Health/Human Services	HHS
Mayor's Office	HUD [1]
Planning	DOT
Public Safety	DOJ
Recreation	USDA
Transit	DOT
Water	EPA
Cleveland:	
Community Development	HUD
Economic Development/Opportunity	HUD
Health/Human Services	EPA
Human Resources/Relations	DOL [1]
Cleveland Heights	HHS
Columbus	HUD
Dayton:	
Aviation	USDA
Community Improvement	DOL [1]
Fire Services	DOJ
Housing and Urban Development	HUD
Water	EPA
Youth Services	USDA
Euclid	HHS
Hamilton	HHS
Kettering	HHS
Lakewood	HHS
Lima	HHS
Lorain	EPA
Parma	HHS
Springfield	HHS
Toledo	HUD
Warren	HUD
Youngstown	HUD
Towns:	
Canton	HHS
Madison	HHS
Perry	HHS
Plain	HHS
Springfield	HHS
OKLAHOMA	
State agencies:	
Agriculture	USDA
Civil Defense	FEMA
Conservation Commission	EPA
Corrections	DOJ
Economic and Community Affairs	DOL
Education	ED
Employment Security Commission	DOL
Governor's Office	DOC
Health	HHS
Human Services	HHS
Labor	DOL
Mental Health	HHS
Military	DOD
Mines	DOI
Pollution Control	EPA
Public Safety	DOJ
Tourism and Recreation	DOI
Transportation	DOT [1]
Veterans Affairs	VA
Vocational and Technical Education	ED
Water Resources Board	EPA
Wildlife Conservation	DOI
Counties:	
Comanche	HHS
Garfield	HHS
Kay	HHS
Muskogee	EPA
Oklahoma	HHS
Tulsa	EPA
Cities:	
Lawton	HUD
Oklahoma City	HHS
Tulsa	HUD
OREGON	
State agencies:	
Agriculture	USDA
Commerce	DOC

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Economic Development	DOC
Education	ED
Energy	DOE
Environmental Quality	EPA
Executive Department	DOL
Fish and Wildlife	DOI
Forestry	USDA
Geology and Mineral Industries	DOI
Governor's Office	HUD
Human Resources	HHS [1]
Justice	DOJ
Labor and Industries Bureau	DOL
State Police	DOJ
Transportation	DOT
Veteran Affairs	VA
Water Resources	DOI
Workers Compensation	DOL
Counties:	
Clackamas	HHS
Coos	HHS
Douglas	HHS
Jackson	HHS
Lane	HHS
Linn	HHS
Marion	HHS
Washington	HHS
Cities:	
Eugene	HUD
Portland	HUD
Salem	DOT
PACIFIC ISLANDS	
State agencies: All departments and agencies	DOI
PENNSYLVANIA	
State agencies:	
Aging	HHS
Agriculture	USDA [1]
Attorney General's Office	DOJ
Commerce	DOC
Community Affairs	HUD
Education	ED
Emergency Management Agency	FEMA
Energy Council	DOE
Environmental Resources	EPA
Fish Commission	DOI
Game Commission	DOI
Governor's Office	DOL
Health	HHS
Historical and Museum Commission	DOI
Housing Finance Agency	HUD
Labor and Industry	DOL
Military Affairs	DOD
Probation and Parole Board	DOJ
Public Welfare	HHS
State Police	DOJ
Transportation	DOT
Counties:	
Adams	HHS
Allegheny:	
Audit Services	HHS [1]
Community Development	HUD
Comprehensive Education and Training Act	HHS
Federal Programs	DOL
Health/Human Services	HHS
Jail	DOJ
Mental Health/Retardation	HHS
Armstrong	HHS
Beaver	HHS
Berks	HHS
Blair	HHS
Bradford	HHS
Bucks:	
Adult Services	HHS [1]
Child Welfare	HHS
Community Development	HHS
Community Improvement	DOL
Mental Health/Retardation	HHS
Butler	HHS
Cambria	HHS
Carbon	HHS
Centre	HHS
Chester	HHS
Clearfield	HHS
Columbia	HHS
Crawford	HHS
Cumberland	HHS
Dauphin	HHS
Delaware	HHS
Erie	HHS
Fayette	HHS
Franklin	DOL
Indiana	HHS
Lackawanna	HHS
Lancaster	HHS
Lawrence	HHS
Lebanon	HHS
Lehigh	HHS
Lycoming	HHS
Luzerne	DOL
McKean	HHS
Mercer	HHS
Montgomery:	
Child Welfare	HHS [1]
Community Development	HUD
Community Improvement	DOL
Geriatric Center	HHS
Northampton	HHS
Northumberland	HHS
Schuylkill	HHS
Somerset	HHS
Washington	DOL
Westmoreland:	
Aging	HHS [1]
Children's Bureau	HHS
Housing Authority	HUD
Manpower	DOL
Planning	HUD
Transportation	DOT
York	DOL
Cities:	
Allentown	HUD
Altoona	HUD
Bethlehem	HHS
Chester	HUD
Erie	HUD
Harrisburg	HUD
Johnstown	HUD
Lancaster	EPA
Philadelphia:	
Public Property	DOT
Schools	ED
All other departments	HUD [1]
Pittsburgh	HUD
Reading	HUd
Scranton:	
Community and Economic Development	HUD
All other departments	EPA [1]
Westmoreland	HUD
Wilkes-Barre	HUD
York	HHS
Towns:	
Abington	HHS
Bristol	HHS
Haverford	HHS
Lower Merion	HHS
Penn Hills	HHS
Upper Darby	HHS
PUERTO RICO	
State agencies:	
Agriculture	USDA
Commerce	DOC
Consumer Affairs	HHS
Cooperative Development Administration	DOC
Crime Commission	DOJ
Cultural Affairs	HHS
Addiction Services	HHS
Economic Development Administration	DOL
Education	ED
Employment Security Bureau	DOL
Environmental Quality Board	EPA
Governor's Office	DOI
Health	HHS
Housing	HUD
Labor and Human Resources	DOL
Metropolitan Bus Authority	DOT
Municipal Services Administration	HUD
National Guard	DOD
Natural Resources	HHS
Social Services	HHS
Soilid Waste Management Authority	EPA
Transportation and Public Works	DOT
Rhode Island	
State agencies:	
Adjutant General's Office	DOD
Administration	HHS [1]
Attorney General	DOJ
Business Regulation	DOC
Children and Their Families	HHS
Community Affairs	HHS
Corrections	DOJ
Economic Development	DOL
Education	ED
Elderly Affairs	HHS
Emergency Management Agency	FEMA
Employment Security	DOL
Environmental Management	USDA
Governor's Office	DOJ
Health	HHS
Labor	DOL
Mental Health, Retardation, and Hospitals	HHS
Public Transit Authority	DOT
Social and Rehabilitative Services	HHS
State Police	DOJ
Transportation	DOT
Cities:	
Cranston	HHS
Pawtucket	EPA
Providence:	
Community Development	HUD [1]
Community Improvement	DOL
Federal Programs	ED
Planning and Urban Development	HUD
Warwick	HUD
SOUTH CAROLINA	
State agencies:	
Adjutant General's Office	DOD
Aging Commission	HHS
Agriculture	USDA
Alcohol and Drug Abuse Commission	HHS
Archives and History	DOI
Corrections	DOJ
Development Board	DOC
Education	ED
Employment Security Commission	DOL
Forestry Commission	USDA
Governor's Office	DOL
Health and Environmental Control	HHS
Highways and Public Transportation	DOT
Housing Authority	HUD
Human Affairs	DOL
Labor	DOL
Land Resources Conservation Commission	EPA
Mental Health	HHS
Mental Retardation	HHS
Parks, Recreation and Tourism	DOI
Parole and Community Corrections	DOJ
Public Service Commission	DOT
Social Services	HHS
Vocational Rehabilitation	ED
Water Resources Commission	DOC
Wildlife and Marine Resource	DOI
Youth Services	HHS
Veteran's Affairs	VA
Counties:	
Aiken	HHS
Anderson	HHS
Charleston	HHS
Darlington	HHS
Florence	HHS
Greenville	DOL
Horry	HHS
Lexington	HHS
Orangeburg	HHS
Richland	HUD
Spartanburg	HHS
Sumter	HHS
York	HHS
Cities:	
Charleston	HUD
Columbia	EPA
Greenville	HUD

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
SOUTH DAKOTA	
State agencies:	
Agriculture	USDA
Charities and Corrections Board	HHS [1]
Commerce and Regulation	DOC
Education and Cultural Affairs	ED
Energy Office	DOE
Game, Fish and Parks	DOI
Governor's Office	DOE
Health	HHS
Housing Development Authority	HUD
Labor	DOL
Military and Veterans Affairs	DOD
Public Safety	DOJ
Social Services	HHS
State Development	DOC
Transportation	DOT
Vocational Rehabilitation	HHS
Water and Natural Resources	EPA
Counties:	
Minnehaha	HHS
Pennington	HHS
Cities:	
Sioux Falls	EPA
TENNESSEE	
State agencies:	
Aging Commission	HHS [1]
Agriculture	USDA
Commerce and Insurance	DOC
Conservation	DOI
Corrections	DOJ
Economic and Community Development	DOL
Employment Security	DOL
Education	ED
Governor's Office	DOJ
Health and Environment	HHS
Historical Commission	DOI
Housing Development Agency	HUD
Human Services	HHS
Labor	DOL
Mental Health and Retardation	HHS
Military	FEMA
Planning Office	HUD
Safety	DOJ
Transportation	DOT
Veterans Affairs	VA
Wildlife Resources Agency	DOI
Counties:	
Anderson	HHS
Blount	HHS
Hamilton	DOC
Knox	HHS
Madison	HHS
Montgomery	HHS
Nashville-Davidson:	
Community Development	HUD
Community Improvement	DOL
District Attorney	DOJ
Education	ED
Health/Human Services	EPA [1]
Hospital	HHS
Metro Action Commission	HHS
Police	DOJ
Social Services	HHS
Water/Sewer	EPA
Rutherford	HHS
Shelby	HHS
Sullivan	DOL
Washington	HHS
Cities:	
Chattanooga	HHS
Knoxville	HHS
Memphis	HUD
Nashville	HUD
TEXAS	
State agencies:	
Aeronautical Commission	DOT
Aging	HHS
Agriculture	USDA
Air Control Board	EPA
Attorney General's Office	DOJ
Budget and Planning Office	HUD
Community Affairs	DOL
Corrections	DOJ
Education Agency	ED
Employment Commission	DOL
Forest Service	USDA
Governor's Office	DOJ
Health	HHS
Highway and Public Transportation	DOT
Historical Commission	DOI
Human Resources	HHS
Intergovernmental Relations Advisory Commission.	HHS
Labor and Standards	DOL
Mental Health Retardation	HHS
Parks and Wildlife	DOI
Public Safety	DOJ
Public Utility Commission	DOE
Railroad Commission	DOT
Rehabilitation Commission	ED
Veteran Affairs Commission	VA
Water Resources	DOI
Youth Commission	HHS
Counties:	
Bell	HHS
Bexar	HHS
Bowie	HHS
Brazoria	HHS
Cameron	HHS
Dallas	HHS
Ector	HHS
El Paso	DOJ
Galveston	HHS
Grayson	HUD
Gregg	HHS
Harris:	
Community Development and Housing	HUD
Courts	DOJ
District Attorney	DOJ
Employment and Training	DOL
Health/Human Services	HHS
Juvenile Probation/Detention	DOJ
Parks	DOI [1]
Hidalgo	HHS
Jefferson	HHS
Lubbock	HHS
McLennan	HHS
Midland	HHS
Nueces	DOC
Orange	HUD
Plainview	DOT
Potter	HUD
Smith	HHS
Tarrant	HHS
Taylor	HHS
Tom Green	HHS
Travis	HHS
Webb	HHS
Wichata	HHS
Cities:	
Abilene	HUD
Amarillo	HUD
Austin	HHS
Beaumont	HHS
Corpus Christi	HHS
Dallas	DOT
El Paso	HUD
Fort Worth	HUD
Galveston	HUD
Houston:	
Aging	HHS
Airport	DOT
Community Development	HUD [1]
Community Improvement	DOL
Health/Human Services	HHS
Library	ED
Public Works	EPA
Laredo	HUD
Lubbock	HHS
San Angelo	HHS
San Antonio	EPA
Tyler	HHS
Waco	HUD
Wichita Falls	EPA
UTAH	
State agencies:	
Agriculture	USDA
Apprenticeship Council	DOL
Community and Economic Development	HUD
Education Office	ED
Employment Security	DOL
Governor's Office	HUD
Health	HHS [1]
Industrial Commission	DOL
National Guard	DOD
Natural Resources	DOI
Public Safety	HHS
Social Services	HHS
Transportation	DOT
Counties:	
Davis	HHS
Salt Lake	HHS
Utah	HHS
Weber	HHS
Cities:	
Ogden	HHS
Salt Lake City	HUD
VERMONT	
State agencies:	
Agriculture	USDA
Development and Community Affairs	HUD
Education	ED
Employment and Training	DOL
Environmental Conservation	DOI
Governor's Office	HHS [1]
Human Services	HHS
Labor and Industry	DOL
Libraries	HHS
Military	DOD
Public Safety	DOJ
Public Service	DOE
Rehabilitation Center	HHS
Transportation	DOT
Counties: Chittenden	HHS
VIRGINIA	
State agencies:	
Adjutant General's Office	DOD
Aging	HHS
Agriculture and Consumer Affairs	USDA
Air Pollution Control Board	EPA
Commerce	DOC
Conservation and Economic Development	DOI
Corrections	DOJ
Criminal Justice Services	DOJ
Education	ED
Emergency and Energy Services Office	FEMA
Employment Commission	DOL
Game and Inland Fisheries Commission	DOI
Governor's Office	DOL
Health	HHS
Highways and Transportation	DOT
Historic Landmarks Commission	DOI
Housing and Community Development	HUD
Law	DOJ
Labor and Industry	DOL
Library	HHS
Mental Health and Mental Retardation	HHS
Planning and Budget	HUD
Rehabilitative Services	HHS
Social Services	HHS
State Police	DOJ
Water Control Board	EPA
Counties:	
Arlington	HHS
Chesterfield	EPA
Fairfax	EPA
Henrico	HUD
Montgomery:	
Education	ED
Public Assistance	HHS [1]
Orange	DOT
Pittsylvania	HHS
Prince William	EPA
Roanoke	HHS
Cities:	
Alexandria	HHS
Chesapeake	ED
Hampton	HHS
Lynchburg	HHS
Newport News	ED
Norfolk:	
City Manager	HUD [1]

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Community Relations	HUD
Development	HUD
Education	ED
General Government	HHS
Housing Authority	HUD
Human Resources/Relations	HHS
Judicial	DOJ
Parks and Recreation	HUD
Personnel	DOT
Planning	DOJ
Police	HHS
Public Health	HHS
Portsmouth	HHS
Richmond	HUD
Roanoke	DOT
Virginia Beach	ED
VIRGIN ISLANDS	
State agencies: All departments and agencies	DOI
WASHINGTON	
State agencies:	
Agriculture	USDA
Archaeology and Historic Preservation Office	DOI
Attorney General's Office	DOJ
Commerce and Economic Development	DOC
Community Development	HUD [1]
Corrections	DOJ
Ecology	DOI
Emergency Management	FEMA
Employment Security	DOL
Energy Office	DOE
Financial Management Office	HHS
Fisheries	DOC
Game	DOI
Governor's Office	HHS
Labor and Industries	DOL
Library	HHS
National Guard	DOD
Natural Resources	USDA
Parks and Recreation Commission	DOI
Post Secondary Education Council	HHS
Public Instruction	ED
Social and Health Services	HHS
State Patrol	DOJ
Traffic Safety Commission	DOT
Transportation	DOT
Veterans Affairs	VA
Counties:	
Benton	HHS
Clark	HHS
Cowlitz	HHS
Grays Harbor	HHS
King	HHS
Kitsap	HHS
Pierce:	
Aging	HHS [1]
Airport	DOT
Community Action	HHS
Community Development	HUD
Law and Justice	DOJ
Manpower	DOL
Sewer Utility	EPA
Social Services	HHS
Skagit	HHS
Snohomish	HUD
Spokane	USDA
Thurston	HHS
Whatcom	HHS
Yakima	HHS
Cities:	
Seattle	HHS
Spokane:	
Community Development and Planning	HUD
Employment and Training	DOL
Human Services	HHS [1]
Public Works	DOT
Sewer Utility	EPA
Transit	DOT
Water	DOE
Tacoma	EPA
WEST VIRGINIA	
State agencies:	
Adjutant General's Office	DOD
Aging Commission	HHS
Agriculture	USDA
Air Pollution Control Commission	HHS
Attorney General	DOJ
Corrections	DOJ
Culture and History	DOI
Economic and Community Development Office.	DOL
Education	ED
Emergency Services Office	FEMA
Employment Security	DOL
Finance and Administration	DOT
Governor's Office	HHS
Health	HHS
Highways	DOT
Housing Development Fund	HUD
Human Services	HHS
Labor	DOL
Mines	DOI
Natural Resources	DOI
Public Service Commission	DOT
Public Safety	DOJ
Veterans Affairs	VA
Vocational Education Board	ED
Counties:	
Cabell	HHS
Fayette	HHS
Harrison	HHS
Kanawha:	
Employment and Training	DOL [1]
Housing Authority	HUD
Parks and Recreation	DOI
Regional Intergovernmental Council	DOT
Transit Authority	DOT
Logan	HHS
Marion	HHS
McDowell	HHS
Mercer	HHS
Monongalia	HHS
Ohio	EPA
Raleigh	HHS
Wood	HHS
WISCONSIN	
State agencies:	
Administration	HHS
Agriculture, Trade and Consumer Protection	USDA
Development	DOC
Governor's Office	DOJ
Health and Social Services	HHS
Historical Society	DOI
Housing and Economic Development Authority.	HUD
Industry, Labor and Human Relations	DOL
Justice	HHS
Military Affairs	DOD
Natural Resources	DOI
Public Instruction	ED
Transportation	DOT
Veterans Affairs	VA
Counties:	
Brown	HHS
Dane	HHS
Dodge	HHS
Eau Claire	HHS
Fond du Lac	HHS
Jefferson	HHS
Kenosha	HHS
La Crosse	HHS
Manitowoc	HHS
Marathon	HHS
Milwaukee	HHS
Outagamie	HHS
Racine	HHS
Rock	HHS
Sheboygan	HHS
Walworth	HHS
Waukesha	HHS
Winnebago	HHS
Wood	HHS
Cities:	
Green Bay	HUD
Kenosha	HHS
Madison	DOT
Milwaukee	HUD
Racine	EPA
Wauwatosa	HHS
West Allis	HHS
WYOMING	
State agencies:	
Agriculture	USDA
Attorney General's Office	DOJ
Charities and Reform Board	HHS
Economic Planning and Development	DOC
Education	ED
Employment Security Commission	DOL
Environmental Quality	EPA
Game and Fish	DOI
Governor's Office	DOL
Health and Social Services	HHS
Highway	DOT
Labor and Statistics	DOL
Public Lands	USDA
Mine Inspector	DOI
National Guard	DOD
Public Service Commission	DOT
Recreation Commission	DOI
Workers Compensation Division	DOL
Counties: Laramie	HHS

[1] Lead cognizant agency for single audits at State and local levels. Also, responsible for negotiating cost allocation plans at local levels. HHS will continue to be cognizant agency for review of State-wide cost allocation plans.

[FR Doc. 85-30188 Filed 12-20-85; 8:45 am]

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Federal Register

Monday
December 23, 1985

Part III

Environmental Protection Agency

40 CFR Part 51

Stack Height Emissions Balancing Policy Proposal

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL-2830-8]

Stack Height Emissions Balancing Policy Proposal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed policy.

SUMMARY: Reproduced below is a draft memorandum which sets forth a policy proving for the concept of "emissions balancing" to be used to comply with the stack height regulation revisions (promulgated July 8, 1985, 50 FR 27892). The EPA solicits public comment on the memorandum before issuing it as a final Agency policy.

DATE: Comments must be submitted on or before January 22, 1986.

ADDRESSES: Comments on the draft memorandum should be submitted (in triplicate if possible) to: Central Docket Section (LE-131), EPA, Attention: Docket Number A-85-05, 401 M Street, SW., Washington, DC 20460. The Central Docket Section is located in the West Tower Lobby, Gallery I, 401 M Street, SW., Washington, DC. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: David Stonefield, Chief, Policy Development Section, Standards Implementation Branch (MD-15), EPA, Research Triangle Park, North Carolina 27711. Telephone: (919) 541-5540.

SUPPLEMENTARY INFORMATION: The stack height regulation revisions promulgated on July 8, 1985 (50 FR 27892), implement the provisions of section 123 of the Clean Air Act which requires that emissions limits incorporated in a State implementation plan (SIP) not be affected by (1) stack heights in excess of good engineering practice, or (2) any other dispersion technique. For a more detailed discussion, see the July 8, 1985, notice.

Stationary sources of air pollution are subject to emission limitations to assure attainment of the national ambient air quality standards and to protect prevention of significant deterioration increments. These limitations are derived from predictions of ground-level pollutant concentrations that occur in the area of maximum impact as a result of pollutant emissions from one or more sources. Dispersion enhancing practices, including all stacks, lower the predicted ground-level concentrations and may result in allowing sources to emit greater amounts of pollution.

As a result of promulgation of the stack height regulation revisions, some sources will be required to reduce their emissions. The proposed policy has been developed in consideration of the fact that emission reductions may be obtained more cost-effectively in some cases by allowing affected sources (the source for which emission reductions are required by the stack height regulations is termed the "affected source") to contract with other sources for the reductions in lieu of reducing emissions at their own facilities (the source which provides the emission reductions is termed the "providing source"). This is referred to as an "emissions balance."

The stack height regulations revisions require that a SIP revision establishing emission limits for sources affected by the regulation be submitted within 9 months of promulgation of the regulation. An emissions balance would also go through the SIP process. To allow time for arranging balances (which cannot be done until the new emission limits required by the regulation are calculated), an additional 6 months would be provided for submitting a SIP revision establishing emissions balances. Therefore, the emissions balance must be submitted to EPA on or before October 8, 1986. This would, however, not extend the 9-month requirement for the original SIP revision required by the regulation, or the deadline for final compliance with the SIP.

The EPA is limiting the period during which emissions balancing can be carried out to avoid delays in compliance with revised emission limitations. Depending on the extent of required emission reductions, significant lead time may be necessary before actual compliance can be achieved. If a source sought to establish an emissions balance much later than 6 months after receiving a revised emission limitation, it may not be possible for the providing source to reduce its emissions within the time required for compliance with that emission limitation, and EPA does not believe that any extensions should be granted. However, EPA is soliciting comment on whether the proposed time limit is, in fact, needed to ensure timely compliance. For example, EPA could allow the approval of emissions balances at any time after the establishment of revised emission limitations but assess noncompliance penalties on the affected source for the period between the compliance deadline established with the revised emission limitation and the date that the providing source achieves the emission reductions specified by the emission balance.

To ensure that balancing would have positive environmental benefits as great as or greater than stack-by-stack compliance with the July 8 regulation, EPA believes that, in light of the unique variability in sulfur dioxide (SO_2) emissions and emissions inventory, the large volumes of emissions from many affected sources and the extremely short time available to develop, review, and approve emission balances under the outstanding court order (50 FR 27892-95), the emissions reductions from the providing sources must be greater than the reduction required by the regulations of the affected sources. Due to all these constraining factors, EPA is proposing to require between 20 and 100 percent additional emission reductions (i.e., ratios of between 1:1.2 and 1:2). Because of the complexities involved in the stack height regulations, EPA favors the more conservative 1:2 ratio; however, EPA solicits comments on the entire range of ratios.

This proposed policy would not allow the use in any emissions balance of emission reductions from plant shutdowns, or operation curtailment. Load shifting steps such as "least emissions dispatch" are also not allowed because of difficulties in monitoring and enforcing compliance. Least emissions dispatch is currently being studied under the EPA's State Acid Rain (STAR) grant program with a view to determining whether such an approach could be allowed in future emissions balancing regulations.

The EPA is considering placing limits on the relative stack height of the providing and affected sources. The EPA is considering four options: (1) no restrictions on the stack height of the providing source, (2) the providing source's actual stack height must be at least equal to or greater than 75 percent of the actual stack height of the affected source, and (3) the providing source's actual stack height may be at least equal to or greater than the actual stack height of the affected source, and (4) the providing source's effective stack height (actual stack height plus plume rise) must be equal to or greater than the effective stack height of the affected source. The EPA intends to select that option that is the most environmentally beneficial, considering such factors as ease of implementation and legal defensibility. The EPA solicits public comment on all of the options before making a final decision.

Because of the administrative and enforcement difficulties with

maintaining balances beyond the limits of a State's authority, EPA has limited the balances to facilities within the State boundaries. The EPA has proposed to allow an exception for interstate air quality control regions. In such areas the States have already developed processes for interstate actions to attain and maintain the ambient air quality standards. Therefore, it is reasonable to allow the balancing of emissions reductions among sources within those areas.

The EPA wishes to consider public comment on this policy before issuing it in final form. Once issued, the policy will be applicable nationally.

Dated: December 16, 1985.

Lee M. Thomas,

Administrator.

Draft Memorandum

Subject: Stack Height Emissions Balancing Policy

From: The Administrator (A-100)

To: Regional Administrator, Regions I-X

I. Background

On July 8, 1985, the Environmental Protection Agency (EPA) promulgated the revised stack height regulation required to implement section 123 of the Clean Air Act (50 FR 27892). The regulation limits the credit sources can receive for the height of their stacks and the use of other dispersion techniques in calculating emission limits. Consequently, certain sources will be required to comply with lower emission limitations.

The likelihood that some required emission reductions could be obtained more cost-effectively from sources other than those directly affected by the regulation has given rise to the concept known as "emissions balancing." This concept would allow certain sources subject to the regulations to comply in a more cost-effective manner while achieving an overall environmental benefit.

II. Policy Discussion

The EPA will allow most sources directly affected by the regulations, "affected sources," to obtain the required emission reductions by reducing emissions at their own facilities or by contracting with other sources, "providing sources," to reduce emissions at other facilities. However, sources which must reduce their emissions because of reliance on a prohibited supplemental or intermittent control strategy cannot obtain reductions from other sources.

The emissions at the providing source, calculated on an annual basis, must be reduced by an amount at least [*] times the reductions required of the affected sources. This balance factor has been chosen because of the difficulty of ensuring environmental equivalency. Partial balancing is allowed, i.e., affected sources may combine emissions reductions at their own facilities with emission reductions from providing sources to meet the total reductions required. For example, if an affected source is required to reduce its emissions by 10,000 tons per year, it may reduce its emissions by 5,000 tons per year and develop an emissions balance for the remaining 5,000 tons per year of required reductions.

This policy applies to sources affected by the regulations promulgated at 50 FR 27892 on July 8, 1985, which were in operation as of that date or for which permits to construct or operate had been issued.

III. Details of Policy

A. Conditions for Emissions Balances

1. Emissions balancing may be permanent or may be used to comply with the regulations temporarily until permanent controls can be installed. With respect to temporary balancing, the remaining requirements of this policy would apply for the duration of the temporary balance.

2. An approvable emissions balance must be such that the providing source reduces emissions of the same pollutant, calculated on an annual basis, to an extent [*] times the emission reduction required of the affected source (or [*] times that portion of the required reduction for which the affected source is seeking an emissions balance).

3. An emissions balance must take place entirely within the boundaries of a State, with one exception: Interstate balances within the same air quality control region may be acceptable if an enforceable interagency agreement is incorporated into the State implementation plans (SIP's) of both States and is approved by EPA. Regardless of the geographical boundaries of the agreement—whether intrastate or interstate—the appropriate Regional Office may limit balances to smaller areas of a case-by-case basis considering factors such as geography, meteorology, or topography if necessary to ensure comparable environmental benefit.

4. Emission reductions from the providing source must be stack emissions.

5. [The EPA is considering four alternatives for limiting the applicability of the policy: (1) No restriction on the stack height of the providing source, (2) the providing source's actual stack height must be at least 75 percent of the actual height of the affected source, (3) the providing source's actual stack height must be at least as high as the affected source's actual stack height, and (4) the effective stack height of the providing source must be equal to or greater than the effective stack height of the affected source. Public comment is solicited to assist EPA in deciding the extent to which the policy should be limited.] [1]

6. Other conditions of an emissions balance are:

- both the affected and providing sources must be in compliance with all applicable Federally approved SIP requirements,
- all national ambient air quality standards (NAAQS) must be attained and maintained,
- prevention of significant deterioration (PSD) increments must be protected, and
- existing or future SIP requirements for visibility protection must be met.

The emissions balancing submittal must demonstrate that the emission limitations for both the affected and providing sources with the actual height and actual stack parameters are adequate to ensure attainment and maintenance of the NAAQS and applicable PSD increments. Any modeling used in this demonstration must conform to EPA's modeling guideline.[2]

7. In addition to any other emission limits, an annual emissions cap (tons per year) must be applied to the affected and providing sources as part of the SIP emission limits.

B. Calculation of Emissions Balances

1. The baseline from which emissions are reduced from the providing source must be the lesser of actual or allowable emissions. Actual emissions are determined by averaging the annual emissions of the providing source over the most recent 3 calendar years unless circumstances (e.g., the recent installation of a permanent control device) warrant a different period of record. Allowable emissions are those emissions allowed by a control strategy which is approved and currently

*This value will be established from a range of 1.2 to 2.0 depending upon public comment.

[1] The wording of this section will be developed after EPA selects one of the alternatives.

[2] *Guideline on Air Quality Modeling*, EPA-450/2-78-027, U.S. EPA, Research Triangle Park, North Carolina, April 1978 (or later editions)

considered by EPA as sufficient for providing for attainment of NAAQS.

2. Reductions from the providing source must be reductions obtained through installation of control equipment or use of lower sulfur fuels. Emission reductions from shutdowns, operation curtailments, intermittent or supplemental control strategies, or load shifting will not be acceptable for emissions balancing. Shutdowns or curtailments would represent only a shifting of production elsewhere (assuming constant demand), with attendant emission increases. Intermittent or supplemental control strategies and load shifting would present too difficult an enforcement problem to be acceptable for an emissions balance. If a providing source shuts down or curtails its operations at some later date, the emissions balance will be totally or partially negated, respectively, and the affected source must either arrange an emissions balance with another source or reduce its own emissions as explained in item C.3.

3. The emission reduction from the providing source calculated for an emissions balance may not be derived from a source control measure: (1) which is already an approved part of a SIP, (2) for which a commitment for reductions has been approved as a part of a SIP, (3) which has been proposed for adoption as a part of a SIP, or (4) which has been adopted at the State or local level as a necessary control measure. As explained in item C.2., however, the new emission limit on a providing source will become part of the SIP.

C. Procedural Requirements

1. Any emissions balance must be part of the SIP process, and any resulting emission limitations must be submitted to EPA as a SIP revision by October 8, 1986 (i.e., 15 months from promulgation of the stack height regulations). This requirement in no way extends the 9-month requirement for the SIP revision required by the regulations. Emissions balancing proposals must be open to public scrutiny, and the process must provide for full public participation as provided for by SIP revision procedures.

2. The emission limits resulting from the balance will be enforceable SIP limits for each source, and the balance must be incorporated into the SIP with an explanation of the interrelationship of both emission limits. The providing source may not increase its emissions until it is relieved of its obligation under the emissions balance agreement through the process of a SIP revision.

3. The SIP emission limit which is required by the stack height regulation for an affected source will remain in the SIP as a contingent emission limit which will become automatically effective and enforceable if the terms of the emissions balance are not met due to a possible curtailment or shutdown of a providing source. Consequently, the SIP must contain a contingency plan for an affected source to reduce its emissions to the limits required by the stack height regulation until another emissions balance can be arranged and submitted as a SIP revision. The plan could consist of a measure such as the substitution of low-sulfur fuel.

4. Emission reductions by a providing source which are currently used to meet any other requirements of the Act may not be creditable for an emissions balance. Likewise, emission reductions by a providing source which are used for an emissions balance may not be creditable for other purposes (e.g., to provide additional PSD increment).

5. This policy may not be used in any way to delay compliance with the stack height regulation revisions, such as to extend the SIP submission date or to postpone the final compliance date by which the emission reductions required by those regulations are to be achieved. Temporary balances may be used to extend the time period for emission reductions at the affected source, such as for installation of a control system; however, the emissions balance would have to take place by the original compliance date for the affected source

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Part IV

Environmental Protection Agency

40 CFR Part 61

Assessment of Trichloroethylene as a Potentially Toxic Air Pollutant; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[ADL-FRL-2889-5]

Assessment of Trichloroethylene as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice describes the results of EPA's preliminary assessment of Trichloroethylene (TCE) as a potentially toxic air pollutant. Based on the health and preliminary risk assessment described in today's notice, EPA now intends to add TCE to the list of hazardous air pollutants for which it intends to establish emission standards under section 112(b)(1)(A) of the CAA. The EPA will add TCE to the list if emission standards are warranted. The EPA will decide whether to add TCE to the list only after studying possible control techniques that might be used to control emissions of TCE and after further assessing public health risks. This notice has no effect on the regulation of TCE as a volatile organic compound in order to attain the national ambient air quality standards (NAAQS) for ozone. In addition, this notice does not preclude any State or local air pollution control agency from specifically regulating emission sources of TCE.

Through this notice, the Agency solicits information on the intent to list decision. The EPA also solicits information on the potential carcinogenicity of TCE, the potential noncarcinogenic adverse health effects of exposure to TCE, the effectiveness of controlling TCE emissions with control equipment, the current level of control of TCE sources, and current TCE emission estimates.

ADDRESSES: Submit written materials (duplicate copies are preferred) to: Central Docket Section (A-130), Environmental Protection Agency, Attn: Docket No. A-85-02, 401 M Street SW., Washington, DC. The docket may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

DATES: Written comments are to be submitted by February 21, 1986.

ADDRESSES: The final Health Assessment Document (HAD) for TCE is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. the National Technical Information Service number PB85-249696 should be used when ordering. Paper copies of the HAD are available for $28.95 (price code A-14), and microfiche copies are available for $5.95 (price code A-01). Prices are subject to change. For further information on the availability of this document, please contact: ORD Publications, CERI-FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (telephone: 513-684-7562 commercial/684-7562 FTS).

The source assessment document for TCE is also available through the National Technical Information Service and can be ordered at the address provided above. The order number PB86-107943/AS should be included when ordering. Paper copies are available for $16.95 (price code A-07) and microfiche copies are available for $5.95 (price code A-01). For additional information on the source assessment document, please contact Mr. Robert Rosensteel (telephone: 919-541-5671 commercial/629-5671 FTS).

The HAD was reviewed by the Science Advisory Board (SAB), an independent group of recognized scientists and technical experts that provide advice and critical review of scientific issues to the Administrator. The SAB comments are available from the SAB office (contact Cheryl Bentley, A-101F, U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460; phone 202-382-2560 commercial/382-2560 FTS). Transcripts of the SAB meetings are available for inspection and copying from the U.S. Environmental Protection Agency, Committee Management Staff. For additional information, please contact Janet Workcuff, PM-213, Room M2515, 401 M Street, S.W., Washington, D.C. 20460 (telephone 202-382-5036 commercial/382-5036 FTS).

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD-12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (telephone 919-541-5645 commercial/629-5645 FTS).

SUPPLEMENTARY INFORMATION:

Background

TCE is a solvent widely used in the industrial degreasing of metals, with secondary solvent uses in adhesive, paint, and polyvinyl chloride production. A previous use for TCE was as an inhalation anesthetic agent in certain surgical procedures, although this practice has been discontinued. The use of TCE can be separated into consumptive and solvent uses. Consumptive uses result in direct chemical alteration (i.e., PVC chain terminator) or export of the TCE while solvent uses employ TCE in nonconsumptive applications. In essentially every case of solvent use, the majority of the TCE employed (79-100%) is lost to the atmosphere through volatilization, with a relatively small amount (2-3%) released to ground and surface waters, and the remainder to incineration or solid waste disposal. Some of the TCE released to water bodies or disposal systems may volatilize and ultimately be released to the atmosphere.

In the atmosphere, TCE is photochemically reactive, with an estimated residence time (i.e., time to decrease in concentration to 37% of original amount) of 11 to 15 days. The estimated northern hemisphere average concentration is between 11 and 30 parts per trillion (ppt), with a gradient observed between urban and rural locations. The maximum measured concentration in the ambient air is 87 parts per billion (ppb) (2 hours) in Newark, New Jersey. The decomposition products include dichloroacetyl chloride, phosgene, carbon monoxide, hexachlorobutene and hydrochloric acid, with ozone produced through trichloroethylene-associated free radical reaction with nitrogen oxides. Given currently estimated emissions and the halflife of TCE in the atmosphere, public exposure to decomposition products of TCE is likely to be very low. While associated public health risks are difficult to quantify, such risks are also expected to be low. However, because other compounds which also undergo transformation in the atmosphere may contribute to atmospheric concentrations and associated public health risks, the Agency will continue to conduct research and examine monitoring information to better define potential public health risks.

TCE has certain chemical and physical properties which make it a desirable solvent for metal cleaning and for paint, adhesive, pesticide, pharmaceutical and fabric scouring uses. Due to environmental and health concerns, market factors such as increased replacement of metals by plastics and substitution of methyl chloroform and other solvents, production and use of TCE has declined. TCE production peaked in 1970 at 277,000 megagrams per year (Mg/yr). Production in 1983 is estimated at 65,700 Mg/yr.

A summary of TCE uses and source emissions for 1983 is provided in Table 1. The baseline emission estimates assume that the source categories meet

current State emission limitations for volatile organic compounds in order to comply with the national ambient air quality standards for ozone.

In January 1984 the Office of Research and Development's Office of Health and Environmental Assessment (OHEA) published a draft of the HAD for TCE. This document was reviewed by the SAB in May 1984, with a final letter forwarding comments by SAB on the HAD sent to the Administrator in December 1984. The final HAD for TCE, which incorporates comments and changes requested by the SAB, was printed in July 1985.

TABLE 1.—SUMMARY OF TRICHLOROETHYLENE USES AND SOURCE EMISSIONS [a]

Source category	Use (percent)	Baseline emissions to U.S. atmosphere [b] (Mg/yr)
Metal degreasing	85	52,600
Publicly owned treatment works	[c] N/A	1,450
Production facilities	N/A	102
Chemical plants	10	158
Drinking water treatment facilities	N/A	42
Miscellanous [d]	5	3,300
Total	100	57,500

[a] Estimates are for 1983 (EPA, 1985).
[b] Assumes controls currently in place to meet State VOC emission limitation requirements.
[c] Not applicable.
[d] Includes use in paints and coatings, adhesive formulations, and general solvent use.

Adverse Health Effects

A number of studies have been conducted to assess the health effects related to exposure to TCE. The majority of these studies have been compiled, reviewed and evaluated in HAD for Trichloroethylene.

Acute, subchronic and chronic exposure to TCE via inhalation, ingestion or dermal exposure is associated with a variety of adverse health effects in humans and animals. Acute exposure to TCE has been documented in human case histories to cause visual disturbances, mental confusion fatigue and nausea, increasing to unconsciousness and death at high concentrations. In a limited number of controlled human studies, headaches and decreases in performance ability for tests of perception, manual dexterity, reaction time and memory are associated with short-term exposures near the Occupational Safety and Health Administration Permissible Exposure Limit (OSHA-PEL) of 100 ppm, with a progressive decrease in psychomotor performance as TCE concentrations increase from 100 to 500 ppm.

The primary noncarcinogenic adverse health effect due to exposure to TCE is dysfunction of the central nervous system, with other effects observed on the liver, kidney and cardiovascular systems. Occasional hepatorenal toxicity in humans is associated with acute inhalation abuse. In limited epidemiological studies of chronically-exposed workers, symptoms related to nervous system disorders increased in frequency with both longer exposures and higher concentrations of TCE for concentrations ranging from 5 to 629 ppm. Symptoms resulting from acute to chronic exposure have been reported to be generally reversible, although permanent nervous system disorders have been documented as a result of long-term exposure. Data are lacking so that it is not possible to characterize the parameters of exposure beyond which irreversible damage occurs.

Evidence of the carcinogenicity of TCE evaluated in the HAD consists of several positive mouse studies (Inhalation: Bell et al., 1978; Henschler et al., 1980; Gavage: NCI, 1976; NTP, 1982) and one marginally positive gavage rat study (NTP, 1982). Several additional studies, (Inhalation: Fukuda et al., 1983; Maltoni, unpublished; Gavage: Henschler et al., 1984; NTP, unpublished; Maltoni, unpublished) including at least one inhalation study, received or reported since completion of the HAD, have not been fully evaluated, but at least two of these studies (Fukuda et al., 1983; Maltoni (inhalation), unpublished) are reported to be positive, with a positive response in more than one species in one of the studies. OHEA has indicated that the additional studies received since completion of the HAD will be incorporated into a future addendum to the HAD. The addendum will be reviewed by the SAB prior to a listing decision.

Of the studies evaluated in the HAD, the Henschler et. al. (1980) and Bell et. al. (1978) mouse studies and the NTP (1982) rat studies were judged to have defects which made their results inadequate to use in the quantitation of a unit risk value, although they do lend support to the overall weight of evidence evaluation of TCE carcinogenicity. The conclusion that TCE is a probable carcinogen is based on the findings of the NCI (1976) and NTP (1982) mouse studies, which were judged in the HAD to be scientifically adequate. These studies demonstrated treatment-related increases in the incidence of hepatocellular carcinonas (liver tumors) in both sexes of B6C3F1 mice. The NCI (1976) and NTP (1982) mouse gavage studies were, therefore, the studies used to assess the carcinogenicity of TCE in a quantitative fashion.

A number of human epidemiological studies have also been conducted and are reviewed in the HAD. While no association between TCE exposure and significant increases in human cancer were demonstrated, each of these studies was considered to have serious deficiencies and thus the epidemiologic data base is considered inadequate to evaluate the carcinogenic potential of TCE.

Using the criteria developed by the International Agency for Research on Cancer (IARC), the HAD concluded that the overall ranking of TCE could be either group 2B (i.e., a probable carcinogen for humans) or group 3 (i.e., cannot be classified as to its carcinogenicity for humans), depending on the evaluation of mouse liver tumors as being suggestive of human cancer. The SAB, in their review of the HAD, was unable to reach a definitive conclusion regarding the classification of TCE carcinogenicity.

While the SAB was deliberating their conclusions, EPA completed and published for review proposed Guidelines for Carcinogen Assessment. EPA announced at that time that the Agency would use those guidelines as interim measures. Using those guidelines, a Technical Committee of the Agency's Risk Assessment Forum classified TCE as category B2 (i.e., a probable human carcinogen). This classification of carcinogenicity was based on a finding of sufficient animal evidence (the proposed guidelines regard mouse liver tumors as sufficient evidence unless downgraded by a variety of factors which were not shown by the TCE results) and inadequate human data. The Agency's proposed Guidelines for Carcinogen Assessment have now received a favorable review by the SAB, with the HAD indicating that under these guidelines TCE is classified as a probable carcinogen (category B2).

Risks to Public Health

Estimates of human exposure to atmospheric TCE emitted from all point sources identified in the EPA (1985) source assessment document have been calculated using the Human Exposure Model. Maximum individual and annual incidence cancer risk estimates were also computed for the metal degreasing, publicly-owned treatment works, and miscellaneous source categories using a dispersion algorithm which assigns emissions to an area rather than to a point. The quantity of emissions assigned to an area is proportional to

the population density of that area, with certain assumptions permitting calculation of the risk estimates.

The upper-bound incremental unit risk estimate for air was derived from the geometric mean of the results from four sets of gavage bioassay data on hepatocellular carcinomas in male and female mice (NCI, 1976; NTP, 1982), there being no inhalation data available at the time the HAD was finalized. The unit risk factor is an upper-bound estimate of the additional probability that an individual will die from cancer resulting from continuous exposure to 1 microgram of TCE per cubic meter of inspired air (assuming a 70 year life-span). The upper-bound nature of the unit risk estimate is such that the true risk estimate for air (1.3×10^{-6}), the aggregate risk of cancer due to exposure to TCE for persons living within 50 kilometers of production sites or chemical plants or drinking water treatment facilities, and resulting from emissions from metal degreasing or publicly-owned treatment works or miscellaneous solvent uses, is 4.1 cases of cancer per year (Table 2). The highest individual risk estimate (defined as the additional risk of cancer to an individual continuously exposed to the highest modeled ambient concentration for a 70-year lifespan), is 9.4×10^{-5}. This analysis does not address potential risks associated with exposure via other media (i.e., food or water), the risks associated with exposure to background concentrations of TCE, or the summation of risks for individuals exposed to emission from area sources.

TABLE 2.—HEALTH RISK ESTIMATES FOR TRICHLOROETHYLENE SOURCE CATEGORIES

Source category	Annual incidence	Maximum individual risk[a]
Metal Degreasing[b]	3.8	9.4×10^{-5}
Publicly-owned treatment works[b]	0.08	3.5×10^{-6}
Production Facilities	0.0005	8.7×10^{-5}
Chemical Plants	0.0078	3.3×10^{-6}
Drinking Water Treatment Facilities	0.0007	1.2×10^{-5}
Miscellaneous[b, c]	0.2	8.0×10^{-6}
Total all sources	4.1	

[a] The maximum individual risk estimates do not include the summation of risks for individuals exposed to emissions from area sources, thus these risk estimates are likely to understate the risks to the most exposed individual.
[b] Area sources.
[c] Includes use in paints and coatings, adhesive formulations, and general solvent uses.

A study to estimate the cancer incidence rate resulting from ambient exposure to TCE and other chemicals has been reported by Hunt et al. (1984). In the Hunt study estimates of national cancer incidence rates and maximum individual risk were calculated on the basis of limited monitoring of urban and rural ambient concentrations of TCE. Using the Hunt technique, an aggregate incidence of 8.0 and a maximum individual risk of 2.6×10^{-5} were calculated. These estimates compare favorably with the modeling results presented above.

Risks to workers in facilities manufacturing or using TCE have not been estimated. However, if emission controls were applied to degreasers, it is likely that worker exposure to TCE will be reduced.

Current modeling information suggests that noncarcinogenic adverse health effects may occur in the vicinity of some production facilities. Using a worst-case modeling scenario, fenceline (200 meters from emission point) concentrations have been estimated at 60 ppm for an 8-hour averaging time and 2000 ppm for a 15-minute averaging time. As noted previously, the OSHA PEL is 100 ppm for an 8-hour averaging time, and adverse health effects such as task performance decrements have been reported as a result of exposure to TCE near this concentration. The American Conference of Governmental Industrial Hygienists (ACGIH) has recommended and eight hour Threshold Limit Value (TLV) of 50 ppm, and a Short Term Exposure Limit (STEL) of 150 ppm. In order to determine the extent to which these modeled concentrations reflect the potential for adverse health effects, it will be necessary to examine the sources in much more detail along with the distribution of population in the vicinity of facilities that emit TCE. Given the uncertainties of the present analysis, it is difficult to estimate the extent to which short-term emissions of TCE pose risks to public health. As the Agency moves forward toward a decision on the listing of TCE, efforts to refine this analysis and characterize the risk to populations from short-term exposures will be performed.

There are a number of assumptions underlying these estimates that can yield either over or underestimates of the risk posed by TCE. Further study and assessment will not likely narrow the uncertainties associated with some of the inputs to the risk assessment or yield an improvement in some of these assumptions (e.g., the carcinogenic potency of a chemical estimated through the use of a mathematical model for extrapolating animal studies to the much lower concentrations present in the ambient air). There are other inputs to the risk estimates that are very preliminary at the current stage of assessment and that will be substantially refined through further study. The primary example of this is the source information: number and types of sources, their locations, emission rates, stack parameters, variability of emissions, etc. Current source information is based on engineering estimates, data obtained under section 114 of the Clean Air Act, and other readily available information in the literature. This information, in many cases, will be improved through plant visits, and source tests. The Agency has concluded that the preliminary risk estimates presented here are sufficient to warrant further study for possible regulation. The Agency will improve these estimates, particularly with respect to emissions and exposure, before making a final decision on whether to add TCE to the list under section 112.

Statement of Intent

Section 112(b)(1)(A) of the CAA defines hazardous air pollutants as air pollutants that contribute to mortality or serious irreversible, or incapacitating reversible, illness. Section 112(b)(1)(A) provides that the Administrator shall maintain " . . . a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section." In deciding whether to establish such emission standards for carcinogens, EPA considers both public health risks and the feasibility and reasonableness of control techniques (e.g., 49 FR 23522, 23498, 23558 (June 6, 1984) (emission standards for benzene)).

Based on the health and preliminary risk assessment described in today's notice, EPA now intends to add TCE to the section 112(b)(1)(A) list. EPA will decide whether to add TCE to the list only after studying possible techniques that might be used to control emissions of TCE and after further improving the assessment of the public health risks. EPA will add TCE to the list if emission standards are warranted. EPA will publish this decision in the **Federal Register.**

If standards are not warranted under section 112 of the Clean Air Act, the Agency will consider other options as described in EPA's report, "A Strategy to Reduce Public Health Risks From Air Toxics," June 1985. For example, in that strategy EPA described other approaches for dealing with routine releases of toxic air pollutants from stationary sources such as working with State of local air pollution agencies to address problems that do not warrant Federal regulatory action but which account for elevated risks in some areas.

Standards Development Process

The following discussion has been prepared to provide the reader with an explanation of the standards development process and the timing of the process. The standards development process involves two phases, each taking about two years. The first phase is the identification of the emission sources and the need and ability to control those sources. The second phase involves Agency decisionmaking and public review prior to final action.

During the first phase, EPA identifies the sources that are significant emitters of the pollutant and the specific emission points within each source and then determines the quantities of pollution emitted, the alternative control systems available, and their cost and effectiveness in reducing emissions and associated public health risks. A set of alternative regulations is developed and the environmental, economic, energy, and public health risks are evaluated.

The first phase requires investigation of the many different ways in which a candidate pollutant can be emitted and controlled. As indicated earlier, TCE is emitted from production and chemical plant use of TCE, from drinking water treatment facilities, from metal degreasing and publicly owned treatment works, and from miscellaneous uses in paints and coatings, adhesive formulations, and general solvent use. Within a source category there is wide variation in designs, sizes, and processes. This variation affects the emission rates, the public health risks, and the cost and controllability of the pollutant. Assessment of source emissions and controls is further complicated by the fact that emissions are not necessarily contained in stacks or ducts (i.e., some are fugitive emissions) and emission test programs are technically difficult and costly.

The decisionmaking and review phase involves a series of EPA internal and external activities. Prior to publication of proposed rules, the Agency reviews all of the technical, cost, and exposure/risk data and makes decisions on the level of standards. The data and conclusions are reviewed publicly by an independent technical advisory committee. The standard is proposed for public comment. The comment period is open a minimum of two months and a public hearing is held, if requested. Following the comment period, Agency technical staff review the comments and resolve technical issues, an activity that often requires obtaining and analyzing new data.

Miscellaneous

TCE is currently listed as a hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Under section 101(14) of CERCLA, Reportable Quantities (RQs) are established for substances specified in the CERCLA, as well as substances listed or designated under certain sections of the Clean Water Act, the Resource Conservation and Recovery Act, the CAA (section 112) and the Toxic Substances Control Act (50 FR 13456; April 4, 1985). Section 103(a) of the CERCLA requires any release of TCE to the environment (including the air) that is equal to or greater than 1,000 pounds in any 24-hour period to be reported to the National Response Center [NRC] (Telephone 800-424-8802 or 202-426-2675 for the Washington DC, metropolitan area). The current RQ for TCE does not reflect consideration of its potential as a human carcinogen and is currently under review by the Agency. Since TCE is already listed under section 101(14) of the CERCLA, a decision to list TCE under section 112 of the CAA would not pose any additional reporting requirements.

Under Executive Order 12291, EPA must judge whether this action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it imposes no additional regulatory requirements on States or sources. This proposal was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB and any written EPA responses are available in the docket. Pursuant to 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl Chloride.

Dated: December 14, 1985.

Lee M. Thomas,

Administrator.

40 CFR Part 61 is amended as follows:

PART 61—[AMENDED]

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416 and 7601.

2. Section 61.01 paragraph (b) is revised by adding the following entry in the alphabetized list of substances.

§ 61.01 Lists of pollutants and applicability of Part 61.

* * * * *

(b) * * *

Trichloroethylene.	(49 FR [Page number]; [Date of publication]).

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[FR Doc. 85-30251 Filed 12-20-85; 8:45 am]
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federal register

Monday
December 23, 1985

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 4, 5, 6 etc.
Federal Acquisition Regulation; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 5, 6, 7, 10, 13, 15, 17, 19, 34, and 52

[Federal Acquisition Circular 84-13]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84–5, was published in the **Federal Register** on January 11, 1985 (50 FR 1726) as an interim rule and request for comment. As a result of public comments received the coverage was revised and is hereby published as a final rule.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Circular (FAC) 84–5 amended the FAR to implement the Competition in Contracting Act of 1984 (CICA). FAC 84–5 was published in the **Federal Register** on January 11, 1985 (50 FR 1726) as an interim rule and request for comment.

Having carefully considered all comments provided, the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulatory Council (DARC) have revised the interim CICA coverage. A summary of the major changes to the interim regulation follows:

a. FAR Subpart 4.6 is revised to require each agency to establish and maintain a computer file of information regarding the agency's procurements.

b. In FAR 5.202 the exceptions to the requirement to publish notices of proposed contract actions have been revised to clarify their relationship to the exceptions to full and open competition in FAR Part 6. In addition, the blanket exception to publicizing acquisitions outside the United States, its possessions, or Puerto Rico, has been replaced by FAR 5.202(a)(12), which restricts the exception to defense agencies' contracts that will be made and performed outside the United States, its possessions, or Puerto Rico when only local sources will be solicited.

c. The regulations in FAR 5.207(b) regarding the preparation of synopses have been revised to require that synopses contain a provision that reflects whether the solicitation requires an offeror, its product, or service meet a qualification requirement and identifies the office from which additional information about the qualification requirement may be obtained. In addition, FAR 5.207(b)(6) has been clarified to require that synopses contain a statement of the reason justifying other than full and open competition.

d. FAR 6.001, 6.302–5, and 19.809–1 have been revised to reflect changes made by Pub. L. 98–577 that contracts awarded under the Small Business Administration 8(a) program are excepted from the requirement for full and open competition under FAR 6.302–5, Authorized or Required by Statute. FAR 6.302–5(c)(2) states that such contracts need not be supported by written justifications and approvals.

e. The title of FAR 6.302–1 is revised to clarify that the first exception to providing for full and open competition applies when the required supplies or services are available from only one responsible source and no other supplies or services will satisfy agency requirements. Further, the subsection is amended to clarify the exception's specific application to unsolicited research proposals and follow-on contracts and possible application to other listed examples.

f. FAR 6.303–1 is revised to require that contracting officers ensure and document that each contract action not providing for full and open competition taken pursuant to the authority of a class justification and approval is within the scope of that class justification and approval. Further, FAR 6.303-2, which specifies the contents of justifications, is revised to include information regarding the publicizing of the requirement in the Commerce Business Daily.

g. FAR 6.304 is revised to clarify that contracts not exceeding $25,000 do not require approval of the justification for other than full and open competition, and to require the inclusion of the estimated dollar value of all options in determining the approval level of justifications.

h. FAR Part 7 is revised to clarify that agencies are required to perform acquisition planning and market surveys for all acquisitions, and to remove the requirement for concurrence in the plan by the cognizant competition advocate. Coordination by this official is still required.

i. FAR 10.002(b) required that defense agencies include descriptions of agency requirements, whenever practicable, to be stated in terms of functions to be performed or performance required. This preference for functional or performance specifications has been revised to apply governmentwide, rather than just to defense agencies.

j. FAR Subpart 15.5 prescribes the policies and procedures for the submission, receipt, evaluation, and acceptance of unsolicited proposals. This coverage is revised to specify that the subpart does not govern the competitive selection of basic research proposals and to refer the reader to FAR Subpart 6.3.

k. FAR 15.1001 discusses notifications to unsucessful offerors. FAR 15.1001(a) is revised to remove the exceptions to notifying unsuccessful offerors that had been inadvertently retained in the interim rule.

l. FAR Part 34, Major System Acquisition, requires agencies to sustain effective competition between alternative system concepts and sources. In order to clarify this requirement, the definition of effective competition has been added to FAR 34.001.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 et seq. and have been assigned clearance number 9000–0013 (see FAR 1.105).

C. Final Regulatory Flexibility Act Analysis

FAC 84–13, Item I, Competition in Contracting Act of 1984, amends the FAR to implement Pub. L. 98–369, the Competition in Contracting Act of 1984 (CICA), and sections 302 and 303 of Pub. L. 98–577, Small Business and Federal Competition Enhancement Act of 1984. Under the new coverage, agencies will be required to provide for full and open competition by soliciting sealed bids or requesting competitive proposals, or use other competitive procedures, unless a statutory exemption permits other than full and open competition. There are new justification, approval, and notice requirements for contracts employing other than full and open competition. This coverage also requires the appointment of competition advocates and enumerates their responsibilities.

Because of the tight statutory deadlines for implementation of the

Acts and the significant changes to the basic statutes underlying the Federal procurement systems, a notice was published in the **Federal Register** on July 25, 1984 (49 FR 29982) requesting Government agencies, private firms, associations, and the general public to submit comments to be considered in the formulation of the initial implementation of CICA in the FAR.

On October 1, 1984, a **Federal Register** (49 FR 38680) notice was published making available for comment, changes to the FAR implementing the CICA. Copies of the draft proposal were sent to Government agencies, private firms, and associations.

On October 3, 1984, a **Federal Register** (49 FR 39151) notice was published announcing the CAAC and DARC would hold a public meeting on proposed changes to the FAR resulting from CICA.

On January 11, 1985, an interim rule and request for comment was published in the **Federal Register** (50 FR 1726) with respect to FAR changes required to implement CICA.

As a result of the notices and public meeting, over 250 comments were received and considered. No comments were received from small entities indicating that the coverage would have a significant economic impact.

This coverage will have a beneficial impact on a substantial number of small entities, since it will increase competitive opportunities for those entities by restricting the award of noncompetitive contract actions to those situations specifically authorized by statute, and by requiring public announcement, with limited exceptions, of all proposed contract actions. These changes will provide small entities with the opportunity to respond to and be considered for all such contract actions including those publicized as noncompetitive.

List of Subjects in 48 CFR Parts 4, 5, 6, 7, 10, 13, 15, 17, 19, 34, 52

Government procurement.

Dated: December 19, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84–13]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–13 is effective February 3, 1986.

Eleanor R. Spector,

Deputy Assistant, Secretary of Defense for Procurement.

December 18, 1985.

[Number 84–13]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive materials contained in FAC 84–13 is effective February 3, 1986.

Terence C. Golden,

Administrator.

[Number 84–13]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–13 is effective February 3, 1986.

S.J. Evans,

Assistant Administrator for Procurement.

Federal Acquisition Circular (FAR) 84–13 amends the Federal Acquisition Regulation (FAR) as specified below.

Item I—Competition in Contracting Act of 1984

The Competition in Contracting Act of 1984 (CICA), Title VII of Pub. L. 98–369, substantially changes the basic statutes underlying the Federal acquisition system. Any solicitation for bids or proposals issued on or after April 1, 1985, was required to comply with CICA's new requirements.

Therefore, 48 CFR Parts, 4, 5, 6, 7, 10, 13, 15, 17, 19, 34, and 52 are amended as follows:

Chapter 1 of Title 48, Code of Federal Regulations, the interim rule, published on January 11, 1985 (50 FR 1726–1753) is adopted as a final rule with the following changes:

1. The authority for Parts, 4, 5, 6, 7, 10, 13, 15, 17, 19, 34, and 52 continues to read as follows:

Authority: 40 U.S.C. 485(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

PART 4—ADMINISTRATIVE MATTERS

4.601 [Redesignated as 4.602]

2. Section 4.601 is redesignated as section 4.602, and a new section 4.601 is added to read as follows:

4.601 Record requirements.

(a) Each executive agency shall establish and maintain for a period of 5 years a computer file, by fiscal year, containing unclassified records of all procurements, other than small purchases.

(b) with respect to each procurement carried out using competitive procedures, agencies shall be able to access from the computer file, as a minimum, the following information:

(1) The date of contract award.

(2) Information identifying the source to whom the contract was awarded.

(3) The property or services obtained by the Government under the procurement.

(4) The total cost of the procurement.

(5) Those procurements which result in the submission of a single bid or proposal so that they can be separately categorized and designated noncompetitive procurements using competitive procedures.

(c) In addition to paragraph (b) above with respect to each procurement carried out using procedures other than competitive procedures, agencies shall be able to access from the computer file—

(1) The reason under Subpart 6.3 for the use of such procedures; and

(2) The identity of the organization or activity which conducted the procurement.

(d) This information shall be transmitted to the Federal Procurement Data System in accordance with agency procedures.

PART 5—PUBLICIZING CONTRACT ACTIONS

3. Section 5.002 is revised to read as follows:

5.002 Policy.

Contracting officers shall publicize contract actions in order to—

(a) Increase competition;

(b) Broaden industry participation in meeting Government requirements; and

(c) Assist small business concerns, small disadvantaged business concerns, and labor surplus area concerns in obtaining contracts and subcontracts.

4. Section 5.101 is amended by revising the introductory text of paragraph (a) to read as follows:

5.101 Methods of disseminating information.

(a) Except as provided in 5.202, contracting officers shall disseminate information on proposed contract actions expected to exceed $10,000 by—

* * * * *

5. Section 5.201 is amended by revising paragraphs (a) and (b) to read as follows:

5.201 General.

(a) As required by the Small Business Act (15 U.S.C. 637(c)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), agencies shall furnish for publication in the Commerce Business Daily (CBD) notices of proposed

contract actions expected to exceed $10,000 as specified below.

(b) For acquisitions of supplies and services other than those covered by the exceptions in 5.202, and special situations in 5.205, the contracting officer shall transmit a notice to the CBD (synopsis) (see 5.207) for each proposed—

* * * * *

6. Section 5.202 is amended by revising the introductory text and paragraph (a) to read as follows:

5.202 Exceptions.

The contracting officer need not submit the notice required by 5.201 when—

(a) The contracting officer determines that—

(1) The synopsis cannot be worded to preclude disclosure of an agency's needs and such disclosure would compromise the national security (e.g., would result in disclosure of classified information). The fact that a proposed solicitation or contract action contains classified information, or that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception to synopsis;

(2) The contract action is made under the conditions described in 6.302-2 and the Government would be seriously injured if the agency complies with the time periods specified in 5.203(a) (see also 5.203(b));

(3) The contract action is one for which either the written direction of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, or the terms of an international agreement or treaty between the United States and a foreign government or international organizations, has the effect of requiring that the acquisition shall be from specified sources;

(4) The contract action is expressly authorized or required by a statute to be made through another Government agency, including acquisitions from the Small Business Administration (SBA) using the authority of section 8(a) of the Small Business Act, or from a specified source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped;

(5) The contract action is for utility services other than telecommunications services and only one source is available;

(6) The contract action is an order placed under a requirements contract;

(7) The contract action results from acceptance of a proposal under the Small Business Innovation Development Act of 1982 (Pub. L. 97-219);

(8) The contract action results from the acceptance of an unsolicited research proposal that demonstrates a unique and innovative research concept and publication of any notice would improperly disclose the originality of thought or innovativeness of the proposed research, or would disclose proprietary information associated with the proposal;

(9) The contract action is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable;

(10) The contract action is made under conditions described in 6.302-3, or 6.302-5 with regard to brand name commercial items for authorized resale, or 6.302-7, and advance notice is not appropriate or reasonable;

(11) The contract action is made under the terms of an existing contract that was previously synopsized in sufficient detail to comply with the requirements of 5.207 with respect to the current contract action; or

(12) The contract action is by a Defense agency and the contract action will be made and performed outside the United States, its possessions, or Puerto Rico, and only local sources will be solicited.

* * * * *

7. Section 5.203 is revised to read as follows:

5.203 Publicizing and response time.

Whenever agencies are required to publish notice of contract actions under 5.201, they shall proceed as follows:

(a) A notice of the contract action shall be published in the CBD at least 15 days before issuance of a solicitation.

(b) Agencies shall allow at least 30 days response time for receipt of bids or proposals from the date of issuance of a solicitation.

(c) Agencies shall allow at least 30 days response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar arrangement.

(d) Agencies shall allow at least 45 days response time for receipt of bids or proposals from the date of publication of the notice required in 5.201 for contract actions categorized as research and development.

(e) Nothing in this subpart prohibits officers or employees of agencies from responding to requests for information.

(f) Contracting officers may, unless they have evidence to the contrary, presume that notice has been published 10 days (6 days if electronically transmitted) following transmittal of the synopsis to the CBD.

8. Section 5.205 is amended by revising paragraph (c) to read as follows:

5.205 Special situations.

* * * * *

(c) *Architect-engineer services.* Except when exempted by 5.202, contracting officers shall publicize notices of intent to contract for architect-engineer services as follows:

(1) Synopsize each proposed contract action for which the total fee (including phases and options) is expected to exceed $10,000.

(2) When the total fee is not expected to exceed $10,000, the contracting officer may display a notice of the proposed contract action at the contracting office and use other optional publicizing methods authorized by 5.101(b).

* * * * *

9. Section 5.207 is amended by revising paragraphs (b)(4)(iv) and (b)(6) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(b) * * *

(4) * * *

(iv) Specification and whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and identification of the office from which additional information about the qualification requirement may be obtained (see Subpart 9.2).

* * * * *

(6) In the case of a contract action under Subpart 6.3, insert a statement of the reason justifying other than full and open competition, and the identity of the intended source(s) (see 5.207(d)(3)).

* * * * *

10. Section 5.301 is revised to read as follows:

5.301 General.

Except for classified contract actions that were synopsized in accordance with 5.202(a), contracting officers shall synopsize in the CBD awards exceeding $25,000 that are likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

PART 6—COMPETITION REQUIREMENTS

11. Section 6.001 is revised to read as follows:

6.001 Applicability

This part applies to all acquisitions except—

(a) Contracts awarded using the small purchase procedures of Part 13;

(b) Contracts awarded using contracting procedures (other than those addressed in this part) that are expressly authorized by statute;

(c) Contract modifications that are within the scope and under the terms of an existing contract;

(d) Orders placed under requirements contracts or definite-quantity contracts; or

(e) Orders placed under indefinite-quantity contracts that were entered into pursuant to this Part when—

(1) The contract was awarded under Subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements contained in the order; or

(2) The contract was awarded under Subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order.

12. Sections 6.302, 6.302–1, 6.302–2, 6.302–3, 6.302–4, 6.302–5, 6.302–6, and 6.302–7, are revised to read as follows:

6.302 Circumstances permitting other than full and open competition.

The following statutory authorities (including applications and limitations) permit contracting without providing for full and open competition. Requirements for justifications to support the use of these authorities are in 6.303.

6.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(1) or 41 U.S.C. 253(c)(1).

(2) When the supplies or services required by the agency are available from only one responsible source and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for.

(i) Supplies or services may be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique and innovative concept the substance of which (A) is not otherwise available to the Government, and (B) does not resemble the substance of a pending competitive acquisition. (See 10 U.S.C. 2304(d)(1)(A) or 41 U.S.C. 253(d)(1)(A).)

(ii) Supplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, including major components thereof, when it is likely that award to any other source would result in (A) substantial duplication of cost to the Government that is not expected to be recovered through competition, or (B) unacceptable delays in fulfilling the agency's requirements. (See 10 U.S.C. 2304(d)(1)(B) or 41 U.S.C. 253(d)(1)(B).)

(b) *Application.* This authority shall be used, if appropriate, in preference to the authority in 6.302–7; it shall not be used when any of the other circumstances is applicable. Use of this authority may be appropriate in situations such as the following (these examples are not intended to be all-inclusive and do not consitute authority in and of themselves):

(1) When there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by unique supplies or services available from only one source or only one supplier with unique capabilities.

(2) The existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances, make the supplies and services available from only one source (however, the mere existence of such rights or circumstances does not in and of itself justify the use of these authorities) (see Part 27).

(3) When acquiring electric power or energy, gas (natural or manufactured), water, or other utility services, circumstances may dictate that only one supplier can furnish the service (see 8.304–5(d)); or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system.

(4) When the agency head has determined in accordance with the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items, and only one source is available.

(c) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

(2) For contracts awarded using this authority, the notices required by 5.201 shall have been published and any bids and proposals must have been considered. (See 15.402(g).)

§ 6.302–2 Unusual and compelling urgency.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(2) or 41 U.S.C. 253(c)(2).

(2) When the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.

(b) *Application.* This authority applies in those situations where (1) an unusual and compelling urgency precludes full and open competition, and (2) delay in award of a contract would result in serious injury, financial or other, to the Government.

(c) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304. These justifications may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.

(2) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

6.302–3 Industrial mobilization; or engineering, developmental, or research capability.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(3) or 41 U.S.C. 253(c)(3).

(2) Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order (i) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization, or (ii) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

(b) *Application.* (1) Use of the authority in paragraph (a)(2)(i) above may be appropriate when it is necessary to—

(i) Keep vital facilities or suppliers in business or make them available in the event of a national emergency;

(ii) Train a selected supplier in the furnishing of critical supplies or services, prevent the loss of a supplier's ability and employees' skills, or maintain active engineering, research, or development work;

(iii) Maintain properly balanced sources of supply for meeting the

requirements of acquisition programs in the interest of industrial mobilization (when the quantity required is substantially larger than the quantity that must be awarded in order to meet the objectives of this authority, that portion not required to meet such objectives will be acquired by providing for full and open competition as appropriate under this part);

(iv) Limit competition for current acquisition of selected supplies or services approved for production planning under the Department of Defense Industrial Preparedness Program to planned producers with whom industrial preparedness agreements for those items exist, or limit award to offerors who agree to enter into industrial preparedness agreements;

(v) Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in the United States or the United States and Canada;

(vi) Continue in production, contractors that are manufacturing critical items, where there would otherwise be a break in production;

(vii) Divide current production requirements among two or more contractors to provide for an adequate industrial mobilization base; or

(viii) Acquire items covered by Subpart 8.2, Jewel Bearings and Related Items.

(2) Use of the authority in paragraph (a)(2)(ii) above may be appropriate when it is necessary to—

(i) Establish or maintain an essential capability for theoretical analyses, exploratory studies, or experiments in any field of science or technology;

(ii) Establish or maintain an essential capability for engineering or developmental work calling for the practical application of investigative findings and theories of a scientific or technical nature; or

(iii) Contract for supplies or services as are necessary incident to paragraphs (b)(2)(i) or (ii) above.

(c) *Limitations.* Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

6.302-4 International agreement.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(4) or 41 U.S.C. 253(c)(4).

(2) Full and open competition need not be provided for when precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government.

(b) *Application.* This authority may be used in circumstances such as—

(1) When a contemplated acquisition is to be reimbursed by a foreign country that requires that the product be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance; or

(2) When a contemplated acquisition is for services to be performed, or supplies to be used, in the sovereign territory of another country and the terms of a treaty or agreement specify or limit the sources to be solicited.

(c) *Limitations.* Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

6.302-5 Authorized or required by statute.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(5) or 41 U.S.C. 253(c)(5).

(2) Full and open competition need not be provided for when (i) a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, or (ii) the agency's need is for a brand name commercial item for authorized resale.

(b) *Application.* This authority may be used when statutes, such as the following, expressly authorize or require that acquisition be made from a specified source or through another agency:

(1) Federal Prison Industries (UNICOR)—18 U.S.C. 4124 (see Subpart 8.6);

(2) Qualified Nonprofit Agencies for the Blind or other Severely Handicapped—41 U.S.C. 46–48c (see Subpart 8.7);

(3) Government Printing and Binding—44 U.S.C. 501–504, 1121 (see Subpart 8.8); or

(4) 8(a) Program—15 U.S.C. 637 (see Subpart 19.8).

(c) *Limitations.* (1) The authority in paragraph (a)(2)(ii) above may be used only for purchases of brand-name commercial items for resale through commissaries or other similar facilities. Ordinarily, these purchases will involve articles desired or preferred by customers of the selling activities (but see 6.301(d)).

(2) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304, except for those contracts awarded under paragraphs (b)(2) and (b)(4) above.

6.302-6 National security.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(6) or 41 U.S.C. 253(c)(6).

(2) Full and open competition need not be provided for when the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

(b) *Application.* This authority may be used for any acquisition when disclosure of the Government's needs would compromise the national security (e.g., would violate security requirements); it shall not be used merely because the acquisition is classified, or merely because access to classified matter will be necessary to submit a proposal or to perform the contract.

(c) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

(2) See 5.202(a)(1) for synopsis requirements.

(3) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

6.302-7 Public interest.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(7) or 41 U.S.C. 253(c)(7).

(2) Full and open competition need not be provided for when the agency head determines that it is not in the public interest in the particular acquisition concerned.

(b) *Application.* This authority may be used when none of the other authorities in 6.302 apply.

(c) *Limitations.* (1) A written determination to use this authority shall be made in accordance with Subpart 1.7, by (i) the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Transportation for the Coast Guard, or the Administrator of the National Aeronautics and Space Administration; or (ii) the head of any other executive agency. This authority may not be delegated.

(2) The Congress shall be notified in writing of such determination not less than 30 days before award of the contract.

(3) If required by the head of the agency, the contracting officer shall perpare a justification to support the determination under paragraph (c)(1) above.

(4) This Determination and Finding (D & F) shall not be made on a class basis.

13. Section 6.303-1 is amended by revising paragraph (c) as follows:

6.303-1 Requirements.

* * * * *

(c) Justifications required by paragraph (a) above may be made on an individual or class basis. Any justification for contracts awarded under the authority of 6.302-7 shall only be made on an individual basis. Whenever a justification is made and approved on a class basis, the contracting officer must ensure that each contract action taken pursuant to the authority of the class justification and approval is within the scope of the class justification and approval and shall document the contract file for each contract action accordingly.

* * * * *

14. Section 6.303-2 is amended by revising paragraphs (a)(6) and (a)(9)(ii) to read as follows:

6.303-2 Content.

* * * * *

(a) * * *

(6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a CBD notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.

* * * * *

(9) * * *

(ii) When 6.302-1 is cited for follow-on acquisitions as described in 6.302-1(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

* * * * *

15. Section 6.304 is amended by revising paragraph (a)(1) and adding paragraph (d) to read as follows:

6.304 Approval of the justification.

(a) * * *

(1) For a proposed contract not exceeding $100,000, at a level above the contracting officer. This approval is not required for—

(i) Contracts under the authority cited in 6.302-4 or 6.302-5;

(ii) Contracts for electric power or energy, gas (natural or manufactured), water, or other utility services when such services are available from only one source;

(iii) Contracts for educational services from nonprofit institutions; or

(iv) Contracts not exceeding $25,000.

* * * * *

(d) The estimated dollar value of all options shall be included in determining the approval level of a justification.

PART 7—ACQUISITION PLANNING

16. Section 7.102 is revised to read as follows:

7.102 Policy.

Agencies shall perform acquisition planning and conduct market surveys for all acquisitions in order to promote and provide for full and open competition (see Part 6), or, when full and open competition is not required in accordance with Part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies and services to be acquired (10 U.S.C. 2301(a)(5) and 41 U.S.C. 253A(a)(1)). This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. Agencies that have a detailed acquisition planning system in place that generally meets the requirements of 7.104 and 7.105 need not revise their system to specifically meet all of these requirements.

17. Section 7.104 is amended by revising paragraph (c) to read as follows:

7.104 General procedures.

* * * * *

(c) The planner shall coordinate with and secure the concurrence of the contracting officer in all acquisition planning. If the plan proposes using other than full and open competition, the plan shall also be coordinated with the cognizant competition advocate.

* * * * *

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

18. Section 10.002 is amended by revising paragraph (b) to read as follows:

10.002 Policy.

* * * * *

(b) Acquisition policies and procedures shall require descriptions of agency requirements, whenever practicable, to be stated in terms of functions to be performed or performance required.

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

19. Section 13.103 is amended by revising paragraph (b) to read as follows:

13.103 Policy.

* * * * *

(b) Small purchase procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the small purchase limitation even though resulting awards do not exceed that limit. Requirements aggregating more than the small purchase dollar limitation shall not be broken down into several purchases that are less than the limit merely to permit the use of small purchase procedures.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

20. Section 15.500 is revised to read as follows:

15.500 Scope of subpart.

This subpart prescribes policies and procedures for submission, receipt, evaluation, and acceptance of unsolicited proposals. It does not govern the competitive selection of basic research proposals (see 6.102(d)(2)).

21. Section 15.502 is revised to read as follows:

15.502 Policy.

Agencies may accept unsolicited proposals in accordance with 15.507. To award a contract based on an unsolicited proposal without providing for full and open competition requires that appropriate authority exists in subpart 6.3. In this connection, 6.302-1(a)(2)(i) provides special authority for unsolicited research proposals.

22. Section 15.303 is amended by revising paragraph (c)(5) to read as follows:

15.503 General.

* * * * *

(c) * * *

(5) Not be an advance proposal for a known agency requirement that can be acquired by competitive methods.

* * * * *

23. Section 15.507 is amended by adding the following sentence at the end of paragraph (b)(5) to read as follows:

15.507 Contracting methods.

* * * * *

(b) * * *

(5) * * * (For unsolicited research proposals, see 6.302-1(a)(2)(i). A valid unsolicited proposal for other than research may be accepted only if otherwise permissible under other provisions of Subpart 6.3.)

* * * * *

24. Section 15.1001 is amended by revising paragraphs (a) and (b)(2) to read as follows:

15.1001 Notifications to unsuccessful offerors.

(a) *General.* The Contracting officer shall promptly notify each offeror whose

proposal is determined to be unacceptable or whose offer is not selected for award, unless disclosure might prejudice the Government's interest.

(b) * * *

(2) In a small business set-aside (see Subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall inform each unsuccessful offeror in writing of the name and location of the apparent successful offeror. The notice shall also state that (i) the Government will not consider subsequent revisions of the unsuccessful proposal and (ii) no response is required unless a basis exists to challenge the small business size status of the apparently successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay.

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

25. Section 17.207 is amended by revising paragraph (g) to read as follows:

17.207 Exercise of options.

* * * * *

(g) The contract modification or other written document which notifies the contractor of the exercise of the option shall cite the option clause as authority.

26. Section 17.602 is amended by revising paragraph (a) to read as follows:

17.602 Policy.

(a) Heads of agencies, with requisite statutory authority, may determine in writing to authorize contracting officers to enter into or renew any management and operating contract in accordance with the agency's statutory authority, or the Competition in Contracting Act of 1984, and the agency's regulations governing such contracts. This authority shall not be delegated. Every contract so authorized shall show its authorization upon its face.

* * * * *

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

27. Section 19.809-1 is amended by revising paragraph (b)(1) to read as follows:

19.809-1 General.

* * * * *

(b) * * *

(1) The award form shall cite 41 U.S.C. 253(c)(5) or 10 U.S.C. 2304(c)(5) (as appropriate) as the authority for use of other than full and open competition.

* * * * *

PART 34—MAJOR SYSTEM ACQUISITION

28. Section 34.001 is amended by adding in alphabetical sequence the following definition:

34.001 Definitions.

"Effective competition," as used in this part, is a market condition which exists when two or more contractors, acting independently, actively contend for the Government's business in a manner which ensures that the Government will be offered the lowest cost or price alternative or best technical design meeting its minimum needs.

* * * * *

29. Section 34.002 is amended by revising paragraphs (a) and (b) to read as follows:

34.002 Policy.

* * * * *

(a) Promote innovation and full and open competition as required by Part 6 in the development of major system concepts by (1) expressing agency needs and major system acquisition program objectives in terms of the agency's mission and not in terms of specified systems to satisfy needs, and (2) focusing agency resources and special management attention on activities conducted in the initial stage of major programs; and

(b) Sustain effective competition between alternative system concepts and sources for as long as it is beneficial.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

30. Section 52.214-19 is amended by removing in the title of the provision the date "(APR 1985)" and inserting in its place the date "(FEB 1986)"; and by revising paragraph (a) of the provision to read as follows:

52.214-19 Contract Award—Sealed Bidding—Construction.

* * * * *

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

* * * * *

31. Section 52.245-16 is amended to correct the heading and text that appeared incorrectly in the interim rule as follows:

52.245-16 Facilities Equipment Modernization.

As prescribed in 45.302-7(e), insert the following clause:

* * * * *

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S. 727/Pub. L. 99-186

To clarify the application of the Public Utility Holding Company Act of 1935 to encourage cogeneration activities by gas utility holding company systems. (Dec. 18, 1985; 1 page) Price: $1.00

S. 1116/Pub. L. 99-187

To amend the Act of October 15, 1982, entitled "An Act to designate the Mary McLeod Bethune Council House in Washington, District of Columbia, as a national historic site, and for other purposes. (Dec. 18, 1985; 2 pages) Price: $1.00

H.J. Res. 485/Pub. L. 99-188

Waiving the printing on parchment of enrolled bills and joint resolutions during the remainder of the first session of the Ninety-ninth Congress. (Dec. 18, 1985; 1 page) Price: $1.00

H.R. 3981/Pub. L. 99-189

To extend until December 19, 1985, the application of certain tobacco excise taxes, trade adjustment assistance, certain medicare reimbursement provisions, and borrowing authority under the railroad unemployment insurance program. (Dec. 18, 1985; 1 page) Price: $1.00

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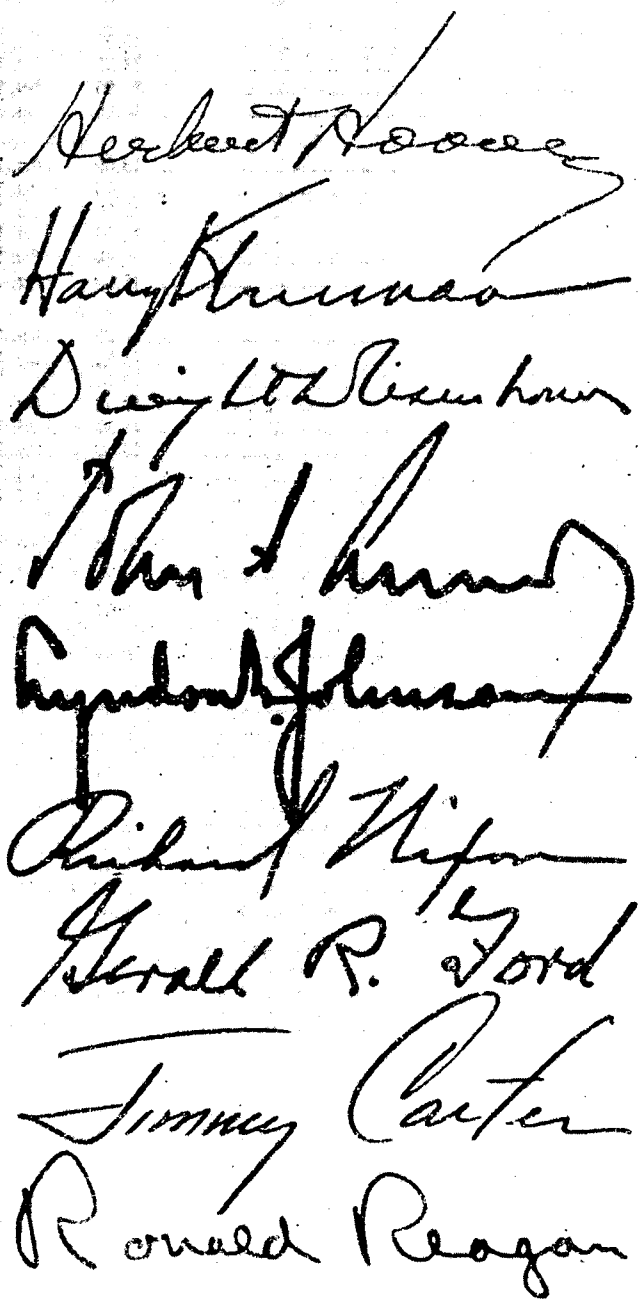
[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



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