Vol. 44—No. 22
1-31-79
PAGES
6083-6346

FEDERAL REGISTER

WEDNESDAY, JANUARY 31, 1979

highlights

OLDER AMERICANS PROGRAM
HEW/HDSO proposes regulations governing grants to Indian tribes for community programs and multipurpose senior centers and to develop regulations for State and community programs on aging; comments by 4-2-79 (2 documents) 6155

VETERANS
VA announces availability of summary reports evaluating exchange of medical information and burial benefits programs (2 documents) 6243, 6244

CHILD-RESISTANT PACKAGING
CPSC exempts from standards erythromycin ethylsuccinate granules or oral suspensions, proposes to exempt erythromycin ethylsuccinate tablets and colestipol, and withdraws proposed exemption for Ogen; effective 1-31-79; comments by 4-2-79 (4 documents) (Part III of this issue) 6340, 6343-6345

SECURITIES
SEC issues temporary rule, rule amendments and interpretations regarding transactions by Members of National Securities Exchanges; effective 2-1-79; comments by 4-1-79 6084

INSURED STATE NONMEMBER BANKS
FDIC proposes rule regarding establishment and operation of foreign branches and acquisition of Shares of foreign entities; comments by 3-2-79 6130

POWERPLANT AND INDUSTRIAL FUEL USE ACT
DOE/ERA announces availability of proposed guidelines for environmental reports; comments by 3-26-79 6177

NATURAL GAS POLICY ACT OF 1978
DOE/FERC establishes guidelines regarding format and number of copies to be followed in complying with filing requirements; effective 2-5-79 6094

CLEAN AIR ACT
EPA proposes rules establishing requirements of and procedures to be used in issuing initial primary nonferrous smelter orders; comments by 4-1-79; hearings on 3-6, 3-7, 3-9, and 3-15-79 (Part II of this issue) 6284

CONTROL OF AIR POLLUTION
EPA amends regulations to adjust light-duty truck class definition pertaining to frontal area; effective 1-31-79 6097

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
Interior/SMRE announces availability of final programmatic environmental impact statement 6096

CONTINUED INSIDE

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA//FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

***NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

federal register

Area Code 202 Phone 523-5240

Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C., Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $5.00 per month or $50 per year, payable in advance. The charge for individual copies is 75 cents for each issue, or 75 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER.

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing **202-523-5240.**

FEDERAL REGISTER, Daily Issue:

Subscription orders (GPO)	202-783-3238
Subscription problems (GPO)	202-275-3054
"Dial - a - Reg" (recorded summary of highlighted documents appearing in next day's issue).	
Washington, D.C.	202-523-5022
Chicago, Ill	312-663-0884
Los Angeles, Calif	213-688-6694
Scheduling of documents for publication.	202-523-3187
Photo copies of documents appearing in the Federal Register.	523-5240
Corrections	523-5237
Public Inspection Desk	523-5215
Finding Aids	523-5227
Public Briefings: "How To Use the Federal Register."	523-5235
Code of Federal Regulations (CFR)	523-3419 523-3517
Finding Aids	523-5227

PRESIDENTIAL PAPERS:

Executive Orders and Proclamations.	523-5233
Weekly Compilation of Presidential Documents.	523-5235
Public Papers of the Presidents	523-5235
Index	523-5235

PUBLIC LAWS:

Public Law numbers and dates	523-5266 523-5282
Slip Law orders (GPO)	275-3030
U.S. Statutes at Large	523-5266 523-5282
Index	523-5266 523-5282
U.S. Government Manual	523-5230
Automation	523-3408
Special Projects	523-4534

HIGHLIGHTS—Continued

TOXIC SUBSTANCES CONTROL ACT

EPA revokes rule requiring submission of lists and copies of health and safety studies on certain chemical substances 6099

PESTICIDES

EPA establishes tolerances for residues of a certain insecticide in or on cottonseed and the fat of milk, cattle, goats, hogs, horses, and sheep; effective 1-31-79 6098

LEGAL AND GOVERNMENTAL STUDIES

HEW/National Institute of Education announces decision to develop interim final rules for a research grants program 6156

COLLECTION OF INFORMATION AND DATA ACQUISITION

HEW/Ass't Sec'y publishes proposed activities that would request information from educational agencies or institutions; comments by 3-2-79 6200

UNIFORM FEDERAL ADP STANDARDS

Commerce/NBS recommends interpretation number 5 to Federal Standard COBOL; comments by 5-1-79 6174

IMPROVING GOVERNMENT REGULATIONS

EEOC publishes semiannual agenda 6199

Interior/Sec'y publishes semiannual agenda of rules scheduled for review or development from January to June 1979 6214

U.S.-EUROPEAN ATOMIC ENERGY COMMUNITY ADDITIONAL AGREEMENT

DOE/Office of Assistant Secretary for International Affairs proposes subsequent arrangement regarding furnishing of nuclear material to Italy 6196

U.S.-INTERNATIONAL ATOMIC ENERGY AGENCY COOPERATION AGREEMENT

DOE/Office of Assistant Secretary for International Affairs proposes subsequent arrangement involving transfer of material for evaluation (SALE) program 6196

IMPORTATION OF DOGS AND CATS

HEW/PHS proposes to eliminate inspection requirements for wild dogs and cats, vaccination requirements for wild dogs and to modify rabies vaccination requirements for domestic dogs 6155

DISINSECTING OF AIRCRAFT

HEW/PHS proposes to eliminate routine disinsecting of aircraft on certain international flights landing at U.S.-controlled airports and to impose certain recommendation, registration, and use requirements on insecticide formulations 6155

VISCOSE RAYON STAPLE FIBER FROM SWEDEN

Treasury/Customs issues preliminary countervailing duty determination; effective 1-31-79 6242

IMPORTED COMMODITIES

Treasury/Customs amends estimated rates of countervailing duties for certain merchandise from Canada, European Economic Community, Finland, and Brazil which is subject to outstanding waivers; effective 1-3-79 6239

MEETINGS—

Administrative Conference of the United States: Committee on Rulemaking and Public Information, 2–16, 3–16, 3–23, and 4–20–79 6167
DOD/Sec'y: Defense Science Board Task Force on EMP Hardening of Aircraft, 2–22 and 2–23–79 6176
Defense Science Board Task Force on Naval Surface Ship Vulnerability, 2–24–79 6176
DOE/BPA: Southwest Oregon Area Service Draft Facility Planning Supplement, 3–5 through 3–8–79 6177
FERC: Regulations implementing incremental pricing provisions of Natural Gas Policy Act of 1978, 2–12 and 2–20–79; comments by 2–12–79; requests to speak by 2–2–79 6133
HEW/PHS: Formulation of influenza vaccines in 1979–1980 and defining individuals at high risk of complications from influenza, 2–12–79 6208
Sec'y: Advisory Committee on the Rights and Responsibilities of Women, 2–14 and 2–15–79 6208
Interior/NPS: President's Commission on the Holocaust, 2–15–79 6227
SBA: National Advisory Council and Region VI Advisory Council, 2–26, 3–6, and 3–29–79 (3 documents) 6239

SEPARATE PARTS OF THIS ISSUE

Part II, EPA 6284
Part III, CPSC 6340

contents

ADMINISTRATIVE CONFERENCE OF UNITED STATES

Notices

Meetings:
Rulemaking and Public Information Committee 6167

AGRICULTURAL MARKETING SERVICE

Rules

Corn; standards; correction 6083

Proposed Rules

Milk marketing orders:
Kansas City et al 6103
Texas et al 6107

AGRICULTURE DEPARTMENT

See also Agricultural Marketing Service; Farmers Home Administration; Federal Grain Inspection Service.

Notices

Feed grain donations:
Acoma Indian Tribe, N. Mex .. 6168

ANTITRUST DIVISION, JUSTICE DEPARTMENT

Notices

Competitive impact statements and proposed consent judgments; U.S. versus listed companies:
Bristol-Myers Co. et. al 6226

BONNEVILLE POWER ADMINISTRATION

Notices

Environmental statements; availability, etc.:
Proposed program for 1979 FY; Southwest Oregon area service; meetings 6177

CIVIL AERONAUTICS BOARD

Notices

Hearings, etc.:
Anchorage-London service case 6168
North Central Airlines, Inc 6169
United Air Lines, Inc. et al 6171
U.S.-Mideast and Far East fare increases 6170
Meetings; Sunshine Act 6257

COMMERCE DEPARTMENT

See National Bureau of Standards; National Technical Information Service.

COMMODITY FUTURES TRADING COMMISSION

Notices

Meetings; Sunshine Act 6257

CONSUMER PRODUCT SAFETY COMMISSION

Rules

Poison prevention packaging:
Erythromycin ethylsuccinate granules or oral suspensions; child-resistant packaging exemption 6340

Proposed Rules

Poison prevention packaging:
Colestipol; child-resistant packaging exemption 6343
Erythromycin ethylsuccinate tablets; child-resistant packaging exemption 6344
Ogen; child-resistant packaging exemption; withdrawn .. 6345

Notices

Meetings; Sunshine Act (4 documents) 6257, 6258

CUSTOMS SERVICE

Notices

Countervailing duty petitions and preliminary determinations:
Viscose Rayon staple fiber from Sweden 6242
Countervailing duty waiver authority expiration; liquidation suspension; amendment of appendix 6239

DEFENSE DEPARTMENT

Notices

Meetings:
Science Board task forces 6176

DISEASE CONTROL CENTER

Proposed Rules

Aircraft disinsecting; advance notice 6155
Importation of dogs and cats; advance notice 6155

ECONOMIC REGULATORY ADMINISTRATION

Notices

Powerplant and industrial fuel use:
Environmental statements; proposed guidelines for preparation 6177

EDUCATION OFFICE

Notices

Information collection and data acquisition activity, description; inquiry 6200

ENERGY DEPARTMENT

See also Bonneville Power Administration; Economic Regulatory Administration; Federal Energy Regulatory Commission.

Notices

Committees; establishment, renewals, terminations, etc.:
Local Government Energy Policy Advisory Committee 6197
International atomic energy agreements; civil uses; subsequent arrangements:
European Atomic Energy Community 6196
Taiwan et al 6196

ENVIRONMENTAL PROTECTION AGENCY

Rules

Air pollution control; new motor vehicles and engines:
Light-duty truck class definition 6097
Air quality implementation plans; delayed compliance orders:
Maine 6096
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
Cyano(3-phenoxyphenyl) methyl-4-chloro-α-(1-methylethyl)benzeneacetate 6098
Toxic substances:
Health and safety study reporting regulations 6099

Proposed Rules

Air quality implementation plans; delayed compliance orders:
South Carolina 6154
Nonferrous smelter orders, primary (NSOs); national rules .. 6284

Notices

Marine sanitation device standards:
California 6197
Pesticide registration, cancellation, etc.:
Mefluidide 6198
Oryzalin; correction 6198
SM-3 6199
Pesticides, experimental use permit applications:
3M Co. et al 6198
Ciba-Geigy Corp. et al 6198

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Rules

Procedural regulations:
Charges deferred to appropriate State and local agencies; designated 706 agencies 6095

Notices

Improving Government regulations; regulatory agenda; semiannual 6199

FARMERS HOME ADMINISTRATION

Rules

Emergency and rural housing disaster loans; CFR part removed 6083

Proposed Rules

Loan and grant programs (group):
Community facility loans; withdrawn 6130

FEDERAL COMMUNICATIONS COMMISSION

Notices

Meetings; Sunshine Act 6258

FEDERAL DEPOSIT INSURANCE CORPORATION

Rules

Employee responsibilities and conduct; Ethics in Government Act; filing of disclosure statements 6083

Proposed Rules

Foreign activities of insured State nonmember banks:
Establishment and operation of foreign branches, and acquisition of shares of foreign entities 6130

FEDERAL ENERGY REGULATORY COMMISSION

Rules

Natural Gas Policy Act of 1978; filing requirements; guidelines 6094

Proposed Rules

Natural Gas Policy Act of 1978:
Incremental pricing; conference and inquiry 6133

Notices

Hearings, etc.:
Arkansas Louisiana Gas Co. et al 6182
Columbia Gas Transmission Corp 6182
Consolidated Gas Supply Corp 6183
Consolidated Oil & Gas, Inc. (4 documents) 6183, 6184
Doyle Hartman 6184
Ingram, Tom L 6184
Juarez Gas Co., S.A., et al 6184
Kentucky West Virginia Gas Co 6185
Michigan Wisconsin Pipe Line Co 6186
Montana-Dakota Utilities Co 6187
Mountain Fuel Supply Co 6187
New England Power Co 6188
Northern Natural Gas Co 6189
Northern Natural Gas Co. et al 6188
Northwest Pipeline Corp. (2 documents) 6189
Oklahoma Natural Gas Co 6190
Shell Oil Co 6190
Southern Union Gathering Co 6190
Tennessee Gas Pipeline Co. et al. (2 documents) 6191, 6192
United Gas Pipe Line Co 6192
Wisconsin Public Service Corp 6193
Yates, Harvey E., Co. (2 documents) 6194
Yates Petroleum Corp. (8 documents) 6195, 6196
Land withdrawals:
Washington 6189
Meetings; Sunshine Act 6258

FEDERAL GRAIN INSPECTION SERVICE

Notices

Grain standards; inspection points:
Texas 6167

FEDERAL HIGHWAY ADMINISTRATION

Proposed Rules

Motor carrier safety regulations:
Air brake system; commercial vehicles; terminated 6156

FEDERAL INSURANCE ADMINISTRATION

Proposed Rules

Flood elevation determinations:
Alaska 6140
Arizona; correction 6141
California (8 documents) 6141–6146
New Jersey 6147
New York (2 documents) 6148
North Dakota 6149
Oregon (2 documents) 6149, 6150
Pennsylvania 6151
South Dakota 6151
Washington (2 documents) 6152
West Virginia 6153

FEDERAL MARITIME COMMISSION

Notices

Freight forwarder licenses:
Oglethorpe International 6200
Meetings; Sunshine Act (2 documents) 6258

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Notices

Meetings; Sunshine Act 6259

FISCAL SERVICE

Rules

Checks drawn on the U.S. Treasury, issue of substitutes of lost, destroyed, mutilated and defaced; indemnity undertaking; correction 6096

FOREIGN CLAIMS SETTLEMENT COMMISSION

Notices

Meetings; Sunshine Act 6259

GENERAL SERVICES ADMINISTRATION

Rules

Property management, Federal; ADP and telecommunications management; low dollar value excess supply type items. 6100

GEOLOGICAL SURVEY

Notices

Environmental statements; availability etc.:
Colstrip Project, Mont.; meetings 6214

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See also Disease Control Center; Education Office; Human Development Services Office; National Institute of Education; Public Health Service.

Notices

Meetings:
Women, Rights and Responsibilities, Secretary's Advisory Committee (2 documents) 6208

HOLOCAUST, PRESIDENT'S COMMISSION

Notices

Meeting 6227

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See Federal Insurance Administration.

HUMAN DEVELOPMENT SERVICES OFFICE

Proposed Rules

Older Americans programs:
Indian tribes; community programs and multipurpose senior centers 6155
State and community programs on aging 6155

INDIAN AFFAIRS BUREAU

Notices

Irrigation projects, operation and maintenance charges:
Fort Hall Project, Idaho 6209

INTERIOR DEPARTMENT

See also Geological Survey; Indian Affairs Bureau; Land Management Bureau; National Park Service; Surface Reclamation and Enforcement Office.

Notices

Improving Government regulations; regulatory agenda; semiannual 6214

INTERNAL REVENUE SERVICE

Notices

Written determinations, public inspection; disclosure intention 6242

CONTENTS

INTERSTATE COMMERCE COMMISSION

Rules

Motor carriers, etc:
Exemptions; aircraft transportation, property transportation incidental to; correction 6102
Railroad car service orders; various companies:
Chessie System 6101

Proposed Rules

Rail carriers:
Directed service reimbursement; cost data submission; funding procedure 6156

Notices

Hearing assignments 6244
Motor carriers:
Temporary authority applications (3 documents) 6245, 6250
Transfer proceedings 6244

JUSTICE DEPARTMENT

See Antitrust Division, Justice Department.

LAND MANAGEMENT BUREAU

Notices

Alaska native selections; applications, etc.:
Leisnoi, Inc 6210
Environmental statements; availability, etc.:
Outer Continental Shelf; California oil and gas lease sale 6213
Sale of public lands:
South Dakota 6213

MANAGEMENT AND BUDGET OFFICE

Notices

Clearance of reports; list of requests 6226

NATIONAL BUREAU OF STANDARDS

Notices

Information processing standards; Federal:
COBOL; interpretations 6174

NATIONAL INSTITUTE OF EDUCATION

Proposed Rules

Grant programs:
Legal and governmental studies research 6156

NATIONAL PARK SERVICE

Notices

Authority delegations:
Adams National Historic Site, Mass.; Supervisory Park Technician 6214
Lowell National Historical Park, Mass.; Administrative Officer 6214

NATIONAL TECHNICAL INFORMATION SERVICE

Notices

Inventions, government-owned; availability for licensing 6175

NATIONAL TRANSPORTATION SAFETY BOARD

Notices

Meetings; Sunshine Act 6259

NUCLEAR REGULATORY COMMISSION

Notices

Meetings; Sunshine Act 6259

PUBLIC HEALTH SERVICE

Notices

Meetings:
Influenza vaccines 6208

RAILROAD RETIREMENT BOARD

Notices

Improving Government regulations; regulatory agenda, semiannual 6227
Meetings; Sunshine Act 6259

SECURITIES AND EXCHANGE COMMISSION

Rules

Securities transactions by members of national securities exchanges; prohibitions and interpretations 6084

Notices

Hearings, etc.:
American Stock Exchange, Inc., et al 6227
American Telecommunications Corp 6234
Ashland Coal & Coke Co. et al 6230
Capitol Industries—EMI Inc... 6234
Compac Corp 6235
Diamond Coal Co., Inc 6235
Georgia Power Co. et al 6231
Hartfield-Zodys, Inc 6232
Peachtree Doors, Inc 6236
State Mutual Life Assurance Co. of America 6232
Union Gas Ltd 6236
Van Dorn Co 6233
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc 6234
New York Stock Exchange, Inc. (2 documents) 6236, 6237

SMALL BUSINESS ADMINISTRATION

Notices

Meetings; advisory councils:
Houston 6239
Little Rock 6239
Washington, D.C 6239

SURFACE MINING RECLAMATION AND ENFORCEMENT OFFICE

Rules

Environmental impact statements; permanent regulatory program 6096

TENNESSEE VALLEY AUTHORITY

Notices

Meetings; Sunshine Act 6259

TREASURY DEPARTMENT

See Customs Service; Fiscal Service; Internal Revenue Service.

TRANSPORTATION DEPARTMENT

See Federal Highway Administration.

UNITED STATES RAILWAY ASSOCIATION

Notices

Meetings; Sunshine Act 6260

VETERANS ADMINISTRATION

Notices

Burial benefits; program evaluation, summary report; availability 6244
Exchange of medical information; program evaluation; summary report; availability .. 6243

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

7 CFR

26 6083
1890w 6083

PROPOSED RULES:

1064 6103
1065 6103
1073 6107
1097 6107
1102 6107
1104 6107
1106 6107
1108 6107
1120 6107
1126 6107
1132 6107
1138 6107
1933 6130

12 CFR

336 6083

PROPOSED RULES:

347 6130

16 CFR

1700 6340

PROPOSED RULES:

1700 (3 documents) 6343-6345

17 CFR

240 6084
241 6084

18 CFR

2 6094
157 6094
270 6094
273 6094
274 6094
275 6094
276 6094
284 6094

PROPOSED RULES:

Ch. I 6133

24 CFR

PROPOSED RULES:

1917 (21 documents) 6140-6153

29 CFR

1601 6095

30 CFR

Ch. VII 6096

31 CFR

245 6096

40 CFR

65 6096
86 6097
180 6098
730 6099

40 CFR—Continued

PROPOSED RULES:

57 6284
65 6154

41 CFR

101-36 6100

42 CFR

PROPOSED RULES:

71 (2 documents) 6155

45 CFR

PROPOSED RULES:

Ch XIII 6155
1320 6155
1321 6155
1324 6155
1326 6155
1495 6156

49 CFR

1033 6101
1041 6102
1047 6102
1082 6102

PROPOSED RULES:

393 6156
1126 6156

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

1 CFR

Ch. I 5
305 1357

PROPOSED RULES:

470 4496

3 CFR

MEMORANDUMS:

December 30, 1978 1075
January 4, 1979 1933

PROCLAMATIONS:

4511 (See Proc. 4634) 5633
4547 (See Proc. 4631) 1
4631 1
4632 1697
4633 2563
4634 5633

EXECUTIVE ORDERS:

November 12, 1838 (Revoked in part by PLO 5655) 1980
8743 (Amended by EO 12107) 1055
8744 (Amended by EO 12107) 1055
9230 (Amended by EO 12107) 1055
9384 (Revoked by EO 12113) 1955
9712 (Amended by EO 12107) 1055
9830 (Amended by EO 12107) 1055
9932 (Amended by EO 12107) 1055
9961 (Amended by EO 12107) 1055
10000 (Amended by EO 12107) 1055
10242 (Amended by EO 12107) 1055
10422 (Amended by EO 12107) 1055
10450 (Amended by EO 12107) 1055
10459 (Amended by EO 12107) 1055
10530 (Amended by EO 12107) 1055
10540 (Amended by EO 12107) 1055
10549 (Revoked by EO 12107) 1055
10550 (Amended by EO 12107) 1055
10552 (Amended by EO 12107) 1055
10556 (Amended by EO 12107) 1055
10561 (Revoked by EO 12107) 1055
10577 (Amended by EO 12107) 1055
10641 (Amended by EO 12107) 1055
10647 (Amended by EO 12107) 1055
10717 (Amended by EO 12107) 1055
10763 (Amended by EO 12107) 1055
10774 (Amended by EO 12107) 1055
10804 (Amended by EO 12107) 1055
10826 (Amended by EO 12107) 1055
10880 (Amended by EO 12107) 1055
10903 (Amended by EO 12107) 1055
10927 (Amended by EO 12107) 1055
10973 (Amended by EO 12107) 1055
10982 (Amended by EO 12107) 1055
11022 (Amended by EO 12106) 1053
11103 (Amended by EO 12107) 1055
11171 (Amended by EO 12107) 1055
11183 (Amended by EO 12107) 1055
11203 (Amended by EO 12107) 1055
11219 (Amended by EO 12107) 1055
11222 (Amended by EO 12107) 1055
11228 (Amended by EO 12107) 1055
11264 (Amended by EO 12107) 1055
11315 (Amended by EO 12107) 1055

3 CFR—Continued

11348 (Amended by EO 12107) 1055
11355 (Amended by EO 12107) 1055
11422 (Amended by EO 12107) 1055
11434 (Amended by EO 12107) 1055
11438 (Amended by EO 12107) 1055
11451 (Amended by EO 12107) 1055
11478 (Amended by EO 12106) 1053
11480 (Amended by EO 12106) 1053
11482 (Revoked by EO 12110) 1069
11490 (Amended by EO 12107) 1055
11491 (Amended by EO 12107) 1055
11512 (Amended by EO 12107) 1055
11521 (Amended by EO 12107) 1055
11534 (Revoked by EO 12110) 1069
11552 (Amended by EO 12107) 1055
11561 (Amended by EO 12107) 1055
11570 (Amended by EO 12107) 1055
11579 (Amended by EO 12107) 1055
11589 (Amended by EO 12107) 1055
11603 (Amended by EO 12107) 1055
11609 (Amended by EO 12107) 1055
11636 (Amended by EO 12107) 1055
11639 (Amended by EO 12107) 1055
11648 (Amended by EO 12107) 1055
11721 (Amended by EO 12107) 1055
11744 (Amended by EO 12107) 1055
11787 (Amended by EO 12107) 1055
11817 (Amended by EO 12107) 1055
11830 (Amended by EO 12106) 1055
11846 (See Proc. 4634) 5633
11849 (Revoked by EO 12110) 1069
11890 (Amended by EO 12107) 1055
11895 (Amended by EO 12107) 1055
11899 (Amended by EO 12107) 1055
11935 (Amended by EO 12107) 1055
11938 (Amended by EO 12107) 1055
11948 (Superseded by EO 12110) 1069
11955 (Amended by EO 12107) 1055
11971 (Revoked by EO 12110) 1069
11973 (Revoked by EO 12110) 1069
11998 (Revoked by EO 12110) 1069
12004 (Amended by EO 12107) 1055
12008 (Amended by EO 12107) 1055
12014 (Amended by EO 12107) 1055
12015 (Amended by EO 12107) 1055
12027 (Amended by EO 12107) 1055
12043 (Amended by EO 12107) 1055
12049 (Amended by EO 12107) 1055
12065 (See Order of January 26, 1979) 5639
12067 (Amended by EO 12107) 1055
12070 (Amended by EO 12107) 1055
12076 (Amended by EO 12111) 1071
12089 (Amended by EO 12107) 1055
12105 (Amended by EO 12107) 1055
12106 1053
12107 1055
12108 1065
12109 1067
12110 1069
12111 1071
12112 1073
12113 1955
12114 1957
12115 4645
12116 4647

3 CFR—Continued

ORDERS:

January 26, 1979 5639

REORGANIZATION PLANS:

No. 4 of 1978 (See EO 12108) 1065

5 CFR

Ch. I 3440, 3943
Ch. XV 5639
210 3440
213 ..... 1359–1362, 1963, 2565, 3943, 5371–5373
307 3943
308 3446
315 ..... 3441, 4649
316 ..... 3943, 4649
330 3945
351 5863
410 4650
430 3447
432 3442
550 ..... 2565, 3945, 4650
752 3444
831 4650
1200 3946
1201 3946
1202 3954
1203 3954
1204 3954
1205 3954
1206 3954
1251 6060
1252 6061
1253 6061
1254 6062
1260 6062
1270 6063
1271 6064
1272 6064
1273 6065
1274 6065
1275 6065
1276 6065
2400 5

6 CFR

701 5328
702 5329
703 5331
704 5333
705 ..... 1077, 5336–5338
706 ..... 1346, 1963, 5338

7 CFR

2 2565
7 5373
15 1362
26 6083
180 4650
210 ..... 1362, 5381
225 ..... 8, 3955
227 3955
245 1363
246 5865
250 3955

7 CFR—Continued

354 ... 1364
401 ... 29, 749, 5057
402 ... 1963
403 ... 1964
404 ... 1964
406 ... 1965
408 ... 1965
409 ... 1966
410 ... 1967
411 ... 1967
412 ... 1365
413 ... 1968
414 ... 1968
417 ... 1969
719 ... 5381
722 ... 2567
795 ... 2567
907 ... 1077, 2353, 3669, 5058
910 ... 30, 1366, 2567, 3956, 5641
928 ... 30, 3669
971 ... 2165
1002 ... 5865
1062 ... 4933
1126 ... 5867
1270 ... 4651
1421 ... 2353, 3454, 3456, 3459, 3461, 3463, 3465, 3670, 3673, 3680, 3685, 3691, 3692, 3697
1427 ... 3466, 5641
1701 ... 1366
1801 ... 4431
1804 ... 1701
1809 ... 1701
1822 ... 1701, 4434, 4437
1861 ... 1702, 4435, 4437
1864 ... 4437
1866 ... 4437
1872 ... 1702, 4437
1890w ... 6083
1904 ... 1701
1910 ... 4431
1930 ... 4437
1933 ... 4435
1941 ... 4437, 5390
1943 ... 4437, 5390
1945 ... 1702
1955 ... 4437
1962 ... 4437
1980 ... 1720, 5059
2024 ... 1721
2880 ... 3253

PROPOSED RULES:

Ch. IX ... 1750, 4701
15b ... 4620
210 ... 1379
220 ... 5449
246 ... 2114
418 ... 4687
929 ... 5139
989 ... 47
1004 ... 5140
1011 ... 4696
1062 ... 1741
1064 ... 6103
1065 ... 3989, 6103
1073 ... 6107
1079 ... 5887

7 CFR—Continued

PROPOSED RULES—Continued

1097 ... 6107
1102 ... 6107
1104 ... 6107
1106 ... 6107
1108 ... 6107
1120 ... 6107
1126 ... 6107
1132 ... 6107
1138 ... 6107
1280 ... 5450
1421 ... 1116, 1380
1430 ... 5147
1434 ... 5456
1446 ... 1380
1701 ... 1381
1933 ... 6130
2900 ... 5668

8 CFR

103 ... 4653
204 ... 5059
235 ... 4653
236 ... 4653
238 ... 4935
242 ... 4653
287 ... 4654
292a ... 4654

PROPOSED RULES:

212 ... 5668
214 ... 5669
274 ... 5671

9 CFR

11 ... 1558
73 ... 1368, 3956, 5868
79 ... 1368
94 ... 2568
319 ... 4655

PROPOSED RULES:

91 ... 2600, 5896
92 ... 1552
445 ... 3719
447 ... 3719

10 CFR

2 ... 4459
20 ... 2569
21 ... 2569
35 ... 1722
73 ... 2569
205 ... 3021
210 ... 3936
211 ... 3418, 3467, 3936
212 ... 3256, 3942
430 ... 1970
440 ... 31
515 ... 761
1004 ... 1908

PROPOSED RULES:

Ch. I ... 2158
50 ... 3719
140 ... 1751
205 ... 4346
210 ... 4346
211 ... 892, 5296, 5899
212 ... 892, 1888, 5296
213 ... 1896

10 CFR—Continued

PROPOSED RULES—Continued

320 ... 4632
420 ... 4562
430 ... 49, 2399
455 ... 1580
500 ... 3721, 5809
501 ... 3721, 5809
502 ... 3721, 5809
503 ... 3721, 5809
504 ... 5808, 5809
505 ... 3721, 5809
506 ... 5808, 5809
507 ... 5808, 5809
508 ... 1694
790 ... 1568
791 ... 4418

12 CFR

1 ... 762
206 ... 5391
226 ... 767, 3257, 5391
262 ... 3957
265 ... 1725
304 ... 3258
335 ... 5869
336 ... 6083
544 ... 5869
545 ... 3470
563 ... 4936
571 ... 4936
701 ... 4938, 5870

PROPOSED RULES:

215 ... 893
226 ... 1116
347 ... 6130
505 ... 2178
545 ... 5899
561 ... 5899
563 ... 5899
701 ... 60, 63, 895, 3722, 5900

13 CFR

101 ... 4957
121 ... 34, 1725
124 ... 4956
130 ... 1369, 4955
305 ... 3959

PROPOSED RULES:

124 ... 5320

14 CFR

21 ... 2362
27 ... 2362
29 ... 2362
36 ... 3031
39 ... 36, 37, 1078-1082, 1726, 2363, 2367, 2377, 3032, 3701, 3703, 4459-4461, 5061, 5643, 5644
47 ... 38, 1726
71 ... 39, 40, 300, 1085-1087, 1726, 3032, 3704, 4462, 5645-5648
73 ... 1088, 4462
75 ... 40, 300
91 ... 2362
95 ... 5062
97 ... 41, 2378, 5070

14 CFR—Continued

241 ..... 1970, 3471
250 2165
252 5071
291 3960
300 4655
302 ..... 4657, 5076
321 4657
385 3704
1216 1089

PROPOSED RULES:

1 1322
27 3250
29 3250
39 ..... 1120, 1741, 2399, 5148, 5149, 5674
43 3250
47 63
61 3250
71 ..... 68, 1120-1122, 1322, 3723, 5150, 5675-5677
73 ..... 68, 5151
75 5152
91 ..... 1322, 3250, 4572
105 1322
121 3250
127 3250
133 3250
135 3250
199 5153
208 2179
221 1381
239 896
288 2179
300 4701
302 1381
399 ..... 1381, 2179, 3723

15 CFR

30 1971
371 ..... 43, 1093
373 ..... 1095, 1971
374 44
376 1099
377 ..... 44, 1973
500 4462
930 3705

PROPOSED RULES:

Subtitle A 896
200 4701
275 4701
370 4703
371 4703
385 4703
390 4703
399 4703
931 3230

16 CFR

13 ..... 3033, 3259, 4465, 4664, 4939, 5391, 5871
456 2569
600 3259
1302 792
1303 792
1630 2168
1700 6340

16 CFR—Continued

PROPOSED RULES:

1 1753
13 ..... 899, 2182, 2600, 3989, 4497, 5457, 5677
419 69
437 5157
450 1123
455 ..... 914, 4499
461 ..... 2602, 3495
1209 3989
1500 5459
1608 1981
1610 1981
1611 1981
1700 6343-6345

17 CFR

1 ..... 1918, 3706
4 ..... 1918, 3706
166 4465
200 3473
210 3960
230 4665
239 4466
240 ..... 1727, 1973, 1974, 2144, 3033, 4666, 6084
241 6084
249 ..... 3033, 4466
250 4666
260 4666
270 4666
274 4466
275 4666
300 5077

PROPOSED RULES:

240 ..... 1754, 1981, 4703
270 3376

18 CFR

1 2380
2 6094
154 ..... 1100, 5875
157 6094
270 6094
271 5876
273 ..... 5879, 6094
274 6094
275 6094
276 6094
284 ..... 4940, 6094
286 2381

PROPOSED RULES:

Ch. I 6133
281 ..... 3052, 3725
285 4500
708 2956

19 CFR

4 ..... 5649, 5650
6 5650
159 ..... 1372, 1728, 2570, 3473-3478

PROPOSED RULES

101 4707

20 CFR

620 4666
651 1688
654 1688

20 CFR—Continued

PROPOSED RULES:

675 4366
676 4372
677 4402
678 4410
679 4412

21 CFR

2 3960
14 ..... 1975, 2571, 5392
81 45
101 3963
131 3964
182 3963
184 3963
436 1374
444 5880
448 5880
449 5881
455 ..... 1374, 5881
510 ..... 3966, 5881
520 ..... 1375, 3966
524 3966
546 1976
558 ..... 5881, 5882
561 4467
573 5392
601 1544
610 1544
1308 2169

PROPOSED RULES:

20 2932
102 5901
109 3990
145 1983
172 5902
175 ..... 69, 3993
182 ..... 5902, 5905
184 5902
186 5905
189 3993
310 3994
436 5462
440 5462
510 1983
522 ..... 1381, 3306
556 1381
680 4707
1020 5908
1090 5463

22 CFR

42 1730

PROPOSED RULES:

211 1123

23 CFR

637 2170

PROPOSED RULES:

420 2400
635 69

24 CFR

10 1606
200 ..... 2383, 2384, 3035
203 1336
300 ..... 3035, 3036
886 1731
888 ..... 2571, 3908, 3912

24 CFR—Continued

891 3036
1914 ..... 792, 2572, 2574, 4468
1915 ..... 794, 801, 815, 5078, 5079
1917 ..... 841, 870, 1976, 1977, 2184, 2185, 3037-3047, 3261-3273, 3479-3490, 5080-5115, 5393-5419

PROPOSED RULES:

805 2502
865 1600
1917 ..... 1134-1177, 1382-1411, 1985, 3496-3512, 4708-4732, 4965-4985, 5463-5473, 6140-6153

25 CFR

41 4667
251 46

26 CFR

1 ..... 870, 1102, 1104, 1376, 4128, 5115, 5419
5 ..... 871, 1106
9 4144
31 1109
37 1110
54 ..... 1978, 5883
141 1978
420 5421

PROPOSED RULES:

1 ..... 1178, 1180, 1412, 1985, 2602, 4148, 5474, 5910
7 ..... 1985, 5474
31 1181

27 CFR

PROPOSED RULES:

4 2603
5 2603
7 2603

28 CFR

0 3273
2 ..... 3404, 3405, 3407, 3408

PROPOSED RULES:

2 3306
511 2978
512 2978
513 2978
522 2978
524 2978
527 2978
540 2978
543 2978
544 2978
545 2978
546 2978
549 2978
550 2978
551 2978
552 2978
570 2978
571 2978
572 2978

29 CFR

97 5438
1601 ..... 4429, 4667, 6095
1608 4422
1910 ..... 5438, 5446
2400 3967
2520 5440
2610 3971
2701 2575

PROPOSED RULES:

1202 1181
1206 1181
1601 ..... 3513, 4733
1910 2604
1913 3994
2200 1762
2201 1762

30 CFR

Ch. VII 6096
48 1979

PROPOSED RULES:

Ch. VII 1355, 1989, 5679
49 1536
55 2604
56 2604
57 2604
250 3513
252 3524

31 CFR

10 ..... 4940, 4944
215 4670
245 6096
316 3372
332 3364

PROPOSED RULES:

1 1414

32 CFR

45 3972
166 3049
177 5883
351 4946
364 4469
365 4670
366 4470
505 5651
621 5651
644 3168
2103 2384

33 CFR

117 ..... 1112, 2386, 5659
126 4642
128 5118
165 ..... 5118, 5659
173 5308
174 5308
282 4594

PROPOSED RULES:

110 2606
161 2401
162 5680
164 5312
165 3882
168 5368
183 5158

35 CFR

10 5660
253 1731

36 CFR

0
1 3491
7 3491
21 2577
200 5660
800 6068

PROPOSED RULES:

7 5680
219 2606
222 914
231 914

37 CFR

PROPOSED RULES

1 4733

38 CFR

PROPOSED RULES:

21 1181

39 CFR

111 ..... 3050, 5422
224 ..... 2386, 5119

PROPOSED RULES:

111 3056
310 ..... 915, 1762
320 ..... 915, 1762
3001 2606

40 CFR

51 3274
52 ..... 4948, 5425, 5427, 5661, 5662
60 ..... 2578, 3491
65 ..... 1377, 1731, 1732, 2387, 2388, 2579-2585, 3285-3287, 4672, 4949, 5429-5432, 5664, 6096
81 5119
86 ..... 2960, 6097
180 ..... 5136, 5664, 5884, 6098
434 2586
730 6099
1500 873
1501 873
1504 873
1506 874
1508 874

PROPOSED RULES:

35 5685
51 2608
52 ..... 1189, 1989, 1990, 2614, 3739, 3740, 4734, 5158, 5159, 5693
57 6284
65 ..... 1193, 1199, 1415, 1416, 1762, 1764, 2402, 2615, 3057, 3527, 3528, 3996, 4734-4736, 4738, 4986, 5160, 5475, 5477, 6154
81 2617
162 1991
180 ..... 1764, 3529, 3740, 4740, 5695
720 2242

41 CFR

Ch. 1 2388
Ch. 101 ..... 1378, 4950
9-1 2556
51-1 5432
101-36 6100
101-38 874
109-1 986
109-14 995
109-25 995
109-26 997
109-27 997
109-28 997
109-29 1002
109-30 1002
109-36 1002
109-38 1003
109-39 1016
109-42 1017
109-43 1018
109-44 1021
109-45 1022
109-46 1026
109-48 1026
109-50 1026
109-51 1029

PROPOSED RULES:

101-47 ..... 70, 3058

42 CFR

50 5665
52h 3980
57 ..... 4471, 4475, 4478
405 ... 2592, 2593, 3288, 3980, 3984, 5479
441 5665
460 2594

PROPOSED RULES:

71 6155
402 4741
405 ..... 2618, 4741, 5162, 5479
433 4741
476 3058

43 CFR

20 4320
2720 4950

PROPOSED RULES:

2740 2620
2910 2620
3800 2623
8370 4501

PUBLIC LAND ORDERS:

2720 1340
4100 2172
5043 (Revoked in part by PLO 5656) 3706
5655 1980
5656 3706
5657 5433

45 CFR

190 5258
220 5665
222 5665
228 5665
1061 4480
2012 2099

45 CFR—Continued

PROPOSED RULES:

Ch. I 3732
Ch. XIII 6155
116 3530
116a 3530
116d 3530
122a 2403
123 3996
158 3530
160c 3996
161b 2403
161c 2404
161e 2404
161n 2404
162 1994
183 2404
184 3997
193 3997
205 2404
206 2404
1067 1200
1320 6155
1321 6155
1324 6155
1326 6155
1495 6156

46 CFR

2 5316
5 5293
34 2391
76 2392
95 2392
162 2393
167 2394
193 2394
530 2595

PROPOSED RULES:

251 3997
510 1418
531 1418
544 915

47 CFR

0 ..... 4485, 5435
1 ..... 3290, 5437
13 1733
19 5666
73 ..... 1733, 1737, 1738, 3412, 3707, 4486, 5136
81 3290
83 ..... 3290, 4488, 4673
87 4489
90 4492

PROPOSED RULES:

Ch. I 3997
0 4744
1 3307
5 4744
15 ..... 924, 3656, 3660, 3661, 3663
18 3999
21 4744
23 4744
25 4744
63 1764
64 1764
73 ..... 1765, 3732, 4501, 4502, 4744, 5163
74 4744

47 CFR—Continued

PROPOSED RULES—Continued

78 4744
81 4744
87 4744
89 4744
90 3736
91 4744
93 4744
94 4744
95 4744
97 ..... 4516, 4744
99 4744

48 CFR

PROPOSED RULES:

1 5164
2 70
8 70
17 ..... 70, 5164
23 5164
42 5164

49 CFR

1 ..... 2395, 5436
5 4675
171 3707
173 3707
178 ..... 1739, 5666
218 2174
523 4492
531 ..... 3708, 3710
573 ..... 4951, 5137
630 4493
1000 4606
1008 4679
1033 ..... 874, 879, 1739, 3711-3718, 4951, 4953, 5137, 6101
1041 ..... 3295, 6102
1047 ..... 3295, 6102
1056 ..... 879, 2595
1057 4680
1082 ..... 3295, 6102
1100 3987
1111 ..... 883, 2177
1201 3493
1249 1740
1253 2396
1322 2595

PROPOSED RULES:

Ch. II 925
Ch. X 1994, 3531
29 1765
127 1856
171 1879
172 ..... 1767, 1852
173 ..... 1767, 1852
174 1883
175 1883
176 1883
177 1886
178 1767
215 1419
393 6156
531 3737
1001 3739
1100 2407
1126 6156
1201 1995
1207 2407
1240 2407

50 CFR

Ch. II 1113
17 3636
18 ..... 2540, 2597
20 2597
32 2396
33 ..... 4953, 4955, 5437
216 2547
251 4494
260 3296

50 CFR—Continued

611 ..... 1115, 4684
651 ..... 885, 2397
671 ..... 1115, 5885
672 4684

PROPOSED RULES:

17 4745
20 2629
23 ..... 3384, 3385
26 1433

50 CFR—Continued

PROPOSED RULES—Continued

34 3999
230 5916
285 1201
296 5165
661 ..... 5168, 5696
662 1434
671 5168

FEDERAL REGISTER PAGES AND DATES—JANUARY

Pages	*Date*	*Pages*	*Date*	*Pages*	*Date*
1-748	Jan. 2	2563-3019	12	4645-4931	23
749-1070	3	3021-3252	15	4933-5056	24
1071-1355	4	3253-3449	16	5057-5369	25
1357-1696	5	3451-3668	17	5371-5632	26
1697-1954	8	3669-3942	18	5633-5862	29
1955-2163	9	3943-4430	19	5863-6081	30
2165-2351	10	4431-4644	22	6083-6346	31
2353-2562	11				

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

DOE/FERC—Natural Gas Policy Act of 1978; implementation; interim regulations; correction 59481; 12-21-78
[Originally published at 43 FR 56448, December 1, 1978]
DOT/FRA—Blue signal protection of railroad workmen 2174; 1-10-79
Treasury/ATF—Exportation of cigars, cigarettes, and cigarette papers and tubes without payment of tax or with drawback of tax, evidence of exportation requirements 59286; 12-19-78
Customs—Customs bonds, change of policy relating to foreign landing certificates 59288; 12-19-78
IRS—Employment taxes, modification of requirements for depositing 56223; 12-1-78

Next Week's Deadline for Comments On Proposed Rules

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—
Milk in the Middle Atlantic Marketing area, recommended decision and opportunity to file written exceptions on proposed amendments to tentative marketing agreement and to order; comments by 2-9-79 ..... 5140; 1-25-79
Commodity Credit Corporation—
1979 Peanut Program; determination regarding a loan and purchase program; comments by 2-5-79 ..... 1380; 1-5-79
Food Safety and Quality Service—
Fruit preserves and jams; U.S. standards; comments by 2-8-79 .. 57608; 12-8-78

COMMERCE DEPARTMENT

Industry and Trade Administration—
Uganda, embargo on exports and re-exports; comments by 2-5-79 ..... 4703; 1-23-79
[Originally published at 43 FR 58571; 12-15-78]
Maritime Administration—
Subsidized vessels and operators; standard contract forms for construction-differential subsidy; comments by 2-6-79 ..... 57624; 12-8-78
National Oceanic and Atmospheric Administration—
Atlantic herring, approval of fishery management; comments by 2-5-79. 60474; 12-28-78

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans, various States:
Louisiana; comments by 2-5-79 ..... 1189; 1-4-79
New Mexico; comments by 2-8-79. 1989; 1-9-79
Oklahoma; comments by 2-8-79 .... 1990; 1-9-79
Air pollution control, State and Federal administration orders permitting delay in compliance with State implementation plans:
Connecticut; comments by 2-7-79. 1764; 1-8-79
Georgia; comments by 2-5-79 ..... 1194; 1-4-79
Iowa; comments by 2-5-79 ..... 1193; 1-4-79
Louisiana; comments by 2-5-79 ..... 1193; 1-4-79
Missouri; comments by 2-7-79 ..... 1762; 1-8-79
Tennessee; comments by 2-5-79... 1195; 1-4-79
Washington; comments by 2-5-79. 1416; 1-5-79
West Virginia; comments by 2-5-79 (3 documents) 1198-1199; 1-4-79

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Procedural regulations; charges deferred to appropriate State and local agencies; designated 706 agencies; comments by 2-7-79 ..... 4733; 1-23-79

FEDERAL COMMUNICATIONS COMMISSION

Common carriers between the United States mainland and Hawaii, Alaska, and Puerto Rico/Virgin Islands; integration of rates and services for the provision of communications; comments by 2-5-79 ..... 55803; 11-29-78
FM broadcast stations; changes in table of assignments:
Columbia, N.C.; comments by 2-6-79. 59113; 12-19-78
Nature of educational broadcast stations; reply comments period extended to 2-8-79 ..... 60968; 12-29-78
Radio frequencies, changing the method for assigning frequencies for trunked systems in the 806-821 MHz and 851-856 MHz bands; comments by 2-7-79 ..... 3736; 1-18-79

FEDERAL REGISTER OFFICE

Proposed educational program on how regulations are made; comments by 2-5-79 ..... 56727; 12-4-78

GENERAL SERVICES ADMINISTRATION

Disposal of property for educational and public health purposes; comments by 2-1-79..... 70; 1-2-79—3058; 1-15-79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—
Antiperspirant drug products for over-the-counter use; establishment of a monograph; reply comments by 2-7-79. 46694; 10-10-78—60957; 12-29-78
Estradiol benzoate, progesterone, testosterone propionate, and estradiol monopalmitate for use in food-producing animals; comments by 2-5-79 ..... 1381; 1-5-79
Health Care Financing Agency—
Medicare; beneficiary liability for nonreimbursable service or items; comments by 2-5-79 ..... 57307; 12-7-78
Office of the Secretary/Civil Rights Office—
Policy interpretation of Title IX of the education amendments of 1972; comments by 2-10-79 ..... 58070; 12-11-78

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of the Secretary—
Mutual mortgage insurance and insured home improvement loans, eligibility criteria; comments by 2-5-79 ..... 1336; 1-4-79

INTERIOR DEPARTMENT

Fish and Wildlife Service—
Ruby Lake National Wildlife Refuge, Nev., public entry and use; comments by 2-5-79 ..... 1433; 1-5-79

LABOR DEPARTMENT

Wage and Hour Division—
Age Discrimination in Employment Act; exemption for certain executive and high policymaking employees; comments by 2-12-79 ..... 58148; 12-12-78

NUCLEAR REGULATORY COMMISSION

Acceptance criteria for emergency core cooling systems for light-water-cooled nuclear power plants; comments by 2-5-79. 57157; 12-6-78
Financial protection requirements and indemnity agreements, spent reactor fuel; comments by 2-7-79 ..... 1751; 1-8-79

SECURITIES AND EXCHANGE COMMISSION

Financial responsibility rules and broker-dealer reporting rule; amendments to conform to the Securities Investor Protection Act of 1970; comments by 2-5-79. 1981; 1-9-79

STATE DEPARTMENT

Agency for International Development—
Transfer for food commodities for use in disaster relief and economic development, and other assistance, proposed revision in requirements; comments by 2-5-79 ..... 1123; 1-4-79

TRANSPORTATION DEPARTMENT

Coast Guard—
Anchorage grounds, Mississippi River below Baton Rouge, La.; comments by 2-5-79 ..... 59521; 12-21-78
Drawbridge operation regulations; Overpack Creek, N.J.; comments by 2-5-79 ..... 1112; 1-4-79

Federal Aviation Administration—
Aircraft wheels and wheel-brake assemblies; comments by 2-7-79 ..... 57261; 12-7-78
Federal Highway Administration/Urban Mass Transportation Administration—
Major urban transportation investment; comments by 2-5-79 ..... 57478; 12-7-78
National Highway Traffic Safety Administration—
Occupant protection in interior impact; impact protection for the driver from the steering control system; steering control rearward displacement; comments by 2-7-79 ..... 52264; 11-9-78

TREASURY DEPARTMENT

Customs Service—
Watches and watch movements; consideration of change of practice of according duty-free treatment; comments by 2-9-79 ..... 57921; 12-11-78
Office of the Secretary—
Privacy Act, 1974, exempting a system of records from certain requirements; comments by 2-5-79 ..... 1414; 1-5-79

Next Week's Meetings

AGRICULTURE DEPARTMENT

Food and Nutrition Service—
Advisory Council on Maternal, Infant and Fetal Nutrition, New Orleans, La. (open), 2-6 and 2-7-79 ..... 4002; 1-19-79
National School Lunch Program; regulation of competitive foods, Detroit, Mich. (open), 2-6-79 ..... 58780; 12-15-78
Office of the Secretary—
Advisory Committee on Export Sales Reporting, Washington, D.C. (open), 2-8-79 ..... 4988; 1-24-79

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee, Washington, D.C. (closed), 2-8 and 2-9-79 ..... 3746; 1-18-79

ARTS AND HUMANITIES, NATIONAL FOUNDATIONS

Humanities Panel, Washington, D.C. (closed), 2-5-79 ..... 4054; 1-19-79
National Council on the Arts, Washington, D.C. (partially open), 2-9 through 2-11-79 ..... 5027; 1-24-79

CIVIL RIGHTS COMMISSION

Minnesota Advisory Committee, St. Paul, Minn. (open), 2-7-79 ..... 2662; 1-12-79
Montana Advisory Committee, Helena, Mont. (open), 2-6 and 2-7-79 ... 4750; 1-23-79
New Jersey Advisory Committee, Newark, N.J. (open), 2-5-79 ..... 2662; 1-12-79

COMMERCE DEPARTMENT

Bureau of the Census—
Census Advisory Committee on Housing for the 1980 Census, Suitland, Md. (open), 2-9-79 ..... 4003; 1-19-79
Industry and Trade Administration—
Numerically Controlled Machine Tool Technical Advisory Committee, Washington, D.C. (partially open), 2-6-79. 3546; 1-17-79
National Oceanic and Atmospheric Administration—
Fishermen's Contingency Fund, New Orleans, La., 2-9-79 ..... 5165; 1-25-79
Gulf of Mexico Fishery Management Council, New Orleans, La. (open), 2-6 through 2-8-79 ..... 2410; 1-11-79
Marine Fisheries Advisory Committee, Washington, D.C. (open), 2-8-79. 4994; 1-24-79
New England Fishery Management Council, Peabody, Mass. (open), 2-7 and 2-8-79 ..... 4005; 1-19-79
Pacific Fishery Management Council, Scientific and Statistical Committee, Salmon Advisory Subpanel and Plan Development Team and Dungeness Crab Advisory Subpanel and Plan Development Team, Seattle, Wash. (partially open), 2-6 through 2-9-79 ..... 1207; 1-4-79
Western Pacific Fishery Management Council, Spiny Lobster and Bottomfish Advisory Subpanel, Honolulu, Hi. (open), 2-5-79 ..... 4751; 1-23-79

DEFENSE DEPARTMENT

Defense Intelligence Agency Advisory Committee, Suitland, Md. (closed), 2-5 and 2-6-79 ..... 1770; 1-8-78
Wage Committee, Washington, D.C. (closed), 2-6-79 ..... 59421; 12-20-78

ENERGY DEPARTMENT

Intergovernmental and Institutional Relations, Consumer Affairs Advisory Committee Subcommittees, Washington, D.C. (open), 2-5-79 ..... 4008; 1-19-79
Intergovernmental and Institutional Relations; Consumer Affairs Advisory Committee, Washington, D.C. (open), 2-5 and 2-6-79 ..... 4008; 1-19-79
National Petroleum Council's Committee on Refinery Flexibility, Refinery Capability Task Group, Washington, D.C. (open), 2-6-79 ..... 4523; 1-22-79
Energy Conservation and Solar Applications Office—
Consumer products energy conservation program, Dallas, Tex. (open), 2-6-79, and San Francisco, Calif. (open), 2-8-79 ..... 49; 1-2-79

ENVIRONMENTAL PROTECTION AGENCY

Science Advisory Board, Executive Committee, Washington, D.C. (open), 2-5 and 2-6-79 ..... 3772; 1-18-79
Water Supply-Wastewater Treatment Coordination Study, New York, N.Y. (open), 2-7 and 2-8-79 ..... 58626; 12-15-78

FEDERAL COMMUNICATIONS COMMISSION

Radio Technical Commission for Marine Services, Washington, D.C. (open), 2-6-79 ..... 4539; 1-22-79

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Washington, D.C. (open), 2-8-79 ..... 3573; 1-17-79

GENERAL SERVICES ADMINISTRATION

Regional Public Advisory Panel on Architectural and Engineering Services, Chicago, Ill. (open), 2-6 and 2-7-79 ..... 2427; 1-11-79
Regional Public Advisory Panel on Architectural and Engineering Services, Washington, D.C. (open), 2-8 and 2-9-79 ... 4999; 1-24-79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Alcohol, Drug Abuse, and Mental Health Administration—
Minority Advisory Committee, Rockville, Md. (open), 2-7 through 2-9-79 . 3779; 1-18-79
National Advisory Mental Health Council, Rockville, Md. (partially open), 2-5 through 2-7-79 ..... 3780; 1-18-79
Education Office—
Equality of Educational Opportunity National Advisory Council, Los Angeles, Calif. (open), 2-8 and 2-9-79 ..... 2428; 1-11-79
National Advisory Council on Extension and Continuing Education Executive Committee, Washington, D.C. (open), 2-5 and 2-6-79 ..... 3097; 1-15-79
Food and Drug Administration—
Physical Medicine Devices Section of the Surgical and Rehabilitation Devices Panel, Washington, D.C. (open), 2-6 and 2-7-79 ..... 3314; 1-16-79
Health Resources Administration—
Agenda Planning Subcommittee of the National Council on Health Planning and Development, Washington, D.C. (open), 2-8-79 ..... 5000; 1-24-79
Health Services Administration—
Maternal and Child Health Research Grants Review Committee, Rockville, Md. (partially open), 2-7 through 2-9-79 ..... 1471; 1-5-79
National Institute of Education—
Panel for the Review of Laboratory and Center Operation, Washington, D.C. (open), 2-3 and 2-4-79 ..... 3784; 1-18-79
National Institutes of Health—
Breast Cancer Task Force Committee, Bethesda, Md. (open), 2-7-79 ..... 2025; 1-9-79
Cancer Control and Rehabilitation Advisory Committee, Bethesda, Md. (partially open), 2-8 and 2-9-79 ... 2025; 1-9-79
Committee on Cytology Automation, Bethesda, Md. (partially open), 2-8 and 2-9-79 ..... 57977; 12-11-78
Endocrinology Research Grants Study Section, Santa Barbara, Calif. (partially open), 2-5 through 2-8-79 ..... 2023; 1-9-79
National Heart, Lung, and Blood Advisory Council and its Manpower Subcommittee and Research Subcommittee, Bethesda, Md. (closed), 2-8, 2-9, and 2-10-79 ..... 59439; 12-20-78

Office of the Secretary—
Model Adoption Legislation and Procedures Advisory Panel, Washington, D.C. (open), 2-5 through 2-7-79 ..... 4541; 1-22-79

INTER-AMERICAN FOUNDATION
Arlington, Va. (open), 2-5-79 ..... 4795; 1-23-79

INTERIOR DEPARTMENT
Land Management Bureau—
Boise District Idaho, Grazing Advisory Board, Boise, Idaho (open), 2-6-79. 2433; 1-11-79
Butte District Grazing Advisory Board, Butte, Mont. (open), 2-8-79 ..... 61020; 12-29-78
Vale District Grazing Advisory Board, Vale, Oreg. (open), 2-8-79..... 1475; 1-5-79
Vernal District Grazing Advisory Board, Vernal, Utah (open), 2-9-79 ..... 61021; 12-29-78

INTERSTATE COMMERCE COMMISSION
Evaluation of Intercorporate Hauling Regulation, Atlanta, Ga. (open), 2-8-79 .. 60692; 12-28-78

JUSTICE DEPARTMENT
Law Enforcement Assistance Administration—
Advisory Committee of the National Institute of Law Enforcement and Criminal Justice, Alexandria, Va. (open) 2-8-79..... 5026; 1-24-79
Office of the Attorney General—
U.S. Circuit Judge Nominating Commission; Western Fifth Circuit Panel, Houston, Tex. (closed), 2-6 through 2-8-79..... 3327; 1-16-79
U.S. Circuit Judge Nominating Commission, Sixth Circuit Panel, Cincinnati, Ohio (closed), 2-6-79..... 1227; 1-4-79
United States Circuit Judge Nominating Commission, Eastern Fifth Circuit Panel, Atlanta, Ga., (closed), 2-8 through 2-10-79..... 2724; 1-12-79

LABOR DEPARTMENT
Occupational Safety and Health Administration—
Federal Advisory Council on Occupational Safety and Health, Washington, D.C. (open) 2-6-79 ..... 4026; 1-19-79

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
NASA Advisory Council, Washington, D.C. (open), 2-6 and 2-7-79 ... 3576; 1-17-79

NATIONAL SCIENCE FOUNDATION
Subcommittee on Anthropology, Washington, D.C. (closed), 2-8 and 2-9-79. 4054; 1-19-79
Subcommittee on Developmental Biology, Washington, D.C. (closed), 2-8 through 2-10-79 ..... 4054; 1-19-79
Subcommittee on Linguistics, Washington, D.C. (closed), 2-8 and 2-9-79..... 4055; 1-19-79
Subcommittee on Metabolic Biology, Washington, D.C. (closed), 2-8 and 2-9-79..... 4055; 1-19-79
Subcommittee on Psychobiology, Washington, D.C. (closed), 2-5 and 2-6-79. 2738; 1-12-79
Subcommittee on Regulatory Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology, Washington, D.C. (closed) 2-7 through 2-9-79. 2738; 1-12-79

NUCLEAR REGULATORY COMMISSION
Reactor Safeguards Advisory Committee, Washington, D.C. (partially open), 2-8 through 2-10-79 ..... 5028; 1-24-79
Reactor Safeguards Advisory Committee, Subcommittee on Evaluation of License Event Reports, Washington, D.C. (partially open), 2-7-79 (2 documents). 4056; 1-19-79—4763; 1-23-79
Reactor Safeguards Advisory Committee, Subcommittee on Procedures and Administration, Washington, D.C. (partially open), 2-7-79 (2 documents). 4056; 1-19-79—4763; 1-23-79

STATE DEPARTMENT
U.S. Organization for the International Radio Consultative Committee, Study Group 6, Boulder, Colo. (open), 2-8-79 ..... 3114; 1-15-79
Agency for International Development—
Voluntary Foreign Aid Advisory Committee, Washington, D.C. (open), 2-9-79. 1504; 1-5-79

TRANSPORTATION DEPARTMENT
Federal Aviation Administration—
Radio Technical Commission for Aeronautics (RTCA), Special Committee 133, Washington, D.C. (open), 2-6 through 2-8-79..... 3807; 1-18-79

Next Week's Public Hearings

ENERGY DEPARTMENT
Economic Regulatory Administration—
Mandatory petroleum price regulations, Dallas, Tex., 2-6-79 ..... 59810; 12-21-78
Powerplant and Industrial Fuel Use Act of 1978, implementation, Boston, Mass., 2-7-79..... 3721; 1-18-79

ENVIRONMENTAL PROTECTION AGENCY
Hazardous waste guidelines and provisions, New York, N.Y., 2-7 through 2-9-79 ..... 58946; 12-18-78

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
Food and Drug Administration—
Biological products; allergenic products; source material criteria, Bethesda, Md., 2-6-79..... 4707; 1-23-79
Office of the Secretary—
Age discrimination regulations, Boston, Mass., 2-5-79..... 56445; 12-1-78
Universal Social Security Coverage Study—
Albuquerque, N. Mex., 2-6-79 ..... 54698; 11-22-78
San Francisco, Calif., 2-8-79 ..... 54698; 11-22-78

INTERNATIONAL TRADE COMMISSION
Bicycle tires and tubes from the Republic of Korea, Washington, D.C., 2-8-79 ... 3101; 1-15-79

JUSTICE DEPARTMENT
National Institute of Corrections Advisory Board, Atlanta, Ga., 2-5 and 2-6-79. 4022; 1-19-79

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
Rules of procedure, Washington, D.C., 2-8-79..... 1762; 1-8-79

TRANSPORTATION DEPARTMENT
Coast Guard—
Tows navigating Pass Manchac, La., New Orleans, La., 2-7-79..... 59524; 12-21-78

TREASURY DEPARTMENT
Internal Revenue Service—
Arbitrage bonds, Washington, D.C., 2-7-79..... 1180; 1-4-79

List of Public Laws

NOTE: No public laws have been received by the Office of the Federal Register for assignment of law numbers and inclusion in today's listing.

[Last Listing Jan. 24, 1979]

Documents Relating to Federal Grants Programs

This is a list of documents relating to Federal grants programs which were published in the FEDERAL REGISTER during the previous week.

Rules Going Into Effect:
HEW/OE—Basic educational opportunity grant program; for effective date call 202-472-4300 ..... 5258; 1-25-79
PHS—Grants for dental team practice training programs; effective 1-22-79. 4471; 1-22-79
Grants for programs for the training of expanded function dental auxiliaries; effective 1-22-79 (2 documents) ... 4475; 4478; 1-22-79
USDA/FmHA—Self-help technical assistance grants; effective 1-21-79 ..... 4435; 1-22-79

Applications Deadlines:
Justice/LEAA—Grant programs for managing criminal investigations, career criminal prosecution, juror utilization and management, and treatment alternatives to street crime; various applications closing dates..... 5213; 1-25-79
Multijurisdictional sentencing guidelines field test; solicitation for competitive research grant program; draft proposals by 4-1-79..... 4761; 1-23-79
National Institute of Law Enforcement and Criminal Justice, solicitation for research grants regarding parole conditions and revocations; proposals by 3-15-79. 5212; 1-25-79

Solicitation of research proposals on safe and secure neighborhoods; submit proposals by 3-1-79 ..... 5027; 1-24-79
Solicitation of research on minority communities; submit concept papers by 3-31-79..... 5027; 1-24-79
Solicitation of research proposals for policy experiments in general deterrence; submit proposals by 3-21-79..... 5026; 1-24-79
Washington State juvenile justice legislation (HB-371) and related action programs; grants to assess implementation and impact; apply by 3-31-79 ..... 5529; 1-26-79
HEW/HRA—Public health special projects; apply by 3-1-79..... 5523; 1-26-79
HSA—Maternal and child health and crippled children's services project grants to institutions of higher learning; apply by 3-16-79..... 5001; 1-24-79
Sudden infant death syndrome program grants; apply by 4-16-79 ..... 5001; 1-24-79
IMS—Museum services program, fiscal year 1979; apply by 3-9-79 ..... 5201; 1-25-79
OE—Follow Through Program; fiscal year 1979; apply by 3-19-79 ..... 5522; 1-26-79
Follow Through Program; technical assistance; fiscal year 1979; apply by 4-2-79..... 5523; 1-26-79
Teacher centers program, fiscal year 1979; apply by 3-15-79 ..... 5202; 1-25-79
HUD/CPD—Community development block grant program; apply by 2-28-79 ... 5289; 1-25-79

Meetings:

HEW/NIH—Review of grant applications by National Cancer Institute advisory committees, Bethesda, Md. (partially open), 2-20 through 3-9-79 ..... 5003; 1-24-79
NFAH—Media Arts (General Programs) advisory panel review of applications for financial assistance, Washington, D.C. (closed), 2-26 through 2-28-79 .. 5027; 1-24-79
National Council on the Arts review of applications for financial assistance, Washington, D.C. (closed), 2-9 through 2-11-79..... 5027; 1-24-79
Visual Arts Panel (Artist's Fellowships) review of applications for financial assistance, Washington, D.C. (closed), 2-12 through 2-14-79 ..... 5028; 1-24-79
NSF—Behavioral and Neural Sciences Advisory Committee, Anthropology Subcommittee, Washington, D.C. (closed), 2-12 and 2-13-79 ..... 5543; 1-26-79
DOE/NSF Nuclear Science Advisory Committee, 1979 Facilities Subcommittee, Washington, D.C. (partially open), 2-12 through 2-14-79 ..... 5543; 1-26-79
Materials Research Advisory Committee, Metallurgy and Materials Subcommittee, Washington, D.C. (closed), 2-15 and 2-16-79..... 5543; 1-26-79
Physiology, Cellular, and Molecular Biology Advisory Committee, Molecular Biology Subcommittee, Group B, Washington, D.C. (closed), 2-12 and 2-13-79. 5544; 1-26-79
Physiology, Cellular and Molecular Biology Advisory Committee, Genetic Biology Subcommittee, Washington, D.C. (closed), 2-15 through 2-17-79 .. 5544; 1-26-79
Science and Society Advisory Committee, Public Understanding of Science Subcommittee, Washington, D.C. (closed), 2-15 and 2-16-79 ..... 5544; 1-26-79
Social Sciences Advisory Committee, Sociology Subcommittee, Washington, D.C. (closed), 2-15 and 2-16-79. 5542; 1-26-79

Other items of interest:

HEW/OE—Acceptance of nominations for membership on National Advisory Council on Indian Education; closing date 3-5-79..... 4757; 1-23-79
Justice/LEAA—Fiscal year 1979 Guide for Discretionary Grant Programs; proposed addition; comments by 3-15-79..... 5527; 1-26-79
LSC—Receipt of application for grant from Connecticut Legal Services; comments solicited..... 5541; 1-26-79
USDA/FmHA—Cooperative agreement with National Society of Public Accountants; gratuitous services for applicants and borrowers/grantees 4517; 1-22-79

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[3410-02-M]

Title 7—Agriculture

CHAPTER I—AGRICULTURAL MARKETING SERVICE (STANDARDS, INSPECTIONS, MARKETING PRACTICES),[1] DEPARTMENT OF AGRICULTURE

PART 26—GRAIN STANDARDS

United States Standards for Corn; Correction

AGENCY: Federal Grain Inspection Service.

ACTION: Notice of Correction.

SUMMARY: Action to correct alphabetic designation of the section on special grades, special grade requirements, and special grade designations for corn.

EFFECTIVE DATE: January 31, 1979.

FOR ADDITIONAL INFORMATION CONTACT:

James L. Driscoll, Director, Standardization Division; 1400 Independence Avenue, SW., Room 0629-S, Washington, D.C. 20250, (202) 447-9329.

In FR Document 78-1681 appearing at page 2816 in the issue for Friday January 20, 1978, in the third column on page 2816 in § 26.353 "(c) *Special grades, special grade requirements, an special grade designations for corn.*" shoud be "(d) *Special grades, special grade requirements, and special grade designations for corn.*"

(Sec. 5, Pub. L. 94-582, 90 Stat. 2869 (7 U.S.C. 76).)

Done at Washington, D.C. January 24, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-3168 Filed 1-30-79; 8:45 am]

[1] Including matters within the responsibility of the Federal Grain Inspecition Service.

[3410-07-M]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER G—MISCELLANEOUS REGULATIONS

PART 1890w—EMERGENCY LOANS AND RURAL HOUSING DISASTER LOANS

Deletion

AGENCY: Farmers Home Administration, USDA.

ACTION: Deletion.

SUMMARY: The Farmers Home Administration (FmHA) deletes regulations regarding Emergency and Rural Housing Disaster Loans. This action is taken as a result of a review of regulations presently in the Code of Federal Regulations which indicated that the provisions were obsolete and no longer necessary. The intended effect of this action is to simplify Agency Regulations by the removal of extraneous materials.

EFFECTIVE DATE: January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph H. Linsley, Directives Management Branch, Phone: 202-447-4057.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration deletes Part 1890w of Subchapter G, Chapter XVIII, Title 7 in the Code of Federal Regulations. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This deletion however, is not published for proposed rulemaking since its purpose is only to remove obsolete material and therefore result in a simplification of the regulations. The official making this determination is Mr. James E. Lee, Assistant Administrator, Farmer Programs, Farmers Home Administration, Room 5019, Washington, D.C. 20250. A copy of the Impact Statement prepared by FmHA is available from Mr. Joseph H. Linsley, Chief, Directives Management Branch, Room 6316, South Agriculture Building, Washington, D.C. 20250. This action has not been determined significant under the USDA criteria implementing Executive Order 12044.

PART 1890w [DELETED]

Therefore, Part 1890w, "Emergency Loans and Rural Housing Disaster Loans" is hereby deleted from Subchapter G, Chapter XVIII, Title 7 in the Code of Federal Regulations.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.)

Dated: January 24, 1979.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 79-3210 Filed 1-30-79; 8:45 am]

[6714-01-M]

Title 12—Banks and Banking

CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

PART 336—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Employees Required To File Disclosure Statements Under Title II of the Ethics in Government Act

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: This provision amends the present § 336.735-32 of FDIC regulations to conform with Civil Service Commission's interpretation of the Ethics in Government Act of 1978 that only employees holding GS-16 positions or above are required to file disclosure statements under the Act. Consequently, § 336.375-32 states that employees holding positions at GS-16 level or higher shall file disclosure statements under the Act rather than filing statements of employment and financial interest under Part 336.

EFFECTIVE DATE: This amendment is effective on January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Mark Rosen, Attorney, Legal Division, Federal Deposit Insurance Corporation, Washington, D.C. 20429 (202-389-4637).

SUPPLEMENTARY INFORMATION: On October 26, 1978, the Ethics in Government Act (the "Act") was signed by the President. Title II of the Act provides for the disclosure of personal finances by employees or Special Employees whose positions are classified at "GS-16 or above * * * or the rate of basic pay for which is fixed (other than under the General Schedule) at a rate equal to or greater than the minimum rate of basic pay for GS-16." Based on this language of the Act, the present § 336.735-32 was written to require employees who receive salaries equal to or greater than the minimum rate of basic pay fixed for GS-16 positions to file under the Act rather than under Part 336.

Recently, however, the Civil Service Commission has determined that Congress intended the Act to cover only individuals holding GS-16 positions or positions that are equivalent to GS-16 on another pay scale. Because the present § 336.735-32 could be incorrectly read to require certain employees below GS-16 level to file under the Act, the Commission has requested that this section be amended to remove any possible ambiguity.

The FDIC has determined that notice of, public participation in, and delaying the effective date of this amendment are unnecessary since the purpose of this amendment is to remove an ambiguity in the present regulations. The requirements of section 553(b) and 553(d) of Title 5 of the United States Code, and §§ 302.1, 302.2, and 302.5 of the FDIC's regulations are, therefore, inapplicable.

Accordingly, 12 CFR 336.735-32 is revised to read as follows:

§ 336.735-32 Employees not required to submit statements.

Employees or Special Employees who hold positions at GS-16 level or above shall file disclosure statements under Title II of the Ethics in government Act of 1978 rather than statements of employment and financial interest under this Part 336.

(12 U.S.C. 1819; 5 CFR 735.104; E.O. 11222.)

By direction of the Board of Directors dated January 24, 1979.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[FR Doc. 79-3219 Filed 1-30-79; 8:45 am]

[8010-01-M]

Title 17—Commodity and Securities Exchange

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15533; File No. S7-613]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Securities Transactions by Members of National Securities Exchanges

AGENCY: Securities and Exchange Commission.

ACTION: Temporary rule, rule amendments and interpretations.

SUMMARY: Section 11(a)(1) of the Securities Exchange Act of 1934 prohibits a member of a national securities exchange from effecting certain types of transactions on that exchange. That section will become fully effective on February 1, 1979. The Commission is announcing the adoption of (i) interpretations concerning the application of the section to transactions effected through the use of several automated trading and order-handling facilities operated by national securities exchanges; (ii) interpretations concerning certain exemptions under the section for specified types of exchange member trading; (iii) a new temporary rule under the section permitting exchange members to effect, for their own accounts or the accounts of their associated persons, bona fide hedge transactions between or among securities entitling the holder to sell or acquire the same equity security, which would include option-to-option hedging; and (iv) amendments to a previously adopted temporary rule concerning exchange members' proprietary trading.

DATES: The effective date of the interpretations, the temporary rule, and the rule amendments adopted herein is February 1, 1979. Comments must be received by April 1, 1979.

ADDRESSES: Interested persons should submit six copies of their written data, views and arguments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, and should refer to File No. S7-613. All submissions will be made available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Arnold Y. Dean, Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202-755-4372).

SUPPLEMENTARY INFORMATION:

INTRODUCTION

Section 11(a)(1) of the Securities Exchange Act of 1934 (the "Act")[1] makes it unlawful for a member of a national securities exchange to effect a transaction on that exchange for (i) its own account, (ii) the account of an associated person of the member, and (iii) an account as to which the member or an associated person of the member exercises investment discretion.[2] These accounts are collectively referred to herein as "covered accounts." Section 11(a)(3) provides that Section 11(a)(1) shall not become effective until February 1, 1979 with respect to transactions effected on a national securities exchange by a person that was a member thereof on February 1, 1978.[3]

The prohibitions of Section 11(a)(1) are qualified by seven exemptions. Five of the exemptions apply to specif-

[1] 15 U.S.C. 78k(a)(1).

[2] In addition to being subject to Section 11(a), exchange member firms are subject to comparable provisions in the Employee Retirement Income Security Act of 1974 ("ERISA"), Pub. L. No. 94-402, 94th Cong., 1st Sess. (1974), in connection with, among other things, exercising investment discretion over an employee benefit plan that is subject to ERISA. In that regard, the Department of Labor (the "Department") has extended to May 1, 1979 a temporary class exemption delaying the application of those ERISA provisions. In addition, the Department has adopted a permanent class exemption allowing persons who serve as fiduciaries for employee benefit plans to effect securities transactions for those plans under certain circumstances. Department of Labor, Class Exemption for Certain Transactions Involving Employee Benefit Plans and Broker-Dealers (Prohibited Transaction Exemption 79-1) (Jan. 23, 1979). Unlike Section 11(a)(1), ERISA and the class exemption also apply to (i) non-member broker-dealers that provide such services to employee benefit plans and (ii) transactions effected for employee benefit plans in the over-the-counter market by exchange members and by non-member broker-dealers acting as fiduciaries for those plans.

[3] 15 U.S.C 78k(a)(3). As originally enacted in 1975, Section 11(a)(3) delayed until May 1, 1978 the effective date of Section 11(a)(1) for transactions by persons who were exchange members on May 1, 1975. Section 11(a)(3) was amended in 1978 to delay until February 1, 1979 the effective date of Section 11(a)(1) for transactions by persons who were exchange members on February 1, 1978. Pub. L. No. 95-283, 95th Cong., 2d Sess. § 19 (1978).

ic types of exchange member trading.[4] An exemption also is provided in Section 11(a)(1)(E)[5] for transactions for accounts of natural persons and their estates and trusts. In addition, Section 11(a)(1)(G)[6] exempts transactions for members' accounts if (i) those members are engaged primarily in certain enumerated kinds of business (the "business mix" test)[7] and (ii) such transactions are effected in compliance with Commission rules assuring that the transactions are not inconsistent with fair and orderly markets and "yield" priority, parity and precedence in execution to orders for the accounts of persons other than members or persons associated with members.

The Commission has extensive rulemaking authority to expand or contract the coverage of the prohibition in Section 11(a)(1). Section 11(a)(1)(H)[8] authorizes the Commission to exempt from Section 11(a)(1) any transaction of a kind which it determines, by rule, to be consistent with the purposes of Section 11(a)(1), the protection of investors, and the maintenance of fair and orderly markets. Section 11(a)(2) authorizes the Commission to adopt rules to regulate or to prohibit certain transactions that are not unlawful under Section 11(a)(1), including transactions that are effected in the over-the-counter markets.[9] Finally, Section 11(c) permits the Commission, upon application of an exchange having limited volume of transactions and meeting certain other requirements, to exempt that exchange and its members from all or part of Section 11(a) and the rules thereunder.[10]

In March and April 1978, the Commission exercised its rulemaking authority under Section 11(a), as well as other authority under the Act, by adopting rules and amendments to a previously adopted temporary rule.[11] The Commission adopted the "effect versus execute" rule,[12] the "look-through" rule,[13] the "bond trading" rule,[14] and amendments to the "proprietary trading" rule.[15] In addition, the Commission interpreted the term "investment discretion," which is defined in Section 3(a)(35) of the Act,[16] and provided guidance on the availability of the statutory exemptions under Section 11(a) and of the exemptions it had created by rule. In May 1978, the Commission published a release drawing attention to the enactment of legislation that delayed the full effectiveness of Section 11(a)(1) until February 1, 1979.[17]

The Commission is issuing this release to address a number of interpretive and other matters. First, certain questions remain as to the application of Section 11(a) in the context of initiatives for the development of a national market system under Section 11A of the act.[18] In particular, the Commission reviews below the status of transactions for covered accounts in the Intermarket Trading System (the "ITS") and in the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, Inc. (the "CSE Trading Facility"). Second, the Commission is publishing interpretations pertaining to the statutory exemptions under Sections 11(a)(1)(A) and (D) for block positioning, bona fide arbitrage, risk arbitrage, and bona fide hedge transactions. Third, the Commission is adopting a new, temporary, exemptive rule permitting members to effect, for their own accounts or the accounts of their associated persons, bona fide hedge transactions involving securities entitling the holder to acquire or sell the same equity security, which would include option-to-option hedging. Finally, the Commission is adopting an amendment to the proprietary trading rule to permit revenues from certain exempted bond trading to be counted as "eligible income" for purposes of that rule, and is deleting a provision in that rule that applied to orders executed before January 1, 1979.

The remainder of this release consists of the following sections:

I. Section 11(a)(1) and the National Market System.
II. Exemptions under sections 11(a)(1)(A) and (D).
III. Temporary exemptive rule for bona fide hedge transactions in certain securities (temporary rule 11a1-3(T)).
IV. Amendments to the proprietary trading rule (temporary rule 11a1-1(T)).
V. Solicitation of comments.
VI. Statutory basis.

I. Section 11(a) and the National Market System

A. Background

In its February 1978 recommendation to the Congress that legislation be enacted to delay the full effectiveness of Section 11(a)(1), the Commission expressed its concern that full implementation of the prohibitions of that section on May 1, 1978 would be undesirable in light of the continuing rapid pace of economic, technological and regulatory changes in the markets. The Commission referred particularly to the development of market linkage, order routing, and limit order protection systems for a national market system.[19]

During the last year, two experimental facilities have been initiated by the securities industry and the self-regulatory organizations as a means of accomplishing certain statutory objectives for a national market system. These two systems, the ITS and the CSE Trading Facility, currently are operated on a pilot basis and permit transactions to be effected through

[4] These exemptions are: (i) transactions by a dealer acting in the capacity of market maker; (ii) transactions for the account of an odd-lot dealer in its registered securities; (iii) certain stabilizing transactions to facilitate a distribution of securities; (iv) certain arbitrage, risk arbitrage and hedge transactions; and (v) transactions to offset transactions made in error. Sections 11(a)(1)(A) through (D) and (F), 15 U.S.C. 78k(a)(1)(A) through (D) and (F).

[5] 15 U.S.C. 78k(a)(1)(E).

[6] 15 U.S.C. 78k(a)(1)(G).

[7] *See* text accompanying nn. 67-69, *infra*.

[8] 15 U.S.C. 78k(a)(1)(H).

[9] 15 U.S.C. 78k(a)(2). Under Section 11(a)(2), the Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to assure equal regulation of exchange markets and over-the-counter markets, may regulate or prohibit (i) transactions not prohibited by Section 11(a)(1) that are effected on exchanges by members for covered accounts (other than market maker or odd-lot dealer transactions; (ii) over-the-counter transactions for covered accounts by members and non-member broker-dealers (other than market maker transactions); and (iii) exchange transactions for covered accounts by non-member broker-dealers (other than market maker transactions). The Commission's authority under Section 11(a)(2) is complemented by Sections 11(b) and 15(c)(5), 15 U.S.C. 78k(b) and 78o(c)(5), and by its general rulemaking authority under Section 23(a)(1), 15 U.S.C. 78w(a)(1).

[10] 15 U.S.C. 78k(c). The Commission has used its authority under Section 11(c) in the past to exempt regional exchanges from the requirements under Rules 11a-1 (17 CFR 240.11a-1) and 11b-1 (17 CFR 240.11b-1). *See* Securities Exchange Act Release Nos. 7290 (Apr. 9, 1964), 7330 (June 2, 1964), and 7465 (Nov. 23, 1964), 29 FR 5168 (Apr. 15, 1964), 29 FR 7380 (June 6, 1964), and 29 FR 15862 (Nov. 26, 1964).

[11] *See* Securities Exchange Act Release Nos. 14563 (Mar. 14, 1978) (the "March 1978 Release"), and 14713 (Apr. 27, 1978) (the "April 1978 Release"), 43 FR 11542 (Mar. 17, 1978) and 43 FR 18557 (May 1, 1978). *See also* Securities Exchange Act Release Nos. 13388 (Mar. 8, 1977) (the "March 1977 Release") and 12055 (Jan. 27, 1976) (the "January 1976 Release"), 42 FR 16745 (Mar. 29, 1977) and 41 FR 8075 (Feb. 24, 1976).

[12] Temporary Rule 11a2-2(T), 17 CFR 240.11a2-2(T).

[13] Rule 11a1-2, 17 CFR 240.11a1-2.

[14] Temporary Rule 11a1-4(T), 17 CFR 240.11a1-4(T).

[15] Temporary Rule 11a1-1(T), 17 CFR 240.11a1-1(T).

[16] 15 U.S.C. 78c(a)(35).

[17] Securities Exchange Act Release No. 14795 (May 24, 1978), 43 FR 23777 (June 1, 1978).

[18] 15 U.S.C. 78k-1.

[19] Letters from Harold M. Williams to Walter F. Mondale, Thomas P. O'Neill, Jr., Harley O. Staggers and Harrison A. Williams (Feb. 22, 1978), and Memorandum of the Securities and Exchange Commission in Support of its Recommendation that the Congress Delay the Full Effectiveness of Section 11(a) until November 1, 1979. The Commission's memorandum is reprinted in *Report, together with Additional Views, to Accompany H.R. 11567*, H.R. Rep. No. 95-1010, 95th Cong., 2d Sess. (1978).

the use of the facilities of existing national securities exchanges. The mechanics of the two systems differ, and each system has different implications for the development of a national market system. The operation of the ITS and the CSE Trading Facility, however, raises certain questions regarding the application of Section 11(a) to trading that occurs through them.

B. APPLICATION OF SECTION 11(a) TO EXISTING AUTOMATED FACILITIES MAINTAINED BY NATIONAL SECURITIES EXCHANGES

1. *ITS.* The ITS began operation in April 1978. It establishes a communications network linking several national securities exchanges [20] and permits members on the trading floor of a participating exchange to send orders for the purchase and sale of certain multiple traded securities to any participating exchange.[21] The ITS provides facilities and procedures for (i) display on the floors of each of the participating exchanges (at the designated trading posts for ITS-traded securities) of composite quotation information disseminated pursuant to Rule 11Acl-1 under the Act,[22] thereby permitting members of each participating exchange to determine readily the best bid and offer available from any participant for a particular multiple traded security, (ii) routing of "commitments to trade" and administrative messages between and among the participants, and (iii) participation, under certain conditions, by members of all participating exchanges in opening transactions on those exchanges.[23]

The Commission has reviewed the operation of the ITS in terms of the prohibitions of Section 11(a)(1) and the exemptions thereunder. One question that has arisen under Section 11(a) concerning the ITS is whether a commitment to trade sent through the ITS by a firm that is a member of both the exchange from which it was sent and the exchange at which it was received would satisfy the off-floor transmission requirement [24] in the effect versus execute rule, Temporary Rule 11a2-2(T). A "commitment to trade"—which, for purposes of the Commission's rules under Section 11(a)(1), would be treated as an order—transmitted through the ITS is sent from the exchange floor where the order originated and is received directly on the receiving exchange's floor. In view of the ITS's method of operation, the Commission believes that an order executed on the floor of an exchange, after having been transmitted to that exchange through the ITS from another exchange, should be deemed to have been transmitted from off the floor of the exchange on which the order is executed.[25] The order would qualify for exemption under the effect versus execute rule [26] if it is effected in compliance with the other conditions set forth in that rule.[27]

2. *CSE Trading Facility.* The CSE Trading Facility began operation in April 1978.[28] It is an automated elec-

[20] At this time, the participating exchanges in the ITS are the American Stock Exchange, Inc. (the "Amex"), the New York Stock Exchange, Inc. (the "NYSE"), the Boston Stock Exchange, Inc., the Midwest Stock Exchange, Inc., the Pacific Stock Exchange, Inc. (the "PSE") and the Philadelphia Stock Exchange, Inc. (the "Phlx").

[21] *See* Securities Exchange Act Release Nos. 14661 and 14662 (Apr. 14, 1978), 43 FR 17419, 17422 (Apr. 24, 1978).

[22] 17 CFR 240.11Aol-1.

[23] *See* Securities Exchange Act Release Nos. 14661 and 14662 (Apr. 14, 1978), 43 FR 17419, 17422 (Apr. 24, 1978).

[24] The off-floor transmission requirement in the effect versus execute rule provides that the order for the covered account must be transmitted from off the exchange floor. Temporary Rule 11a2-2(T)(a)(2)(ii). *See* letter to Philip J. Lo Bue, Senior Vice President of the PSE, from Richard A. Steinwurtzel of the Commission's staff (Dec. 22, 1978), Securities and Exchange Commission File No. S7-613 ("File No. S7-613").

[25] *See* Rule 11a2-2(T)(a)(2)(ii). An ITS order would thus be treated under Temporary Rule 11a2-2(T) in a manner similar to an order sent to an exchange floor through one of several intra-market order routing systems, *e.g.*, the NYSE Designated Order Turnaround ("DOT") System. March 1978 Release, n. 41. In that regard, the Commission notes that orders sent to the Amex floor through the Amex's Post Execution Reporting System and the Amex Options Switching System are similar to DOT orders and that the use of those systems would satisfy the off-floor transmission requirement in Temporary Rule 11a2-2(T).

Two other intra-market facilities, the PSE's Communications and Execution System ("COMEX") and the Phlx's Automated Communications and Execution System ("PACE"), differ from order routing facilities such as DOT and automated trading facilities like the CSE Trading Facility. COMEX and PACE combine automated order routing, formula pricing, and automatic execution functions. Execution of COMEX market orders is effected automatically at prices determined by a formula designed to approximate the execution price the order would have received had it been transmitted instead to the NYSE or the Amex. The PSE is in the process of changing its COMEX pricing formula. For securities included in the ITS, COMEX would automatically execute an order at a price the order could have received had it been transmitted through the ITS. For securities not included in the ITS, the new COMEX formula would produce an execution at whichever was the best bid or offer from among the bids disseminated by the NYSE and the PSE specialist pursuant to Rule 11Acl-1 under the Act. Limit orders in the COMEX system are routed to the appropriate specialist and executed manually. Orders in the PACE system are executed automatically pursuant to a pricing formula. Unlike ITS, DOT and the CSE Trading Facility, PACE and COMEX permit the entry of agency orders only; the application of requirements under the effect versus execute rule to these systems is therefore limited to orders for managed accounts.

In the case of both PACE and COMEX, the initiating member relinquishes any ability to influence or guide the execution of its order at the time that order is transmitted into the system. While the execution of the order is thereafter automatic and does not involve any independent executing member, the design of those systems insures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the floors of the Phlx or the PSE. Consequently, the Commission believes that executions obtained through either system should be regarded as satisfying paragraphs (a)(2)(i), (a)(2)(ii) and (a)(2)(iii) of the effect versus execute rule.

[26] The ITS also permits specialists on participating exchanges who open their markets in ITS securities to obtain pre-opening indications of interest ("pre-opening notifications") in certain circumstances from other specialists registered in those securities on other participating exchanges. To the extent a specialist who is a member of two participating exchanges effects principal transactions on one of those exchanges in response to pre-opening notifications, the specialist may effect those transactions in reliance on the market making exemption under Section 11(a)(1)(A).

[27] The effect versus execute rule has two other conditions that might present a problem for members using the ITS. First, the covered account transaction must be executed otherwise than by an associated person of the initiating member. Second, the initiating member and its associated persons must not participate in the execution of the covered account transaction after the transmission of the order from off the exchange floor. Temporary Rule 11a2-2(T)(a)(2) (i) and (iii).

In the case of an initiating member that is a member of two exchanges participating in the ITS, it is conceivable that an associated person of the initiating member might unknowingly participate (*e.g.*, as a specialist or a floor broker) on the other side of a covered account transaction that had been transmitted from one exchange to the other. A similar problem could arise with respect to a single exchange's trading floor. In that case, an associated person of the initiating member also might unknowingly participate on the other side of a covered account transaction which had simply been transmitted by the initiating member to an unaffiliated member on the exchange floor.

The conditions under Temporary Rule 11a2-2(T)(a)(2) (i) and (iii) were not intended to cover such fortuitous events. Accordingly, the Commission believes that an initiating member does not violate these two conditions in these cases if the associated person's participation is limited to acting for the order on the other side of the initiating member's transaction and if neither the initiating member nor its associated person knows, or has reason to know, that the associated person will so participate.

[28] Securities Exchange Act Release No. 14674 (Apr. 18, 1978), 43 FR 17894 (Apr. 26, 1978). The Commission recently approved an extension of the operation of the CSE Trading Facility from January 31, 1979 to January 31, 1980. Securities Exchange Act Release No. 15413 (Dec. 15, 1978), 44 FR 129 (Jan. 2, 1979).

tronic communication system designed by the Cincinnati Stock Exchange, Inc. (the "CSE") for multiple dealer trading. Through it, bids and offers of competing dealers, as well as public bids and offers, are consolidated for execution. The process of execution is fully automated and is governed by certain auction-type principles. The CSE Trading Facility accepts orders, in certain securities that are either listed on the CSE or admitted to unlisted trading ("designated issues"), from several classes of "users": (i) members of the CSE, (ii) "access non-members" of the CSE, and (iii) specialists and exchange market makers in designated issues registered as such on other exchanges who may (along with CSE members) become approved dealers on the CSE. Members of the CSE and approved dealers may enter both agency and principal orders; access non-members of the CSE may enter only agency orders.[29] Transactions for covered accounts effected by members of the CSE in the CSE Trading Facility would be subject to Section 11(a)(1).

The Commission has reviewed the operation of the CSE Trading Facility in terms of the prohibition of Section 11(a)(1) and the exemptions thereunder. Unlike certain order routing systems in operation today, the CSE Trading Facility is an electronic market in which CSE members may effect transactions directly as dealers. Thus, for purposes of Section 11(a) and the Commission's rules, it does not appear appropriate to treat covered account transactions effected in the CSE Trading Facility in essentially the same manner as transactions involving only order routing systems such as DOT [30] and the ITS.

Nevertheless, the Commission believes that Section 11(a)(1) may not in fact have a substantial impact on current operation of the CSE Trading Facility because several of the exemptive provisions apply to trading through the CSE Trading Facility. For example, a CSE member who is an approved dealer and, with respect to a security, holds himself out in the CSE Trading Facility as being willing to buy and sell such security for his own account on a regular or continuous basis [31] would be entitled to rely on the market maker exemption in Section 11(a)(1)(A).

Other transactions in the CSE Trading Facility for covered accounts by CSE members who are approved dealers and transactions by other CSE members would also need a statutory exemption under Section 11(a)(1) or an exemption pursuant to one of the rules under Section 11(a). In the case of proprietary trading by CSE members, the exemption provided by Section 11(a)(1)(G) and Temporary Rule 11a1-1(T) thereunder will apply to any member that meets the "business mix" test set forth in those provisions since the yielding procedures required by Section 11(a)(1)(G)(ii) [32] are appropriately reflected in the CSE rules applicable to the CSE Trading Facility.[33] In the case of accounts as to which the CSE member exercises investment discretion,[34] the Commission believes that an exemption under the effect versus execute rule will be available where either (i) the initiating member arranges to have another member enter the order for such an account into the CSE Trading Facility, or (ii) the initiating member enters the order itself at a limit price that is higher, in the case of an order to sell, or lower, in the case of an order to buy, than the best bid or offer, as the case may be, that is currently displayed in the CSE Trading Facility.[35]

II. EXEMPTIONS UNDER SECTIONS 11(a)(1)(A) AND (D)

Section 11(a)(1) contains a number of exemptions for principal transactions by members and their associated persons. In order to assist exchanges and exchange members in complying with Section 11(a), the Commission has determined to set forth certain interpretive statements concerning the application of the market making, bona fide arbitrage, risk arbitrage, and bona fide hedge exemptions provided in Sections 11(a)(1)(A) and (D).

---

[29] CSE Rule 9D3 (Temporary). According to the auction-type principles programmed into the CSE Trading Facility, execution priority is granted to orders first by price (*i.e.*, the highest bid and lowest offer) and then, as to orders at the same price, by time of entry, except that "public agency orders," regardless of time of entry, are granted priority over other orders at the same price. A "public agency order" is "any order for the account of a person other than an Approved Dealer, a Member or a person who could become an Approved Dealer by complying with this Rule with respect to his use of the System, which order is represented, as agent, by a User." *Id.* Once entered, a public agency order which has not been executed may be removed in only three circumstances: (1) upon cancellation, (2) in connection with a transfer of the order to another exchange, or (3) in order to permit the approved dealer or member who entered the order to execute such order as principal pursuant to a prior guarantee to provide such execution in the event a trade takes place in another market at the specified limit price. *Id.*

[30] *See* n. 25, *supra.*

[31] *See* Section 3(a)(38) of the Act, 15 U.S.C. 78c(a)(38).

[32] 15 U.S.C. 78k(a)(1)(G)(ii).

[33] CSE Rule 9D3 (Temporary) provides, in essence, that a CSE member's proprietary order must yield priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the CSE. An exception to that general principle is provided in the case of orders entered in the CSE Trading Facility by a non-CSE member who is a specialist on another national securities exchange and has become an approved dealer. Orders for that type of non-CSE member would not be within the class of non-member orders to which members' orders must yield.

That limited exclusion is appropriate in the CSE's case. Under the CSE's access provisions, non-CSE member specialists who have become approved dealers (unlike other non-members of the CSE) are afforded all the trading rights and advantages available to CSE members and, therefore, should not be afforded the benefit which the Congress, in fashioning Section 11(a)(1)(G)(ii), intended to restrict to non-members who do not enjoy any privileged rights of access to exchange markets.

[34] *See* Section 3(a)(35) of the Act, 15 U.S.C. 78(c)(35). *See also* March 1978 Release at text accompanying nn. 19-23. An exemption under the effect versus execute rule would not be needed, of course, if the account was a "natural person" account to which Section 11(a)(1)(E) applies. *See* April 1978 Release at text accompanying nn. 34-36.

[35] The CSE Trading Facility is similar to PACE and COMEX in that the facility itself performs the execution function that on exchange floors is performed by members themselves. A CSE member who entered a market order into the CSE Trading Facility for immediate execution against an existing bid or offer in the system would have met the off-floor transmission requirement (paragraph (a)(2)(ii) of the effect versus execute rule) and the requirement that the member not participate in the execution of the order after transmission (paragraph (a)(2)(iii) of that rule). Unlike PACE and COMEX, however, a CSE member can achieve immediate and direct control over the execution of a market order up to the time of execution. For that reason, the Commission believes that the initiating member would not satisfy the requirement in paragraph (a)(2)(i) of that rule that he not execute the order directly. The entry of an order into the CSE Trading Facility hitting an existing bid or offer involves the initiating member directly in executing the order.

On the other hand, where an order is entered into the CSE Trading Facility by a member at a limit price away from the market, the resulting transaction satisfies the requirement in paragraph (a)(2)(i) of the effect versus execute rule. Such an order would be queued along with other orders awaiting execution and the member would not retain any ability to control the timing of execution or otherwise to enjoy the kind of special order-handling advantages inherent in being on an exchange floor. (Similar principles may well apply to limit orders entered in electronic limit order loading mechanisms that are currently being developed by other exchanges. *See, e.g.*, letter to George A. Fitzsimmons, Secretary of the Commission, from James E. Buck, Secretary of the NYSE (May 31, 1978), Securities and Exchange Commission File No. S7-735. *See also* April 1978 Release at n. 16.) The CSE member entering an order away from the market would remain subject to the limitation on transaction-related compensation contained in paragraph (a)(2)(iv) of that rule in effecting transactions for an account (other than one described in Section 11(a)(1)(E) of the Act) as to which it or one of its associated persons exercises investment discretion.

The Commission believes that, in light of the purposes of Section 11(a)(1), custom in the securities markets and the usage of those terms among the highly specialized securities traders and arbitrageurs who engage in those activities are the best determinants of the meaning and application of those terms under Section 11(a)(1). In fact, specialized technical terms such as "block positioner," "bona fide arbitrage," "risk arbitrage" and "bona fide hedge" are largely descriptive of custom and practice in the securities markets.

The legislative history of Section 11(a) indicates that the Congress believed that the transactions for which exemptions were provided in Section 11(a)(1) either contributed to the fairness and orderliness of exchange markets, or at least had not given rise to serious problems.[36] It does not appear from the legislative history that the Congress intended to impose excessively rigid limits on the activities of arbitrageurs and other specialized "upstairs" traders in connection with block positioning transactions and transactions of the types listed in Section 11(a)(1)(D). Section 11(a)(1) was not designed to narrow or complicate those activities unduly.

The Commission has concluded nevertheless that it should provide some interpretive guidance concerning the scope of the exemptions provided for those activities in order to assist exchange members who seek to establish their entitlement to any such exemption. In providing such guidance, which is intended solely for purposes of Section 11(a)(1) and is not controlling in other contexts,[37] the Commission believes, at present, that it would be unwise, if not impossible, to provide a complete description of these activities.[38] Such a description, even if accurate, could rapidly become obsolete as trading practices and the markets evolve. In part for that reason, the Commission's statements are not intended to be exclusive; they do not provide any comprehensive definitions. Furthermore, the Commission's statements should not be construed by negative implication to make the exemptions in Sections 11(a)(1) (A) and (D) inapplicable to activities that are not specifically covered by the discussion and that would normally and properly be considered to be within those specialized terms.

Since exchange members may effect principal transactions under the effect versus execute rule regardless of whether a statutory exemption is also available, exchange members do not need to rely on statutory exemptions for principal transactions unless they plan to use their own associated persons on the exchange floor to participate in executing those transactions or, for other reasons, do not plan to rely on the effect versus execute rule for those transactions. At the same time, it appears that exchange member firms currently engaged in block positioning, arbitrage and hedge transactions frequently execute those transactions directly on exchanges. If the exemptions in Section 11(a)(1)(D) were construed too narrowly, such an interpretation would disadvantage specialized "upstairs" traders in a fashion that the Congress does not appear to have contemplated.

A. BLOCK POSITIONING TRANSACTIONS

Section 11(a)(1)(A) exempts any transaction by a dealer acting in the capacity of a "market maker." The term "market maker," as defined in Section 3(a)(38) of the Act,[39] includes a "block positioner." In January 1976, the Commission posed several questions concerning the meaning of that term. The Commission asked whether or not the definitions of that term under certain exchange rules and Commission reporting rules, and the credit regulations adopted by the Board of Governors of the Federal Reserve System, would be appropriate for the purposes of Section 11(a)(1) and, if not, what would be an appropriate definition. The Commission also asked whether restrictions should be adopted governing permissible time periods for liquidating, or "lay-off," transactions in which the block positioner's securities position is liquidated after the block transaction has been effected.

The commentators' responses generally favored a broad definition of the term "block positioner." [40] The Association of the Bar of the City of New York and the NYSE rejected the definitions set forth in Rule 17a-17 under the Act and Regulation U.[41] They suggested that the term "block positioner" should be defined to mean any dealer who (i) has and maintains net capital as defined in Rule 15c3-1 under the Act [42] (or in the net capital rules of the appropriate exchange) of $1,000,000, (ii) engages in the activity of purchasing long or selling short as principal, from time to time, from or to one or more unrelated customers [43] a block of stock with a current market value of $200,000 or more, in a single transaction (or in several transactions at approximately the same time from a single source), to facilitate a sale or purchase by such customers, and (iii) sells the securities comprising the block as rapidly as possible, commensurate with the circumstances. The commentators opposed specific time limits for lay-off transactions in view of the large sums of capital at risk in block transactions, the volatility of conditions in the exchange markets, and the difficulty of predicting the amount of time that is necessary to liquidate a block of stock under a particular set of circumstances.

The Commission believes that the term "block positioner" is generally used to describe a broker-dealer that facilitates the execution of a block transaction in an equity security by positioning at least some part of the block—that is, by purchasing securities for its own account to fill all or a part of a customer's block sale order, or by selling securities for its own account, as either a short sale or a sale from its inventory, to fill all or a part

[36] *Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249*, S. Rep. No. 94-75, 94th Cong., 1st Sess. 99 (1975).

[37] *See, e.g.*, Section 16(e) of the Act, 15 U.S.C. 78p(e); Rule 10a-1 (e)(7)and (e)(8), 17 CFR 240.10a-1 (e)(7) and (e)(8); Rule 15c3-1, 17 CFR 240.15c3-1; and Rule 16e-1, 17 CFR 240.16e-1.

[38] *Cf.* letter to Andrew M. Klein of the Commission's staff from Judith Shepard presenting the views of Goldman, Sachs & Co. and Salomon Brothers (Jan. 5, 1979), File No. S7-613.

[39] Section 3(a)(38), 15 U.S.C. 78c(a)(38), provides that the term "market maker" means "any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an interdealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis."

[40] *See* March 1977 Release, Appendix A, at text accompanying nn. 55-68.

[41] 17 CFR 240.17a-17 and 12 CFR 221.3(z)(2). Rule 17a-17 defines the term "block positioner" for purposes of that rule to mean any registered dealer or exchange member in compliance with applicable capital requirements who, among other things, (i) engages, from time to time, in the activity of buying long or selling short as principal, from or to a customer, a block of stock with a market value of $200,000 or more in a single transaction, or in several transactions at approximately the same time from a single source to facilitate a sale or purchase by such customer; (ii) sells the shares comprising the block as rapidly as possible commensurate with the circumstances; and (iii) does not hold, except under exceptional circumstances and then only for five day extension periods, such block continuously for more than 20 business days and before the expiration of such 20 business day period either extinguishes the exempt credit received or brings such credit into conformity with the initial margin requirements of Regulation U. The definition of the term "block positioner" in Regulation U parallels the definition of that term in Rule 17a-17.

[42] 17 CFR 240.15c3-1.

[43] The suggested definition would have excluded purchases and sales from or to (i) a partner of the dealer or (ii) a joint venture or other entity which has as a participant a partner of the dealer, the dealer itself, or a person associated with the dealer, as defined in Section 3(a)(18) of the Act, 15 U.S.C. 78c(a)(18).

of a customer's block purchase order.[44] An exchange member may be presumed to be acting in the capacity of a "block positioner" for purposes of the market-maker exemption under Section 11(a)(1)(A) if that member is a dealer who establishes a position by purchasing long or selling short as principal from or to a customer with which it is not associated some or all of a block of an equity security [45] in a single transaction (or in several transactions at approximately the same time) to facilitate a purchase or sale by such customer. A transaction liquidating part or all of a position (long or short) so acquired may be presumed to qualify as a block positioner's transaction if liquidation of the position acquired has not been delayed for tax purposes, investment purposes, or other purposes unrelated to the current state of the market in the security involved.

B. ARBITRAGE AND HEDGE TRANSACTIONS

Section 11(a)(1)(D) provides an exemption for any "bona fide arbitrage transaction" as well as "any risk arbitrage transaction in connection with a merger, acquisition, tender offer, or similar transaction involving a recapitalization." [46] In the January 1976 Release, the Commission solicited public comment on these exemptions. In discussing whether there should be time limits on block positioning "lay-off" transactions exempt under Section 11(a)(1)(A),[47] the Commission asked whether time limits would be appropriate for arbitrage transactions. It also asked whether arbitrageurs should be subject to the limitations or obligations of exchange market makers or specialists.[48]

The commentators generally believed that limitations should not be imposed on the arbitrage or hedge exemptions and that the Commission's authority to modify the exemptions under Section 11(a)(1) was significantly limited. One commentator suggested that the primary function and benefit of arbitrage is to narrow spreads between markets or between similar and exchangeable securities or securities which are expected to become similar or exchangeable in the future. The NYSE stated that its criteria for a "bona fide" arbitrage transaction are: (i) the possibility of a profit after expenses, (ii) the necessity of an existing equivalent bid, and (iii) practically simultaneous purchases and offsetting sales.[49]

1. *Bona fide arbitrage.* The term "bona fide arbitrage" generally describes an activity undertaken by market professionals in which essentially contemporaneous purchases and sales are effected in order to "lock in" a gross profit or spread resulting from a current differential in pricing. For example, an arbitrageur may effect an offsetting purchase and sale of the same security in different markets on the basis of an existing price differential between those markets, or may effect offsetting transactions in the same market in a security and another security convertible into the first.[50] In either event, the essence of the bona fide arbitrage is a bona fide effort to profit from an existing price differential. Bona fide arbitrage has been thought to be beneficial to the markets in that it tends to reduce irrational pricing disparities.

The Commission understands that many transactions currently being undertaken by those who are regularly engaged in arbitrage involve some limited, intentional delay (usually a matter of minutes or hours but sometimes, under extraordinary circumstances, as long as a day or even two days) in between the transaction in which the first leg of the arbitrage is established and the subsequent transaction in which the second, offsetting, leg is completed.

Known as "legging" or "legging in," the practice of introducing a delay between putting down the first leg and completing the second leg of the arbitrage is frequently designed to permit the market professional to combine the opportunity to profit from a spread existing at the time the first leg is put down with the opportunity to profit from a favorable short-term price movement, widening the spread, before the arbitrage is completed.[51] Indeed, in situations where the initial spread is very small, the attendant transaction costs, risks and carrying charges may make it uneconomical to attempt the arbitrage unless the existing spread can be combined with an expected favorable intra-day or other very short term price movement. Also, the legging in practice may be adopted in circumstances where market conditions, such as the inability of the market to absorb a large transaction without significant price movement, make it advisable to avoid immediate execution of an entire arbitrage order.

In light of the legislative history and unique purposes underlying Section 11(a),[52] the Commission believes that the bona fide arbitrage exemption in Section 11(a)(1)(D) should be construed very broadly. While the term "bona fide arbitrage" in other contexts is not generally used to describe transactions that are not essentially contemporaneous, the Commission believes that the types of market operations described above should be viewed as bona fide arbitrage within the special meaning of Section 11(a)(1)(D). The "legging in" technique departs from the classic notion of bona fide arbitrage as a simultaneous, or essentially simultaneous, pair (or group) of transactions, and injects some limited element of market prediction and market risk into what would otherwise be purely an activity aimed at profiting from contemporaneous pricing differentials. Nevertheless, in the Commission's view, where a member has begun an arbitrage in the presence of an existing pricing differential (although perhaps one not great

---

[44] *See* Securities Exchange Act Release No. 15219, Oct. 6, 1978), 43 FR 47495 (Oct. 16, 1978). Although the term "block" is not defined in the Act or in the rules thereunder, the Commission has stated in the past that the term "block transaction" means a transaction in which a member firm, by reason of the size of the order in relation to conditions in the exchange market reasonably concludes that it is in the interest of the customer to search and negotiate for a matching interest on the other side of the market (including negotiating as principal with the customer) rather than to accept or submit a bid or offer in the ordinary course of the auction market. Securities Exchange Act Release No. 8791 (Dec. 31, 1969). *See also* NYSE Rules 97.10 and 127.10, New York Stock Exchange Guide (CCH) ¶¶ 2097.10 and 2127.10.

[45] For purposes of Section 11(a)(1), a customer's order may be presumed to be a block order if it represents at least 10,000 shares, or a quantity of securities that has a current market value of at least $200,000, whichever is less. *See* NYSE Rule 127.10. Contrast the block guidelines under Rule 10b-10, Securities Exchange Act Release No. 15219 (Oct. 6, 1978), 43 FR 47495 (Oct. 16, 1978), and under proposed Rule 13e-2(d), Securities Exchange Act Release No. 10539 (Dec. 6, 1973), 38 FR 34341 (Dec. 13, 1973).

[46] Section 11(a)(1)(D) also exempts "bona fide hedge" transactions in certain securities from the prohibitions of Section 11(a)(1). The hedge exemption is discussed at text accompanying nn. 58-61, *infra.*

[47] *See* text accompanying nn. 39-45, *supra.*

[48] January 1976 Release, Question 1.

[49] *See* March 1977 Release, Appendix A, at text accompanying nn. 69-75.

[50] *See* March 1977 Release, Appendix A, at text accompanying nn. 69-75. Although the need for a statutory exemption for members' trading is lessened in view of the Commission's effect versus execute rule, Temporary Rule 11a2-2(T) under the Act, the requirement under that rule that a member arrange to have an independent member execute the transaction may effectively prevent member firms from engaging in certain kinds of arbitrage transactions where the spread sought to be realized, or "cash flow," is sufficiently small to make the hiring of an independent broker uneconomical.

[51] For example, in a bona fide arbitrage between a common stock and a convertible debt security, the arbitrageur who believed the price of the common stock would decline in the immediate future might effect a short sale in the stock before making a long purchase in the convertible debt security; if the prediction were accurate, the proceeds on the short sale would be maximized and the arbitrageur could expect to acquire the convertible debt security after the stock price (and the convertible debt security price) declined. If, instead, the arbitrageur believed the stock price would shortly rise, he might effect the transactions in the reverse order.

[52] *See* text accompanying n. 36, *supra.*

enough to outweigh expected transaction costs and carrying charges), time lags alone on the order of those discussed above do not in and of themselves cause the transaction no longer to be covered by the Section 11(a)(1)(D) exemption.[53]

2. *Risk arbitrage.* The term "risk arbitrage" is itself a misnomer in that the transactions to which it is generally applied do not involve arbitrage in the classic sense of an effort to "lock in" a profit resulting from an existing spread, or differential, between the prices of the same security in different markets or of one security and a second security convertible into the first. Rather, risk arbitrage involves a risking of capital on a contingent event; to be exempt under Section 11(a)(1)(D) it must be in connection with a proposed merger, acquisition, tender offer, or other similar transaction involving a recapitalization ("risk arbitrage event").[54]

The Commission believes that the exemption for risk arbitrage in Section 11(a)(1)(D) applies to transactions which are effected with a view to profiting from the consummation of a risk arbitrage event as well as to transactions effected in order to profit from the unsuccessful termination of such an event. It applies regardless of whether the risk arbitrage event involves a proposed exchange of securities or cash tender offer or acquisition.[55] The exemption applies only to transactions effected after the public announcement of the risk arbitrage event[56] and before completion or termination of the risk arbitrage event. In addition, the exemption applies to transactions that liquidate a risk arbitrage position before completion or termination of the risk arbitrage event or within a reasonable period of time thereafter.[57]

3. *Hedge transactions.* Section 11(a)(1)(D) also provides an exemption for "any bona fide hedge transaction involving a long or short position in an equity security and a long or short position in a security entitling the holder to acquire or sell such equity security * * *." The Act does not otherwise specify what type of transaction will result in a "bona fide hedge." While the application of that term is largely a matter of custom and practice, the Commission believes that it implies that an appreciable offset of risk, for all or part of the position being hedged, must be involved.[58]

A bona fide hedge may be established either by contemporaneous transactions in two securities where each position acquired reduces the risk of the other,[59] or by a single transac-

[53] In some circumstances, an arbitrage begun in good faith may be abandoned because of unfavorable (and unexpected) market changes. In such circumstances, the failure to complete the arbitrage would not cause the transaction establishing the first leg to cease to qualify for exemption as "bona fide arbitrage" under Section 11(a)(1)(D). The question whether the first transaction was part of a contemplated arbitrage involes a factual determination. One relevant, although not necessarily determinative, consideration would be whether that transaction was effected in an account reserved primarily for arbitrage and like transactions by an exchange member regularly engaged in arbitrage. *See* Section 1233(f) of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 1233(f), and the regulation thereunder, 26 CFR 1.1233-1(f)(3).

[54] One leading risk arbitrageur has described risk arbitrage activities as follows:

An arbitrageur is not an investor in the formal sense of the word; *i.e.*, he is not normally buying or selling securities because of their investment value. He is, however, committing capital to the "deal"—the merger, tender offer, recapitalization, etc.—rather than to the particular security. He must thus take a position in the deal in such a way that he is at the risk of the deal, and not at the risk of the market. He accomplishes this by taking a short position in the securities which are being offered, as part of the deal, in exchange for the securities which he purchases.

Wyser-Pratte, *Risk Arbitrage*, Bulletin Nos. 74-75, New York University Graduate School of Business Administration, Institute of Finance (May 1971) at 11-12.

[55] The term "risk arbitrage" is customarily applied to the activities of arbitrageurs in connection with both cash and exchange tender offers, mergers and acquisitions. Section 11(a)(1)(D) refers to "any risk arbitrage transaction in connection with a merger, acquisition, or tender offer. . . ." No distinction is made between cash offers and exchange offers. Moreover, while risk arbitrage in the context of a cash tender offer or cash merger is in some respects indistinguishable from other types of speculation on the future value of a particular security, it does resemble other forms of arbitrage and risk arbitrage in other respects. Like other forms of risk arbitrage, it involves speculation on a particular deal rather than on the corporate fortunes of the issuer or issuers involved. Like bona fide arbitrage between the prices of a security in differing markets, risk arbitrage in the context of a cash tender offer or cash merger involves differing prices for the same security in what may be viewed as two markets, the current market price and the contingent parity value if the risk arbitrage event is consummated. At the same time, of course, not every purchase of a target company's stock is undertaken as risk arbitrage. Generally, risk arbitrage (as opposed to other speculative trading not covered by Section 11(a)(1)(D)) is undertaken only by professional arbitrageurs who are regularly engaged in that activity. Generally, it is undertaken for their own accounts or the accounts of their firms, but it is sometimes undertaken on behalf of others. Risk arbitrageurs generally maintain separate accounts for tax and other purposes. The presence or absence of any such factor would not be determinative, but would be relevant, as to whether a claim to the risk arbitrage exemption was proper.

[56] The first public announcement pertaining to such an event often does not contain the precise terms of the offer or other risk arbitrage event. Where it does not, arbitrageurs cannot determine the exact amount of the consideration to be offered. Nevertheless, the amount of the premium over market value is generally within a predictable range. In that situation, arbitrageurs generally assume that the premium will be within that range, and structure their transactions accordingly, even in the absence of an announcement of all the price terms.

[57] A position assumed by a risk arbitrageur could of course be maintained for tax or investment purposes after the termination or completion of the risk arbitrage event. The later liquidation of such a position would not, however, be considered to be risk arbitrage for purposes of the Section 11(a)(1)(D) exemption.

[58] For example, while the risk of a short stock position might theoretically be reduced by a "deep-out-of-the-money" long call position, there generally would not be any realistic expectation that the call would offset any appreciable amount of the risk assumed in the short stock position. In such a case the two positions would not involve a bona fide hedge for purposes of Section 11(a)(1)(D). At the same time, a transaction establishing an "in-the-money" or "near-the-money" long call position covering 100 underlying shares of stock could be a hedge transaction for purposes of Section 11(a)(1)(D) for part of a preexisting short stock position of much greater size.

The question whether particular combinations of stock positions and options positions result in risk reduction in each of the positions involves subjective judgments as to the volatility and risk characteristics of those positions. For example, "ratio" hedges are frequently used when the risk involved in a stock position is offset by the writing of options. In such ratio hedges, the number of underlying shares deliverable upon exercise of the options exceeds the number of shares in the stock position that is being hedged. The hedge ratio reflects a calculation of the relative degree of risk involved in each position. In establishing a suitable ratio, some industry participants use the "delta factor" derived from the Black-Scholes pricing formula; the delta factor predicts price movements in an option as a function of movements in the underlying stock. Other industry participants have developed their own models. The Commission recognizes that the calculation of volatility and risk can only be approximate, and believes that, for purposes of Section 11(a)(1)(D), the determination of what constitutes an offset may be made by the use of any responsible method of calculating the risk of stock and options positions.

[59] For example, a bona fide hedge may involve essentially contemporaneous transactions in a stock and in one or more options to buy or sell that stock where the stock and option positions so acquired reduce the risks of each other. Where a bona fide hedge position is established by contemporaneous transactions, each such transaction qualifies for the hedge exemption.

In addition, the Commission recognizes that the "legging in" technique discussed above is used also in establishing hedges and that a similar "legging out" technique is used in liquidating some hedges. The Commission believes that, where either technique is used, the hedging exemption should apply on the same basis as is discussed above in connection with bona fide arbi-

Footnotes continued on next page

tion in which a position acquired in one security reduces the risk of a previously established position in another security.[59] To the extent, however, that a position does more than offset the risk of the position or positions on the other side, the excess position is not part of a "bona fide hedge" for purposes of Section 11(a)(1)(D). Where a bona fide hedge has been established, the exemption under Section 11(a)(1)(D) also applies to the transaction or transactions that liquidate the hedge.[61]

III. TEMPORARY EXEMPTIVE RULE FOR BONA FIDE HEDGE TRANSACTIONS IN CERTAIN SECURITIES (TEMPORARY RULE 11a1-3 (T))

With respect to the exemption for "bona fide hedge" transactions, the wording of Section 11(a)(1)(D) refers, on the one hand, to a position in an equity security and, on the other hand, to a position in a security entitling the holder to acquire or sell that security. By its terms, the exemption does not apply to a hedge that involves options exclusively. The Commission currently believes, however, that it is appropriate to accord such options hedges a temporary exemption. That conclusion is prompted in part by the fact that members of the options exchanges currently conduct such activities on those exchanges and that the prohibition of such activities by Section 11(a)(1) could cause unnecessary disruption in the operation of the options markets without serving the purposes of Section 11(a).[62] While the market making exemption under Section 11(a)(1)(A) applies to proprietary trading by floor members who are acting as market makers,[63] option-to-option hedging by other members does not have any exemption comparable to the Section 11(a)(1)(D) exemption.

The options markets have developed substantially since the time Section 11(a) was adopted. Options hedging strategies are part of the options activities of professional traders. Even though the Commission has not completed its evaluation of the current operations of the options markets, it currently believes that exemptive relief under Section 11(a)(1)(H) for options hedging transactions is appropriate to avoid any immediate disruption. Furthermore, it appears that the Congress may possibly have intended to include option-to-option hedging under the exemption for bona fide hedge transactions when it enacted Section 11(a) as part of the Securities Acts Amendments of 1975.[64]

The legislative history of Section 11(a)(1)(D) indicates that certain persons believed that its wording would in fact cover hedging between or among options positions.,[65] As noted above, however, it does not appear to the Commission that the language of Section 11(a)(1)(D) accomplishes that purpose.

The Commission is adopting a temporary rule, Temporary Rule 11a1-3(T), that would establish an exemption comparable to the hedging exemption in Section 11(a)(1)(D) for, among other things, option-to-option hedging. The temporary rule would permit members of a national securities exchange to effect, for their own accounts or the accounts of their associated persons, bona fide hedge transactions between or among securities entitling the holder to sell or acquire the same equity security, which would include option-to-option hedging. The exemption provided by the temporary rule does not exempt transactions for accounts with respect to which a member or an associated person thereof exercises investment discretion,[66] in view of the potential fiduciary problems which the Congress identified with respect to transactions for such accounts.

The Commission has not adopted Temporary Rule 11a1-3(T) as a permanent rule for two reasons. First, the options markets have developed substantially since the time Section 11(a) was adopted, and the Commission has been studying those developments with a view to determining any appropriate and necessary regulatory action. The Commission has not completed its review of current market operations

---

Footnotes continued from last page

trage. *See* text accompanying nn. 51-53, *supra*.

[60] A transaction to hedge a previously established position does not retroactively confer a hedge exemption on the transaction that established the original position. For example, a short stock position that had been established on February 1 could be hedged by a long call transaction on March 1. In that example, only the March 1 long call transaction could qualify as a bona fide hedge transaction. The February 1 short stock transaction would not, even though it later became involved in a hedge; if the transaction establishing the February 1 position had violated Section 11(a), the violation would not be cured by the March 1 transaction.

[61] When a hedge is liquidated, the hedge exemption applies to the transaction or transactions that eliminate the hedge, regardless of whether the transaction that originally established the position being liquidated was an exempt bona fide hedge transaction. If a hedge is eliminated by liquidating all the positions at the same time, or by legging them out, each liquidating transaction qualifies for the hedge exemption. For example, where a short stock position established on February 1 was hedged contemporaneously by a long call position, or was hedged at a later time (*e.g.*, on March 1) by such a position, both positions could be liquidated, or "legged out," under the hedge exemption. If, on the other hand, a hedge is eliminated by liquidating only one of the positions that constituted the hedge, only that liquidating transaction qualifies for the hedge exemption; transactions liquidating the remaining positions that had formerly been, but were no longer, part of an existing hedge would not qualify for the hedge exemption (unless a hedge had been reestablished involving those positions). For example, where the hedge referred to above was eliminated by the liquidation of only the February 1 short stock position, that transaction would qualify for the hedge exemption, but the later liquidation of the March 1 long call position would not qualify under the hedge exemption (unless a hedge had been reestablished by acquiring a third position—*e.g.*, another short stock position).

[62] *See* letter to Andrew M. Klein of the Commission's staff from Judith Shepard, presenting the views of Goldman, Sachs & Co., and Salmon Brothers (Jan. 5, 1979), and letter to Lee A. Pickard of the Commission's staff from Pope, Ballard, Shepard & Fowle on behalf of Harris Associates, Inc. (Jan. 5, 1977), File No. S7-613. Exchange members could, after February 1, 1979, employ unaffiliated brokers, pursuant to the effect versus execute rule (Temporary Rule 11a2-2(T)), to effect the transactions between or among options. The Commission does not currently believe any useful purpose would be served in compelling exchange members to use an unaffiliated broker in order to effect such transactions.

[63] *See* March 1978 Release, at text accompanying n. 69.

[64] Pub. L. No. 94-29, § 6 (June 4, 1975).

[65] In February 1975, the Senate Subcommittee on Securities of the Committee on Banking, Housing and Urban Affairs held hearings on S. 249, the Senate's version of the Securities Acts Amendments of 1975. At that time, Section 11(a)(1)(D) provided an exemption for "any bona fide arbitrage transaction." In its written statement (Mar. 13, 1975) to the Subcommittee, the Chicago Board Options Exchange, Inc. (the "CBOE") commented that it was important that certain members' trading be preserved from the prohibition of Section 11(a)(1). The CBOE then stated:

> In particular, subparagraph (D), exempting "any bona fide arbitrage transaction" is important to an options market, since arbitrage type spread transactions among the various options series and arbitrage between an options position and a position in the underlying stock serve important functions in maintaining proper price relationships and otherwise contributing to a fair and orderly market.

The CBOE apparently believed that bona fide arbitrage transactions included the hedge transactions it described in its letter. The CBOE suggested expansion of Section 11(a)(1)(D) to assure that such transactions were exempted; to accomplish this result it proposed language that is precisely the same as the language which the Congress ultimately adopted as Section 11(a)(1)(D). *Hearings on S. 249 before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249*, 94th Cong., 1st Sess., Appendix at 485-486 (1975). *See* letter to Roger D. Blanc of the Commission's staff from Bernard H. Garil on behalf of Oppenheimer & Co. Inc. (Dec. 27, 1978), File No. S7-613.

[66] Such transactions may, of course, be effected pursuant to an available statutory or rule exemption under Section 11(a)(1), such as Section 11(a)(1)(E) or the effect versus execute rule (Temporary Rule 11a2-2(T)).

conducted by options traders and others and is not able to conclude finally whether the options trading that would be covered by the temporary rule should be exempted permanently. Second, although option-to-option hedging is an existing practice among securities professionals, its place in an active trading environment in which Section 11(a) is fully effective has not been gauged. The Commission plans to continue its consideration of Temporary Rule 11a1-3(T) and, if necessary, to revisit these issues at a later date.

Commentators are requested to provide their views on the issues discussed above and on any other matters relating to the adoption of Temporary rule 11a1-3(T) that they believe the Commission should consider.

IV. Amendments to the Proprietary Trading Rule (Temporary Rule 11a1-1(T))

The proprietary trading rule was adopted under Section 11(a)(1)(G) to implement that provision's exemption for members' proprietary transactions. Under Section 11(a)(1)(G), as implemented, a member may effect a transaction for its own account if, among other things, (i) the member derives more than 50% of its gross income from certain types of business (the "business mix" test), and (ii) the transaction yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange.

The Commission is responding below to comments concerning whether revenues derived from exempt bond trading activities may be included within the categories of business enumerated in the "business mix" test (referred to in the April 1978 Release as "eligible income"). The Commission also briefly reviews below the treatment under Section 11(a) of covered account orders which are left before February 1, 1979 on limit order books maintained on exchange floors but which are not executed until after that date.

A. Bond Trading Revenues

In April 1978, the Commission adopted the bond trading rule (Temporary Rule 11a1-4(T)) to exempt from Section 11(a)(1) all bond transactions on an exchange for the account of a member or its associated person. Two persons commented on the bond trading rule. While they supported that rule, they contended that revenues from proprietary transactions under the bond trading rule should be considered as "eligible income" for purposes of the "business mix" test under Section 11(a)(1)(G)(i). They stated that these revenues are derived from activities which have beneficial and constructive effects on the exchange markets. They also observed that revenues derived from transactions exempted under paragraphs (A), (B) and (D) of Section 11(a)(1) are deemed to be "eligible income" for purposes of the "business mix" test of the proprietary trading rule, and stated that revenues derived from exempt bond trading deserve similar treatment.[67]

In adopting the bond trading rule, the Commission concluded that principal bond trading on exchanges provides a relatively liquid market for transactions of small size, that exchange bond markets do not appear to offer exchange members an opportunity for special "time and place" advantages, and that such trading would not raise any of the problems concerning institutional exchange membership articulated by the Congress when it enacted Section 11(a).[68] Furthermore, when the proprietary trading rule was amended to permit revenues from transactions exempted under paragraphs (A), (B) and (D) of Section 11(a)(1) to be treated as "eligible income" for purposes of the "business mix" test, the Commission stated that such transactions represent a "traditional" securities business and that the Congress believed them to have a beneficial, or at least not deleterious, impact on the exchange markets.[69]

The reasons behind that revision of the proprietary trading rule are equally applicable with respect to revenues derived by members from exchange bond trading activities. Accordingly, the Commission is adopting an amendment to paragraph (b) of the proprietary trading rule, to permit members to count as "eligible income" for purposes of the "business mix" test revenues derived from effecting transactions under the bond trading rule.

B. Pre-February 1979 Limit Orders

In the April 1978 release, the Commission adopted a new paragraph (c) to the proprietary trading rule. That paragraph provides that any limit order that was left with a specialist or any other person maintaining a limit order book on a national securities exchange before May 1, 1978, and not executed before that date, shall be deemed, if executed before January 1, 1979, to be an order for the account of a person who is not, and is not associated with, a member. Paragraph (c) was summarily adopted to avoid the significant problem of marking orders left on limit order books for purposes of the proprietary trading rule within the extremely short time that remained before May 1, 1978, when Section 11(a)(1) was originally scheduled to become fully effective.

The Commission believes that the exchanges have had sufficient time to alert their members to this problem and to encourage or require members to mark any orders left on limit order books for purposes of the proprietary trading rule. Accordingly, the Commission is rescinding paragraph (c) of the proprietary trading rule and is not adopting any comparable rule for the period following January 1, 1979.

V. Solicitation of Comments

The Commission hereby requests all interested persons to provide data, views, and arguments on the new temporary rule, the rule amendments, and the interpretations adopted herein, and any other matters pertaining to Section 11(a) of the Act. Comments must be submitted by April 1, 1979 in accordance with the instructions set forth near the beginning of this release under the caption "ADDRESSES."

VI. Statutory Basis

The Securities and Exchange Commission, acting pursuant to the Securities Exchange Act of 1934, and particularly Sections 2, 3, 6, 11, 11A, and 23 thereof (15 U.S.C. 78b, 78c, 78f, 78k, 78k-1, and 78w), hereby adopts Temporary Rule 11a1-3(T) and an amendment to paragraph (b) of Temporary Rule 11a1-1(T), and rescinds paragraph (c) of that rule. The adoption and rescission shall both take effect on February 1, 1979. The Commission has determined that Temporary Rule 11a1-3(T), and the amendment to Temporary Rule 11a1-1(T), are consistent with the purposes of Section 11(a), the protection of investors, and the maintenance of fair and orderly markets.

The Commission finds, in accordance with Section 4(b)(B) of the Administrative Procedure Act (the "APA"),[70] that notice and public procedure on the adoption of Temporary Rule 11a1-3(T) are impracticable and contrary to the public interest. Accordingly, the Commission finds that good cause exists to adopt Temporary Rule 11a1-3(T) without notice and public procedure. The trading activity covered by the exemption provided by Temporary Rule 11a1-3(T) is ongoing and has occurred in the past. Although the Commission has raised substantial questions about options trading and the operations of options exchanges,[71] the Commission has not concluded at this time that the trading activity covered by the temporary

[67] Responses of Asiel & Co. (July 24, 1978) and Mabon, Nugent & Co. (May 24, 1978), File No. S7-613. *See* Rule 11a1-1(T)(b).

[68] April 1978 Release, at text accompanying nn. 11-13.

[69] *Id.*, at text accompanying n. 23.

[70] 5 U.S.C. 553(b)(B).

[71] *See, e.g.*, Securities Exchange Act Release No. 14056 (Oct. 17, 1977), 42 FR 56706 (Oct. 27, 1977).

rule has caused serious problems or has resulted in disruption of the exchange markets. On the other hand, the effectiveness of Section 11(a) with respect to all exchange members and their associated persons on February 1, 1979, without the exemptive relief accorded by the adoption of Temporary Rule 11a1-3(T), could disrupt existing trading patterns in a fashion that the Congress appears not to have contemplated. The problem raised by the exclusion of option-to-option hedging from the exemption provided by Section 11(a)(1)(D) was addressed by three commentators, who urged the Commission to take appropriate action to exempt such exchange transactions from the prohibition of Section 11(a)(1). Adoption of the temporary rule effective February 1, 1979, the date Section 11(a)(1) becomes generally effective, will alleviate certain of the options trading problems that implementation of Section 11(a)(1) would otherwise cause. For the reasons expressed above, the Commission finds good cause to make the temporary rule effective less than 30 days after its adoption, in accordance with Section 4(c) of the APA.[72] In addition, publication is not required because the temporary rule grants an exemption.

The amendment to paragraph (b) of Temporary Rule 11a1-1(T) is an extension of the exemptive treatment accorded to exchange bond trading under Temporary Rule 11a1-4(T), which was adopted in April 1978. That rule was addressed by only two commentators, both of which requested the Commission to adopt an amendment similar to the one adopted today. Moreover, the amendment clarifies the treatment of bond trading revenues under the "business mix" test in Section 11(a)(1)(G)(i) and temporary Rule 11a1-1(T) and thus permits members in the bond business to complete their preparations for the full effectiveness of Section 11(a)(1) on February 1, 1979. In view of the foregoing discussion, and the February 1, 1979 date for full effectiveness of Section 11(a)(1), the Commission finds that notice and public procedure in accordance with Section 4(b)(B) of the APA are impracticable, unnecessary and contrary to the public interest. Accordingly, the Commission finds that good cause exists to adopt the amendment concerning bond trading revenues to paragraph (b) of Temporary Rule 11a1-1(T) without notice and public procedure. For the same reasons, the Commission finds good cause to make that amendment effective less than 30 days after its adoption, in accordance with Section 4(c) of the APA. In addition, publication of notice before that amendment's effectiveness is not required because that amendment broadens an existing exemption.

The Commission finds that neither Temporary Rule 11a1-3(T) concerning bona fide hedge Transactions in certain securities, including options, nor the amendment, concerning bond trading revenues, to paragraph (b) of Temporary Rule 11a1-1(T), will impose any burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act. Temporary Rule 11a1-3(T) will create an exemption from Section 11(a)(1) that the Commission believes is necessary or appropriate to prevent possible disruption of options trading and diminution of the ability of securities traders to offset the risks they assume in effecting other transactions. The amendment to Temporary Rule 11a1-1(T) will broaden an existing exemption under that rule. In addition, it will avoid any disparity in treatment between exchange members relying on Temporary Rule 11a1-4(T) and members relying on certain other statutory exemptions since the amendment permits a member to count revenues earned from exchange bond transactions as "eligible income" for purposes of the "business mix" test in Section 11(a)(1)(G)(i) and Temporary Rule 11a1-1(T).

The Commission's rescission of paragraph (c) of Temporary Rule 11a1-1(T) deletes a provision which refers to transactions effected before January 1, 1979. The Commission finds that notice and public procedure in accordance with Section 4(b) of the APA would be unnecessary, that good cause exists to make the rescission amendment effective less than 30 days after its adoption and that the rescission of paragraph (c) will not impose any burdens on competition.

Part 241 of Chapter II of Title 17 of the Code of Federal Regulations is amended, effective February 1, 1979, by the inclusion of this release therein. Part 240 of Chapter II of Title 17 of the Code of Federal Regulations is amended, effective February 1, 1979, by amending paragraph (b) and deleting paragraph (c) of § 240.11a1-1(T), and by adding § 240.11a1-3(T), as follows:

§ 240.11a1-1(T) Transactions yielding priority, parity and precedence.

* * * * *

(b) A member shall be deemed to meet the requirements of section 11(a)(1)(G)(i) of the Act if during its preceding fiscal year more than 50 percent of its gross revenues was derived from one or more of the sources specified in that section. In addition to any revenue which independently meets the requirements of section 11(a)(1)(G)(i), revenue derived from any transaction specified in paragraph (A), (B), or (D) of section 11(a)(1) of the Act or specified in 17 CFR 240.11a1-4(T) shall be deemed to be revenue derived from one or more of the sources specified in section 11(a)(1)(G)(i). A member may rely on a list of members which are stated to meet the requirements of section 11(a)(1)(G)(i) if such list is prepared, and updated at least annually, by the exchange. In preparing any such list, an exchange may rely on a report which sets forth a statement of gross revenues of a member if covered by a report of independent accountants for such member to the effect that such report has been prepared in accordance with generally accepted accounting principles.

(c) [Deleted]

§ 240.11a1-3(T) Bona fide hedge transactions in certain securities.

A bona fide hedge transaction effected on a national securities exchange by a member for its own account or an account of an associated person thereof and involving a long or short position in a security entitling the holder to acquire or sell an equity security, and a long or short position in one or more other securities entitling the holder to acquire or sell such equity security, shall be deemed to be of a kind which is consistent with the purposes of section 11(a)(1) of the Act, the protection of investors, and the maintenance of fair and orderly markets.

(Secs. 2, 3, 6, 11, 11A, and 23, 89 Stat. 97, 104, 110, 111, 156 (15 U.S.C. 78b, 78c, 78f, 78k, 78k-1, 78w), Secs. 2, 3, 11, 23, 48 Stat. 881, 882, 885, 891, 901, as amended).

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 29, 1979.

[FR Doc. 79-3450 Filed 1-30-79; 8:45 am]

[72] 5 U.S.C. 553(d).

[6450-01-M]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION

SUBCHAPTER A—GENERAL RULES

[Docket No. RM79-3]

PART 2—GENERAL POLICY AND INTERPRETATIONS

SUBCHAPTER E—REGULATIONS UNDER THE NATURAL GAS ACT

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

SUBCHAPTER H—REGULATION OF NATURAL GAS SALES UNDER THE NATURAL GAS POLICY ACT OF 1978

PART 270—RULES GENERALLY APPLICABLE TO REGULATED SALES OF NATURAL GAS

PART 271—CEILING PRICES

PART 273—COLLECTION AUTHORITY; REFUNDS

PART 274—DETERMINATIONS BY JURISDICTIONAL AGENCIES

PART 275—COMMISSION DETERMINATIONS AND COMMISSION REVIEW OF JURISDICTIONAL AGENCY DETERMINATIONS

PART 276—REPORTS

SUBCHAPTER I—OTHER REGULATIONS UNDER THE NATURAL GAS POLICY ACT OF 1978

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS

Filing Requirements Under Interim Regulations Implementing the Natural Gas Policy Act of 1978

JANUARY 26, 1979.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of filing requirements.

SUMMARY: On December 1, 1978, (43 FR 56448) the Federal Energy Regulatory Commission issued regulations implementing the Natural Gas Policy Act of 1978 (NGPA). This Notice directs parties making filings in compliance with the NGPA regulations to follow the guidelines established herein regarding format and number of copies to be filed.

EFFECTIVE DATE: February 5, 1979.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (Reference Docket No. RM79-3).

FOR FURTHER INFORMATION CONTACT:

Matthew Stover, Office of the Secretary, Federal Energy Regulatory Commission 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 275-4166, or

Marvin Hirsh, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 275-4623.

JANUARY 26, 1979.

The formal requirements for pleadings, documents, and other papers filed with the Federal Energy Regulatory Commission are specified in 18 CFR 1.15. A number of parties making filings pursuant to the Commission's regulations implementing the Natural Gas Policy Act of 1978 (NGPA) have failed to comply with the provisions of § 1.15. In order to clarify filing procedures under the NGPA and minimize paperwork burdens on the public, this Notice provides rules by which to make filings under the NGPA.

Any filing received by this Commission after February 5, 1979, pursuant to regulations implementing the NGPA shall be deemed deficient and rejected if the filing does not conform to the terms of this Notice.

Notice is hereby given that:

GENERAL. Unless otherwise indicated by this Notice, all filings made with the Commission pursuant to regulations implementing the NGPA shall be made in conformance with 18 CFR 1.15.

TITLE. Pleadings, documents, or other papers filed with the Commission shall clearly show:

(1) the section of NGPA under which they are filed;

(2) the section of the Commission's Regulations under which they are filed;

(3) the name of the person in whose behalf the filing is made.

TRANSMITTAL. The original and each conformed copy of all filings shall bear a transmittal letter listing:

(1) a description of each item included in the filing;

(2) an indication of any item for which the filing party requests confidentiality pursuant to 18 CFR 275.206.

CONFIDENTIALITY. It is the filing party's responsibility to identify on the transmittal letter and segregate within the filing all items for which confidential treatment is requested pursuant to 18 CFR 275.206.

FORM. Pleadings, documents, and other papers filed with the Commission pursuant to the NGPA shall be typewritten on letter size paper 8 to 8½ inches wide by 10½ to 11 inches long. The impression shall be on only one side of the paper unless there are more than four pages.

(1) *Exceptions.* Well logs, graphs, maps, and charts will be accepted in excess of 8½ inches wide by 11 inches long only if they cannot be legibly provided on letter size paper.

COPIES. The § 1.15 requirement that documents be filed in an original and either 14 or 19 copies has been reduced for filings under most sections of the NGPA regulations. Except as noted in the following table or otherwise required by the rules and regulations of the Commission, filings under the NGPA shall be made in an original and five conformed copies.

Section of NGPA regulations	Description	Original	Copies
157.48(b)(1)(i)	Petition Requesting Waiver	1	14
270.202(d)	Application for adjustment	1	14
271.402(c)(3)	Petition for Special Relief	1	14
271.1105 & 271.1106	Applications for Determination, Costs, or Adjustment	1	14
274.207(c) & (e)	Alternative Filing Requirements	1	14
275.201(d)	Protest of Determination	1	14
275.202(d)	Comments and/or Request for Informal Conference	1	14
275.204	Protest of Determination	1	14
275.205(b)	Petition to Reopen Proceedings	1	14
275.206(b)	Request for Disclosure of Confidential Information	1	14
286.102(a)	Petition for Rehearing	1	14
286.102(d)(1)	Initial or Reply Brief	1	19

Any inquiries concerning filing requirements under the Natural Gas Policy Act of 1978 should be made to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 275-4166.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3311 Filed 1-30-79; 8:45 am]

[6570-06-M]

Title 29—Labor

CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PART 1601—PROCEDURAL REGULATIONS

706 Designation

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations on designation of certain State and local fair employment practices agencies so that they may handle employment discrimination charges within their jurisdiction, filed with the Commission. Additionally, changes in nomenclature are made with regard to other, previously designated, agencies.

DATE: Effective January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Boyce Nolan, Equal Employment Opportunity Commission, Office of Field Services, State and Local Division, 2401 E Street, NW., Washington, D.C. 20506, telephone 202/634-6040.

SUPPLEMENTARY INFORMATION: Publication of this amendment to § 1601.74(a) effectuates the designation of the following agencies as 706 Agencies:

Georgia Office of Fair Employment Practices [1]
New Mexico Human Rights Commission

Notice of the proposed designation of the foregoing agencies as 706 Agencies was published in the September 7, 1978 issue of the FEDERAL REGISTER, 43 FR 39831, with notice that written comments must have been filed with the Commission on or before September 15, 1978. The Commission received two comments from interested persons on the operation of one agency, but nothing substantive as to the legality and to finalizing 706 designation of the agency.

In keeping with its new 706 designation, the Georgia Office of Fair Employment Practices is no longer designated a notice agency, and that designation is therefore deleted.

In addition to the new designations, corrections are being made regarding two previously designated Agencies. The name "Wichita (Kansas) Commission on Civil Rights" is corrected to read "Wichita (Kansas) Civil Rights and Equal Employment Opportunity Commission." The name "Dade County (Florida) Fair Housing and Employment Commission" is corrected to read "Dade County (Florida) Fair Housing and Employment Appeals Board."

With the addition of the above mentioned agencies and noted corrections, § 1601.74 (a) and (b) are amended as follows:

§ 1601.74 Designated 706 and notice agencies.

(a) The designated 706 Agencies are:

Alaska Commission for Human Rights
Alexandria (Virginia) Human Rights Office
Allentown (Pennsylvania) Human Relations Commission
Arizona Civil Rights Division
Augusta/Richmond County (Georgia) Human Relations Commission
Austin (Texas) Human Relations Commission
Baltimore (Maryland) Community Relations Commission
Bloomington (Indiana) Human Rights Commission
California Fair Employment Practices Commission
Charlestown (West Virginia) Human Rights Commission
Colorado Civil Rights Commission
Commonwealth of Puerto Rico Department of Labor
Connecticut Commission on Human Rights and Opportunities
Dade County (Florida) Fair Housing and Employment Appeals Board
Delaware Department of Labor
District of Columbia Office of Human Rights
East Chicago (Indiana) Human Relations Commission
Evansville (Indiana) Human Relations Commission
Fairfax County (Virginia) Human Rights Commission
Florida Commission on Human Relations
Fort Wayne (Indiana) Metropolitan Human Relations Commission
Fort Worth (Texas) Human Relations Commission
Gary (Indiana) Human Relations Commission
Georgia Office of Fair Employment Practices
Howard County (Maryland) Human Rights Commission
Hawaii Department of Labor and Industrial Relations
Idaho Commission on Human Rights
Illinois Fair Employment Practices Commission
Indiana Civil Rights Commission
Iowa Commission on Civil Rights
Kansas Commission on Civil Rights
Kentucky Commission on Human Rights
Lexington-Fayatte (Kentucky) Urban County Human Rights Commission
Lincoln (Nebraska) Commission on Human Rights
Madison (Wisconsin) Equal Opportunities Commission
Maine Human Rights Commission
Maryland Commission on Human Relations
Massachusetts Commission Against Discrimination
Michigan Civil Rights Commission
Minneapolis (Minnesota) Department of Civil Rights
Minnesota Department of Human Rights
Missouri Commission on Human Rights
Montana Commission for Human Rights
Montgomery County (Maryland) Human Relations Commission
Nebraska Equal Opportunity Commission
Nevada Commission on Equal Rights of Citizens
New Hampshire Commission for Human Rights
New Jersey Division on Civil Rights, Department of Law and Public Safety
New Mexico Human Rights Commission
New York City (New York) Commission on Human Rights
New York State Division on Human Rights
Ohio Civil Rights Commission
Oklahoma Human Rights Commission
Omaha (Nebraska) Human Relations Department
Oregon Bureau of Labor
Orlando (Florida) Human Relations Department
Pennsylvania Human Relations Commission
Philadelphia (Pennsylvania) Commission on Human Relations
Pittsburgh (Pennsylvania) Commission on Human Relations
Prince Georges County (Maryland) Human Relations Commission
Rhode Island Commission for Human Rights
Rockville (Maryland) Human Rights Commission
St. Paul (Minnesota) Department of Human Rights
Seattle (Washington) Human Rights Commission
Sioux Falls (South Dakota) Human Relations Commission
South Bend (Indiana) Human Rights Commission
South Carolina Human Affairs Commission
South Dakota Division of Human Rights
Springfield (Ohio) Human Relations Department
Tacoma (Washington) Human Rights Commission
Utah Industrial Commission
Vermont Attorney General's Office, Civil Rights Division
Virgin Islands Department of Labor
Washington State Human Rights Commission
West Virginia Human Rights Commission
Wheeling (West Virginia) Human Rights Commission
Wichita (Kansas) Civil Rights and Equal Employment Opportunity Commission
Wisconsin Equal Rights Division, Department of Industry, Labor, and Human Relations
Wyoming Fair Employment Practices Commission

(b) The designated notice agencies are:

Arkansas Governor's Committee on Human Resources
North Dakota Commission on Labor
Ohio Director of Industrial Relations
Raleigh (North Carolina) Human Resources Department, Civil Rights Unit

(Sec. 713(a), 78 Stat. 265 (42 U.S.C. 2000e-12(a)))

[1] The Georgia Office of Fair Employment Practices has been designated as a 706 Agency for all charges covering the employment practices of the departments of the State of Georgia only.

Dated: January 23, 1979.

ELEANOR HOLMES NORTON,
Chair, Equal Employment Opportunity Commission.

[FR Doc. 79-3223 Filed 1-30-79; 8:45 am]

[4310-05-M]

Title 30—Mineral Resources

CHAPTER VII—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

[INT FES 79-3]

PERMANENT REGULATORY PROGRAM

Availability of the Final Programmatic Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Notice of availability of the final programmatic Environmental Impact Statement (FES).

SUMMARY: OSM has prepared an FES in connection with its permanent program rulemaking under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), (Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. § 1201 *et seq.*)). Copies of the FES are being made available today. Final decisions on OSM's regulations have not yet been made. The "preferred alternative", *i.e.*, the regulations being considered for publication under section 501(b) of SMCRA, is included in the FES as Appendix C.

DATES: Agency review period ends February 15, 1979.

ADDRESSES: Copies of the FES are available for inspection or may be obtained at the following OSM offices:

OSM Headquarters, Department of the Interior, Room 120, 1951 Constitution Ave., NW., Washington, D.C. 20240.
OSM Region I, First Floor—Thomas Hill Building, 950 Kanawaha Boulevard, East, Charleston, West Virginia 25301.
OSM Region II, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902.
OSM Region III, Federal Building and Courthouse, Ohio and Pennsylvania Streets, Indianapolis, Indiana 46205.
OSM Region IV, 601 East 12th Street, Room 1768, Kansas City, Missouri 64106.
OSM Region V, Room 270—Old Post Office Building, 1823 Stout Street, Denver, Colorado 80205.

FOR FURTHER INFORMATION CONTACT:

Frank Anderson, Chief, Branch of Environmental Analysis, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240 (202) 343-5287.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*) and Section 702 of SMCRA, OSM has prepared a final programmatic Environmental Impact Statement on regulations to implement the permanent regulatory program. The FES evaluates the adverse and beneficial environmental impacts of the preferred alternative being considered for issuance under Section 501(b) of SMCRA and other alternatives. The three major components of the preferred alternative include: (1) regulations concerning environmental and public health and safety performance and design standards, and permit application and bonding requirements; (2) regulations covering the procedures for preparation and submission of state programs for the Secretary's approval and for the substantive review criteria used for approval; and (3) regulations governing the development and implementation of a Federal program for a State.

A notice of availability of the draft programmatic environmental impact statement (DES) was published in the FEDERAL REGISTER on October 4, 1978. (43 FR 45886-87).

Public hearings on the DES were held between October 31, 1978, and November 2, 1978, in Washington, D.C., Indianapolis, Indiana, and Denver, Colorado. Extensive comments on the DES, received during the comment period and public hearings, were considered in preparation of the FES. Copies of written comments and OSM's responses are included in the FES as Appendices B and A, respectively.

Pursuant to the Guidelines for Preparation of Environmental Impact Statements of the Council on Environmental Quality (CEQ), a decision whether to promulgate as final rules the preferred or another alternative may not be taken "sooner than thirty (30) days after the final text of an environmental statement (together with comments) has been made available to the Council, commenting agencies, and the public." (40 C.F.R. § 1500(b)). CEQ Guidelines also provide that modifications to the thirty-day period for agency review may be made after consultation with CEQ. (Since the publication of the CEQ Guidelines, this responsibility has been transferred to the Environmental Protection Agency.) The Department of Interior, by letter of January 25, 1979, from the Assistant Secretary, Energy and Minerals, to the Administrator of the Environmental Protection Agency has requested approval to shorten the agency review period from 30 to 15 days. This request was granted on January 29, 1979. Accordingly, the fifteen-day period will expire on Wednesday, February 15, 1979.

Dated: January 29, 1979.

HOPE M. BABCOCK,
Deputy Assistant Secretary, Energy and Minerals.

Approved:

LARRY E. MEIEROTTO,
Deputy Assistant Secretary for Policy, Budget and Administration.

[FR Doc. 79-3464 Filed 1-29-79; 3:09 pm]

[1505-01-M]

Title 31—Money and Finance: Treasury

CHAPTER II—FISCAL SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—BUREAU OF GOVERNMENT FINANCIAL OPERATIONS

PART 245—ISSUE OF SUBSTITUTES OF LOST, DESTROYED, MUTILATED, AND DEFACED CHECKS DRAWN ON THE U.S. TREASURY

Requirements for Undertaking of Indemnity

Correction

In FR Doc. 78-35193 appearing at page 59059 in the issue for Tuesday, December 19, 1978, in § 245.3, the paragraph which begins at the top of the middle column of page 59060 and is designated "(a)" should have been designated "(1)".

[6560-01-M]

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 1045-5]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for the Town of Mars Hill, Maine

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby issues a Delayed Compliance Order to the Town of Mars Hill, Maine. The Order requires the municipality to bring air emissions from its open burning dump into compliance with certain regulations contained in

the federally-approved Maine State Implementation Plan (SIP). The Town of Mars Hill's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. William Torrey, engineer, 617/223-5330 or Mr. Wesley Marshall, attorney, 617/223-5600 both at EPA, Region I, Room 2103, J.F.K. Federal Building, Boston, Massachusetts, 02203.

ADDRESSES: The Delayed Compliance Order, supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing issuance of the Order are available for public inspection and copying during normal business hours at: EPA, Region I, Room 2103, J.F.K. Federal Building, Boston, Massachusetts, 02203.

SUPPLEMENTARY INFORMATION: On November 14, 1978, the Regional Administrator of EPA's Region I Office published in the FEDERAL REGISTER, 43 FR 52752, a notice setting out the provisions of a proposed delayed compliance order for the Town of Mars Hill, Maine. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments or requests for a public hearing were received in response to the proposal notice.

Therefore, a delayed compliance order effective this date is issued to the Town of Mars Hill, Maine by the Administrator of EPA pursuant to the authority of Section 113(d)(1) of the Clean Air Act, 42 U.S.C. 7413(d)(1). The Order places the Town of Mars Hill, Maine on a schedule to bring its solid waste disposal system into compliance as expeditiously as practicable with Section 100.2.2 of the Maine Department Environmental Protection Air Pollution Control Regulations, a part of the federally-approved Maine State Implementation Plan. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and reporting requirements. Although Section 113(d)(C) of the Act normally requires emission monitoring in an ORDER, no reasonable system of emission monitoring for the Town of Mars Hill's open burning dump site exists. If the conditions of the Order are met, it will permit the Town of Mars Hill to delay compliance with the SIP regulation covered by the Order until June 15, 1979. The Town is unable to immediately comply with these regulations.

EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place the Town of Mars Hill, Maine on a schedule for compliance with the applicable requirement of the Maine State Implementation Plan.

(42 U.S.C. 7413(d), 7601)

Dated: January 26, 1979.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending § 65.240 to read as follows:

§ 65.240 Federal delayed compliance orders issued under Section 113(d)(1), (3), and (4) of the act.

* * * * *

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
(Town of Mars Hill)	(Maine)	(A-SS-78-649)	(November 14, 1978)	(100.2.2)	(June 15, 1979)

[FR Doc. 79-3293 Filed 1-30-79; 8:45 am]

[6560-01-M]

[FRL 1031-8]

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES CERTIFICATION AND TEST PROCEDURES

Technical Amendment

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is making a technical amendment to Part 86 of the EPA regulations. The purpose of this technical amendment is to adjust that portion of the light-duty truck (LDT) class definition pertaining to frontal area. The current limit includes as LDT's those vehicles of less than 46 square feet frontal area. The amended limit is 45 square feet.

DATES: These amendments are effective January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

John F. Anderson, Standards Development and Support Branch Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, Phone: (313) 668-4496.

SUPPLEMENTARY INFORMATION: The intent of establishing a frontal area cutpoint was to exclude from the LDT class certain vehicles which fell within the LDT weight class, but which were considered to be used primarily for commercial purposes. As stated in the preamble to the December 28, 1976 FEDERAL REGISTER notice promulgating the new LDT class definitions, "EPA has accepted the contention that delivery vans which are designed to carry only commodities, and are now characterized by much larger frontal areas than pickup trucks and conventional vans, are properly regulated as heavy-duty vehicles." A cutpoint of 46 square feet frontal area was established for this purpose, based upon data submitted by manufacturers of affected vehicles.

EPA has determined that frontal area measurements used to establish this cutpoint were inappropriately determined by the manfacturers, in that outboard mirrors were included in the frontal area. These mirrors, which are specifically excluded under the definition of basic vehicle frontal area, added just over 1 square foot to the measurements. The result of removing mirror area is to place some smaller step vans in the LDT class, even though the stated intention of the regulations is to exclude such vehicles.

The inconsistency is easily remedied by adjusting the cutpoint based upon the revised data. For this purpose, the 46 square foot cutoff is being amended to 45 square feet.

By issuing the following technical and clerical amendments directly as a final rule, EPA is foregoing the prior issuance of a notice of proposed rulemaking (NPRM) and the opportunity for public comment on the proposal provided by the NPRM. The issuance of a proposal and opportunity for public comment is unnecessary and is contrary to the public interest. The amendments simply correct the regulations and impose no additional burden on the regulated industry in complying with the regulations. For these reasons, EPA finds good cause to dispense with public comment proceedings in accordance with 5 U.S.C. § 553(b).

NOTE.—The Environmental Protection Agency has determined that this document is not a "significant" regulation and does not require preparation of a Regulatory Analysis under Executive Order 12044.

Dated: January 26, 1979.

DOUGLAS M. COSTLE,
Administrator.

Part 86 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

1. section 86.079-2 is amended by revising the definitions of "heavy-duty vehicle" and "light-duty vehicle" to read as follows:

§ 86.079-2 Definitions.

* * * * *

"Heavy-duty vehicle" means any motor vehicle rated at more than 8500 pounds GVWR or that has a vehicle curb weight of more than 6000 pounds or that has a basic vehicle frontal area in excess of 45 square feet.

* * * * *

"Light-duty truck" means any motor vehicle rated at 8500 pounds GVWR or less which has a vehicle curb weight of 6000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

(1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or

(2) Designed primarily for transportation of persons and has a capacity of more than 12 persons, or

(3) Available with special features enabling off-street or off-highway operation and use.

* * * * *

(Sec. 202, 301(a) of the Clean Air Act as amended [42 U.S.C. 7521; 7601(a)]).

[FR Doc. 79-3287 Filed 1-30-79; 8:45 am]

[6560-01-M]

SUBCHAPTER E—PESTICIDE PROGRAMS

[PP 7F2013/R191; FRL 1048-4]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Cyano(3-phenoxyphenyl)methyl-4-chloro-α-(1-methylethyl)benzeneacetate

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide cyano (3-phenoxyphenyl) methyl-4-chloro-α-(1-methyl)benzeneacetate in or on cottonseed and the fat of milk, cattle, goats, hogs, horses, and sheep. The regulation was requested by Shell Chemical Co. This rule establishes maximum permissible levels for residues of the subject insecticide in or on cottonseed and the fat of milk, cattle, goats, hogs, horses, and sheep.

EFFECTIVE DATE: Effective on January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington DC 20460 (202/426-9425).

SUPPLEMENTARY INFORMATION: On May 4, 1978 notice was given (43 FR 19290) that Shell Chemical Co., Suite 200, 1025 Connecticut Ave. NW, Washington, DC 20036, had filed a pesticide petition (PP 7F2013) with the EPA.

This petition proposed that 40 CFR 180 be amended to establish tolerances for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-α-(1-methylethyl)benzeneacetate in or on the raw agricultural commodities cottonseed at 0.2 part per million (ppm) and the fat of milk and the fat of livestock at 0.02 ppm. (The petitioner has clarified the term "livestock" to mean cattle, goats, hogs, horses, and sheep.) No comments were received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances included a rat acute oral toxicity study with a lethal dose (LD_{50}) of 1-3 grams (g)/kilogram (kg) of body weight (bw) in water and 450 milligrams (mg)/kg bw in dimethylsulfoxide (DMSO); a 90-day dog feeding study with a no-observable-effect level (NOEL) of 500 ppm; teratology studies in mice and rats (both negative at the highest dose of 50 mg/kg bw/day); the following studies assessing neurological effects: a hen study, negative at 1 g/kg bw for five days, a rat acute study with an NOEL of 200 mg/kg bw, a rat subchronic feeding study with an NOEL of 150 ppm with no cumulative effects, a dog subchronic feeding study with an NOEL of 500 ppm (the highest dose fed), and 18-month mouse feeding study with an NOEL of 100 ppm with no oncogenic effects at the highest level fed (3,000 ppm), a 24-month rat feeding study with an NOEL of 250 ppm (the highest level fed) with no oncogenic effects, and a three-generation rat reproduction study with an NOEL of 250 ppm (the highest level fed); and the following mutagenicity studies: mouse dominant lethal (negative at 100 mg/kg bw, which was the highest level fed), mouse host-mediated bioassay (negative at 50 mg/kg bw, which was the highest level fed), Ames in vitro (negative), and a bone marrow cytogenic study in the Chinese hamster (negative at 25 mg/kg bw).

Based on the two-year rat feeding study with an NOEL of 250 ppm and using a 100-fold safety factor, the acceptable daily intake (ADI) is 0.025 mg/kg bw/day. No tolerances have previously been established for residues of the subject insecticide. The theoretical maximal residue contribution (TMRC) in the human diet from these tolerances is 0.01 mg/day/1.5-kg diet.

The metabolism of the subject insecticide is adequately understood, and an adequate analytical method (gas chromatography with electron capture detection) is available for enforcement purposes. No actions are currently pending against registration of the subject insecticide nor are any other considerations involved in establishing the proposed tolerances. Although some studies and research are still in progress, the proposed tolerances are fully supported by the data available. The tolerances established by amending 40 CFR 180 will be adequate to cover residues that would result in the meat, fat (including milk fat), and meat byproducts of cattle, goats, hogs, horses, and sheep as delineated in 40 CFR 180.6(a)(2), and there is no reasonable expectation of residues in poultry or eggs as delineated in 40 CFR 180.6(a)(3).

The pesticide is considered useful for the purpose for which tolerances are sought, and it is concluded that the tolerances of 0.2 ppm in or on cottonseed and 0.02 ppm in the fat of milk, cattle, goats, hogs, horses, and

sheep established by amending 40 CFR 180 will protect the public health. It is concluded, therefore, that the tolerances be established as set forth below.

Any person adversely affected by this regulation may, on or before March 2, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708, 401 M St., SW., Washington 20460. Such objections should be submitted and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on January 31, 1979, Part 180 is amended as set forth below.

Dated: January 25, 1979.

(Section 408(d)(2) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(d)(2)].)

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

Part 180, Subpart C, is amended by adding the new § 180.377 to read as follows:

§ 180.377 Cyano(3-phenoxyphenyl)methyl-4-chloro-α-(methylethyl) benzeneacetate; tolerances for residues.

Tolerances are established for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-α-(1-methyl)benzeneacetate in or on the following raw agricultural commodities:

Commodity:	*Parts per million*
Cattle, fat	0.02
Cattle, mbyp	0.02
Cattle, meat	0.02
Cottonseed	0.2
Goats, fat	0.02
Goats, mbyp	0.02
Goats, meat	0.02
Hogs, fat	0.02
Hogs, mbyp	0.02
Hogs, meat	0.02
Horses, fat	0.02
Horses, mbyp	0.02
Horses, meat	0.02
Milk, fat	0.02
Sheep, fat	0.02
Sheep, mbyp	0.02
Sheep, meat	0.02

[FR Doc. 79-3296 Filed 1-30-79; 8:45 am]

[6560-01-M]

SUBCHAPTER R—TOXIC SUBSTANCES CONTROL

[FRL 1047-7; OTS 084002]

PART 730—HEALTH AND SAFETY STUDY REPORTING REGULATIONS

Revocation of Rule

AGENCY: Environmental Protection Agency.

ACTION: Revocation of Rule.

SUMMARY: The Environmental Protection Agency (EPA) has decided to revoke the rule published on July 18, 1978 under section 8(d) of the Toxic Substances Control Act (43 FR 30984-30988). This rule required submission of lists and copies of health and safety studies on ten chemical substances and categories of substances recommended for testing rules by the Interagency Testing Committee (ITC). Companies subject to the rule were required to submit lists and copies of existing studies by October 16, 1978 (43 FR 41205). There was also a continuing requirement to submit ongoing studies when completed and studies initiated after October 16, 1978 until such time as rules under section 4(a) had been promulgated for the substances, or the Administrator had published a FEDERAL REGISTER notice stating his reasons for not initiating such rules.

On September 15, 1978, the Dow Chemical Company (Dow) filed in the United States Court of Appeals for the Third Circuit a Petition for Review of the rule, *The Dow Chemical Company v. United States Environmental Protection Agency, et al.* Docket No. 78-2203. Dow has raised the following issues:

1. Whether the final regulation's requirement to submit lists and copies of studies on chemicals manufactured or processed for product research and development was in excess of the statutory authority of the Agency.

2. Whether the final regulation's requirement to submit copies of studies on chemicals which a company does not manufacture, process or distribute, was in excess of the statutory authority of the Agency.

3. Whether as a consequence of the Agency's decision to broaden, without prior announcement, the scope of the final regulation in comparison with the notice of proposed rulemaking, petitioner was deprived of the right to adequate notice and a fair opportunity to comment, under the Administrative Procedure Act.

Reporting under the rule was substantially completed by October 16, 1978, except for the few reports expected to be made on studies completed between that date and the time that testing rulemaking procedures are initiated under section 4 of TSCA. Dow did not request a stay of the rule, but has, itself, submitted a substantial amount of studies and has presumably complied with the rule. It appears, therefore, that EPA has received almost all the important information it would receive under the subject rule.

In addition, EPA is in the process of developing another rule under section 8(d) for the purpose of obtaining health and safety studies on other chemicals recommended by the ITC. The Agency expects to have a proposal published within three months. The new rule will probably also include the substances and categories subject to the rule being revoked today. Even though Dow feels it did not have adequate notice and fair opportunity to comment on certain aspects of the July 18, 1978 rule, it will certainly have adequate opportunity to raise those issues when the next section 8(d) rule is proposed. EPA, however, does not intend to change its interpretation of the scope of its statutory authority. The Agency entertains no doubt that it has the authority under TSCA section 8(d) to require submission of lists and copies of studies from persons who manufacture or process the substance in question for purposes of product research and development, and that it may obtain copies of studies on substances from persons in possession of such studies whether or not such persons manufacture, process or distribute the substances. However, EPA will accept comments on the issue of whether under any given section 8(d) rule the Agency should exercise the full extent of its authority. The Agency will not decide whether to exercise such authority prior to consideration of such comments.

While EPA does not concede that it failed to comply with the legal requirements of the Administrative Procedure Act in providing opportunity for notice and comment to Dow, EPA does admit that Dow has raised substantial questions on the matter and, as a matter of fairness and in order to aid in Agency decision-making, EPA wishes to have additional public input on the issues raised by Dow.

Since EPA has already received substantial information under the instant rule, EPA feels it would best use its resources by revoking the July 18, 1978 rule and considering all issues at a later date, as soon as practicable, in a rule which covers both the chemicals subject to the July 18 rule and additional chemicals recommended by the ITC. In this way, all of the current comment and controversy can be addressed in the context of the rule with future effect rather than a rule which has already been complied with and would soon be superseded in any

event. Acccordingly, 40 CFR Part 730 is hereby revoked.

FOR FURTHER INFORMATION:

John B. Ritch, Jr., Industry Assistance Office, Office of Toxic Substances (TS-799), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 800-424-9065; in Washington call 554-1404.

Dated: January 26, 1979.

DOUGLAS COSTLE,
Administrator.

[FR Doc. 79-3294 Filed 1-30-79; 8:45 am]

[6820-25-M]

Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER F—ADP AND TELECOMMUNICATIONS

[FPMR Amdt. F-36]

PART 101-36—ADP MANAGEMENT

Low Dollar Value ADP Excess Supply Type Items

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation updates GSA's policies and procedures by establishing minimum reporting levels for nationwide screening of excess ADP supplies and support equipment; by providing for high priority reassignment of excess ADPE to back up the Government's installed base; and by clarifying the meaning of "lease" pertaining to excess ADPE. These changes will expedite screening low dollar excess ADPE items and improve the operation and management of the excess program.

EFFECTIVE DATE: January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

L. Perlman, Procurement Policy and Regulations Branch, Policy and Evaluation Division, Office of Policy and Planning (202-566-0834).

Subpart 101-36.3—Reutilization of Automatic Data Processing Equipment and Supplies

1. Section 101-36.301-1 is amended by revising paragraphs (b) and (d) to read as follows:

§ 101-36.301-1 Automatic data processing equipment.

* * * * *

(b) Auxiliary or accessorial equipment such as plotters, communications terminals, source data automation recording equipment (optical character recognition equipment, paper tape typewriters, magnetic tape cartridge and card typewriters, and other data acquisition devices), etc., acquired for use in conjunction with digital, analog, or hybrid computer equipment, either cable connected, wire connected, or self-standing and whether selected or acquired with a computer or separately; and/or

* * * * *

(d) ADP supplies and support equipment such as but not limited to electronic data processing (EPD) paper, seal bands, tapes, canisters, reels, control panels and wires, certifying and cleaning equipment, winders, splicers, cabinets, safes, and racks peculiar to ADP operations.

2. Section 101-36.303 is revised to read as follows:

§ 101-36.303 Reutilization of excess ADPE.

The primary source of supply for meeting ADPE requirements is excess. To obtain maximum reutilization and to minimize the procurement of new ADPE, excess and exchange/sale ADPE shall be made available for transfer to other Federal agencies in accordance with the provisions of this Subpart 101-36.3. Excess ADP supplies and support items with a unit original acquisition cost (OAC) of $1,500 or less shall be made available for transfer to other Federal agencies in accordance with the provisions of Subpart 101-43.3. Any need for excess ADPE expressed by a Federal agency, including the Senate, the House of Representatives, the Architect of the Capitol and any activities under the Architect's direction, the District of Columbia, and mixed-ownership Government corporations, shall take precedence over disposal, provided such need is made known to GSA prior to shipment or delivery in case of donation or prior to removal of the property from Government control in case of sale.

3. Section 101-36.303-2(a) is amended to revise paragraphs (2) and (2)(v) to read as follows:

§ 101-36.303-2 Considerations for use of excess Government-owned or Government-leased ADPE.

* * * * *

(a) * * *

(2) To obtain maximum economic advantage to the Government, reutilization of excess owned ADPE to satisfy requirements generally shall be considered in the following priority order:

* * * * *

(v) To cannibalize in order to have a parts source of supply for maintenance. In instances where maintenance support has been discontinued or significantly curtailed, reuse priority may be given to agencies seeking to support their installed base.

* * * * *

4. Section 101-36.306 is amended by revising the introductory paragraph to read as follows:

§ 101-36.306 Requests for transfer of excess ADPE or exchange/sale ADPE.

Requests for transfer of excess ADPE or reimbursable transfer of exchange/sale ADPE between Federal agencies shall be accomplished in accordance with this subpart by completing an SF 122, Transfer Order Excess Personal Property. (Transfers of excess ADP supplies and support items with a unit OAC of $1,500 or less shall be accomplished by the Federal Property Resources Service in accordance with FPMR Subpart 101-43.3.) The SF 122 shall contain the name and telephone number (commercial and FTS) of the agency official to be contacted regarding transportation details.

* * * * *

Subpart 101-36.47—Reports

5. Section 101-36.4702 is revised to read as follows:

§ 101-36.4702 Reporting excess or exchange/sale ADPE.

Excess ADPE or exchange/sale ADPE shall be reported on an original and four copies of SF 120, Reports of Excess Personal Property (illustrated at § 101-36.4901-120), and, when necessary, SF 120A, Continuation Sheet (Report of Excess Personal Property). (Excess ADP supplies and support equipment, as defined in FPM 101-36.301-1(d), with an OAC of $1,500 or less shall be reported to the Federal Property Resources Service for regional office screening in accordance with FPMR 101-43.4901.) Any questions should be referred to the General Services Administration (CDSDE), Washington, DC 20405, for resolution.

(a) The SF 120 shall be submitted to the above address by the holding agency at least 90 calendar days before the anticipated release date as determined by the holding agency. This report is exempt from reports control

in accordance with FPMR Subpart 101-11.11. Excess ADPE in the hands of Government contractors may be reported on an appropriate contractor inventory appended to an SF 120: *Provided,* The reporting format includes an adequate commercial description and other appropriate data required by paragraph (b) of this section.

(b) The SF 120 shall include the appropriate condition code designation as defined in § 101-36.301-17 and shall contain the manufacturer's name, equipment type and model number, and full description of the ADPE to determine whether the ADPE may satisfy another agency's requirement. Since ADPE suppliers have adopted no uniform method of identifying certain ADPE systems, components, features, cables, or other devices such as terminators and junction boxes used with the equipment, the complete nomenclature for such equipment as used by the supplier shall be identified and reported on the SF 120. Parts or devices shall not be removed subsequent to reporting the ADPE to GSA as excess. If any part or device has been removed from the ADPE, a statement identifying those parts or devices shall be made on the SF 120. In addition, the status of each individual component and feature shall be shown to indicate whether it is leased, purchased, or leased with option to purchase. If the equipment is leased or leased with option to purchase, the fair value shall be shown on the SF 120. The fair value is the difference between original acquisition cost and accrued purchase option credits. Government-owned and leased ADPE shall not be reported on the same SF 120.

(c) By the time Government-owned ADPE becomes excess to an agency's needs, it may be obsolete in relation to new technology, or the supplier may no longer produce the equipment or develop and maintain software necessary for the operation of the equipment. Accordingly, information such as the availability of software packages, engineering drawings, maintenance manuals, and other technical literature relating to Government-owned ADPE shall be included on the SF 120.

(d) The words "Exchange/Sale Property" and the statement: A written administrative determination has been or will be made to apply the exchange allowance or proceeds of sale to the acquisition of similar items by other than lease, shall be displayed prominently on the original and four copies of the SF 120 when reporting ADPE that is to be replaced pursuant to exchange/sale provisions of Part 101-46. Lease includes the acquisition of ADPE under any plan, e.g., fixed term, extended term rental, or other such plan wherein payments are still due. Without exception, both cash (sale) or exchange (trade-in) offers shall be solicited. The acquisition costs and the reimbursement required, which shall not be greater than the cash (sale) or exchange (trade-in) that the reporting agency has received for the specific ADPE, shall be shown on the SF 120. In addition, the following information must be forwarded with the SF 120:

(1) The identity of the offeror of the cash or exchange offer (enclose copy of offer with the SF 120);

(2) The type of replacement equipment;

(3) The method of acquisition for the replacement equipment;

(4) The anticipated purchase price for the replacement equipment;

(5) The delegation of procurement authority (DPA) number assigned by GSA for the replacement equipment if a DPA is required; and

(6) The name and telephone number of the contracting officer. Until this information is received, the equipment will not be entered into exchange/sale screening. Exchange/sale reports received with inadequate screening time (in noncompliance with the 90-day requirement in § 101-36.4702, above) will be disapproved and entered into screening as excess ADPE. If there is any change to a cash or exchange offer subsequent to the submission of an SF 120, a revised SF 120 indicating the new cash or exchange offer shall be promptly submitted to GSA. Agencies will be advised promptly, in writing, of the date the original or revised SF 120 is received by GSA. Such equipment shall not be sold or exchanged prior to written authorization from GSA. (See § 101-36.4901-120(c) for a specimen description of SF 120 when reporting exchange/sale ADPE.)

(e) Excess ADPE that is located on or within excess real property falling under the provisions of Part 101-47 shall be reported in accordance with this § 101-36.4702. The SF 120 reporting this excess ADPE to GSA shall be so annotated.

(Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)))

Dated: January 16, 1979.

JAY SOLOMON,

Administrator of General Services.

[FR Doc. 79-3213 Filed 1-30-79; 8:45 am]

[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Service Order No. 1354]

PART 1033—CAR SERVICE

Chessie System Authorized To Use Open Hoppers in Unit-Grain-Trains

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order, Service Order No. 1354.

SUMMARY: The Chessie is unable to furnish shippers covered hopper cars for eight consecutive trips as required by tariff. Chessie has a supply of open hopper cars available. Service Order No. 1354 waives the eight-consecutive-trip provision and authorizes the substitution of open hopper cars.

DATES: *Effective 12:01 a.m., January 26, 1979. Expires 11:59 p.m., April 30, 1979.*

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C., 20423, Telephone (202 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION:

Decided: January 24, 1979.

An acute shortage of covered hopper cars for transporting shipments of grain exists on The Baltimore and Ohio Railroad Company and The Chesapeake and Ohio Railway Company, collectively known as Chessie. That line has published certain rates in Traffic Executive Association-Eastern Railroad Tariff 794-F, ICC C-1206 which require the shipment of eight consecutive lots of grain, each to comprise 6,370 net tons loaded into not more than sixty-five (65) covered hopper cars. During the current winter shutdown of Great Lakes shipping, Chessie intends to make available to grain shippers open hopper cars normally used in the movement of coal to Great Lakes ports. As the eight consecutive trips may not be completed before the open hoppers are needed for coal loading, Chessie plans to assign two sets of open hopper equipment and to allow the eight trainload shipment minimum to be met on the basis of four trips each. The Chessie has requested authority to waive the eight-consecutive-trip provisions of this tariff rule, and to substitute open hopper cars for covered hopper cars to be operated concurrently in two sets

each comprising not more than 82 open hopper cars.

It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1354 Service Order No. 1354.

(a) *Chessie System authorized to use open hoppers in unit-grain-trains.* The Baltimore and Ohio Railroad Company and The Chesapeake and Ohio Railway Company, collectively known as Chessie, is authorized to waive the eight-consecutive-trip requirement applicable to 6,370 ton shipments of grain published in Item 370 of Traffic Executive Association-Eastern Railroad Tariff 794-F, ICC C-1206, supplements thereto or reissues thereof. Chessie is authorized to substitute open hopper cars for covered hopper cars for these shipments. Chessie is authorized to operate concurrently two sets of open hopper equipment, each comprising not more than eighty-two (82) open hopper cars, in order to complete the eight trainload shipment minimum on the basis of four trips each. All other provisions of that tariff shall remain fully in effect.

(b) *Rules and Regulations Suspended.* The operation of all other tariff provisions or of other rules and regulations insofar as they conflict with the provisions of this order, is hereby suspended.

(c) *Appplication.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 12:01 a.m., January 26, 1979.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., April 30, 1979, unless otherwise modified, changed or suspended by order of this Commission.

(49 U.S.C. (10304-10305 and 11121-11126).)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-3309 Filed 1-30-79; 8:45 am]

[7035-01-M]

[No. MC-C-3437]

PART 1041—INTERPRETATION—CERTIFICATES AND PERMITS

PART 1047—EXEMPTIONS

PART 1082—EXEMPTIONS

Motor Transportation of Property Incidental to Transportation by Aircraft

AGENCY: Interstate Commerce Commission.

ACTION: Correction to final rules.

SUMMARY: The rules adopted in this proceeding expand air terminal areas to a zone extending 35 miles from the boundary of the pertinent airport, as well as a zone extending 35 miles from the corporate limits of any municipality any part of whose commercial zone falls within 35 miles of that airport. In the interest of clarity, certain changes are necessitated in the final rules, as well as in the Commission Decision, which adopted them.

EFFECTIVE DATE: May 16, 1979.

FOR FURTHER INFORMATION CONTACT:

Frederick Stocker, Telephone 202-275-7907.

SUPPLEMENTARY INFORMATION: The necessary changes clarify the definition of the term "air terminal zone" and the application of the rules. Changes (1) and (2) below affect the Commission Decision which adopted the concerned final rules, and they will be identified by reference to the appropriate page in the Decision where the changes are necessitated. Change (3), however, affects the final rules which were attached to the Decision and published in 44 F.R. 3295, at 3296, on January 16, 1979. Consequently, the necessary changes noted in (3) below will be identified by reference to both the appropriate page of the Decision and FEDERAL REGISTER citation.

(1) At page 95 of the Commission's Decision [*Motor Transp. of Property Incidental to Air,* 131 M.C.C. 87 (1978)], line 17 from the top of the page, delete the following language "the 35-mile air terminal zone" and insert "35 miles of the boundary of the pertinent airport."

(2) At page 97 of the involved decision, the third line from the bottom of the page, delete "49 CFR 1047.40(c)" and insert "49 CFR 1047.40(b)(1)".

(3) The final rules adopted in this proceeding, which appear at page 103 of the involved decision, and at 44 FR 3295, 3296, published January 16, 1979, should be amended by deleting § 1047.40(a)(4) and 1047.40(b) and inserting the following:

§ 1047.40 Motor transportation of property incidental to transportation by aircraft.

* * * * *

(4) must take place within a zone (the "air terminal zone") extending 35 miles from the boundary of the airport at which the shipments are received or delivered, as well as 35 miles from the corporate limits of any municipality any part of whose commercial zone falls within 35 miles of that airport's boundary.

(b) Exceptions.

(1) The Commission may, on its own motion or in response to a petition filed by any person, establish a different air terminal zone for a particular airport.

(2) In emergency situations, where air carriers substitute motor transportation for air transportation due to adverse weather conditions, equipment failure, or other causes beyond the air carrier's control, the substituted service will qualify as incidental to transportation by aircraft if it is performed at the expense of an air carrier on a through air bill of lading.

* * * * *

The changes noted above will be incorporated, as pertinent, into both the Decision of the Commission which will be bound in the Motor Carrier Cases reporter series, and into the codified rules. Certain other less consequential changes will be made in the Commission's Decision to correct typographical errors.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-3314 Filed 1-30-79; 8:45 am]

proposed rules

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.

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1064 and 1065]

[Docket Nos. AO-23-A51, AO-86-A38]

MILK IN THE GREATER KANSAS CITY AND NEBRASKA-WESTERN IOWA MARKETING AREAS

Final Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision changes the funding rate for the advertising and promotion program of each order from a fixed level to a rate tied to the level of producers' pay prices in each market. The funding level is increased from five cents to an initial level of eight cents per hundredweight. The changes are necessary to restore the promotional effort in these markets to the level initially contemplated by producers and to keep the funding rate current with changes in the economy. The decision is based on industry proposals considered at a public hearing held October 23, 1978.

FOR FURTHER INFORMATION CONTACT:

Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of hearing: Issued September 29, 1978, published October 4, 1978 (43 FR 45881).

Recommended decision: Issued December 15, 1978, published December 21, 1978 (43 FR 59511).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the marketing areas mentioned above. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Omaha, Nebraska, on October 23, 1978, pursuant to notice thereof issued on September 29, 1978 (43 FR 45881).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Program Operations, on December 21, 1978, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. At the end of Issue No. 1, a new paragraph has been added.

2. Issue No. 2 of the recommended decision, entitled "Need for emergency action", dealt with a request to omit the recommended decision. Since that issue is now moot, it is not included in this final decision.

The material issues on the record of the hearing relate to:

1. Funding rate for the advertising and promotion program.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Funding rate for the advertising and promotion program.* The funding rate for the advertising and promotion programs under the Kansas City and Nebraska-Western Iowa orders should be changed from the present fixed 5-cent rate to a rate determined yearly by multiplying the simple average of the monthly uniform prices applicable under each order for the months of October-December by 0.75 percent and rounding to the nearest cent. The resulting figure should be the funding rate beginning the following April and should continue for a 12-month period until the procedure is repeated.

The advertising and promotion programs were established under the Kansas City and Nebraska-Western Iowa orders in April 1973. The programs have been funded since their inception through a monthly 5-cent per hundredweight assessment on milk delivered during the month by participating producers. The money is deducted by the market administrator in the computation of the blend price and is turned over to an agency composed of producer representatives. Certain reserves are withheld by the market administrator to cover refunds to those producers not participating in the program and administrative costs.

The advertising and promotion agency is responsible for the development and implementation of programs and projects approved by the Secretary and designed to carry out the purpose of the Act. The scope of the agency's activities may include the establishment of research and development projects, advertising on a nonbrand basis, sales promotion, and educational and other programs designed to improve or promote the domestic marketing and consumption of milk and its products. The advertising and promotion program is a voluntary program. Accordingly, each producer, on a quarterly basis, is given an opportunity to request a refund of the money withheld from him.

The funding rate adopted herein was proposed by Mid-America Dairymen, Inc. (Mid-Am), whose members represent 82 percent of the producers participating in the Greater Kansas City advertising and promotion program and 61 percent of the producers participating in the Nebraska-Western Iowa advertising and promotion program. The cooperative's representative testified that the current funding rate is no longer generating adequate revenues to support advertising and promotion activitives at levels initially contemplated by producers when such activities were initiated under both orders. He indicated that the continuance of the fixed 5-cent funding rate has resulted in a cutback in the advertising and promotion program under each order because the funds generated have remained virtually constant while the costs for television, radio, and newspaper advertising have risen sharply.

At the request of the cooperative, a representative of the United Dairy Industry Association (UDIA) presented data in support of the cooperative's position that additional funds are needed by the agency. These data indicated that the costs of advertising through the various medias in the Kansas City area since 1974 have increased by 83 percent for television, 43 percent for radio, and 85 percent for newspapers. In the Nebraska-Western Iowa area for the same period, compa-

rable advertising costs have increased 83 percent, 69 percent, and 45 percent, respectively. In addition, this witness testified that the cost of scientific research has been increasing at the rate of 8 percent per year. He stated that, as a result of these escalating costs, UDIA has been forced to hold its research budget at the same dollar level as budgeted in 1974.

A spokesman for Associated Milk Producers, Inc., (AMPI), a cooperative with producers on both the Kansas City and Nebraska-Western Iowa markets, also testified in support of a higher funding level and of tying the funding rate to changes in the uniform price to producers. This, he said, would not only bring the rate up to a more reasonable level but also would allow the rate to fluctuate in the future with changes in economic conditions.

The proposed increase in the funding rate for the advertising and promotion programs is warranted in view of the increased costs for advertising that have occurred since the programs were established under the orders. The greatest increase in the cost of advertising has occurred in local television. In terms of a dollar's worth of advertising expenditure in 1974, television advertising currently costs $1.83 in both markets. The cost of newspaper and radio advertising also has increased but not to the same extent as the cost of television advertising. One dollar's worth of radio time in 1974 now costs $1.43 in the Kansas City market and $1.69 in the Nebraska-Western Iowa market. One dollar's worth of newspaper advertising in the two markets now costs $1.85 and $1.45 respectively.

Based upon the increased costs for radio and newspaper advertising in these markets, the funding rates would need to be increased by 2.9 cents for Order 65 and 3.2 cents for Order 64 to enable the agencies to purchase the same quantity of advertising as when the programs were initiated. Cost increases for television advertising would warrant an increase of about 4 cents to maintain the 1974 level. The funding rate adopted herein is in line with these increases in advertising costs.

If the proposed funding rate were now in effect, the assessment for the period from April 1978 through March 1979 would be 7 cents per hundredweight under both orders. This is based on average uniform prices under Orders 64 and 65 of $9.84 and $9.63, respectively, for the last quarter of 1977. On the basis of uniform prices for the months of October through November 1978, it appears likely that the funding rate for the period of April 1979 through March 1980 would be 8 cents per hundredweight. (The uniform prices for October and November 1978 averaged $11.07 under Order 64 and $10.88 under Order 65. An average uniform price in excess of $10.00 during the last quarter of 1978 would assure an 8-cent rate.)

The proposed rate as a percent of the uniform price is in line with the rate at which producers originally funded the programs. In 1973, when the advertising and promotion programs were adopted in the Kansas City and Nebraska-Western Iowa markets, the 5-cent rate was equal to 0.71 and 0.72 percent, respectively, of each market's average uniform price for the year. By 1977, the 5-cent rate represented only 0.53 and 0.54 percent, respectively, of the annual average uniform price in each market. The reason for this decline is that the annual average uniform prices for the Kansas City and Nebraska-Western Iowa markets increased from $7.07 and $6.92, respectively, in 1973 to $9.45 and $9.30 in 1977, while the 5-cent funding rate remained constant. As mentioned previously, the revised funding rate adopted herein would have provided an assessment rate during 1977 of 7 cents per hundredweight, which is equal to 0.75 and 0.74 percent, respectively, of the annual average uniform price for the Nebraska-Western Iowa and Kansas City markets (approximately the same percentage rate that was in effect during 1973).

A minor change should be made in the refund procedure with respect to producers who have transferred to either the Nebraska-Western Iowa or Kansas City market from another Federal order market with an advertising and promotion program. Presently, a producer who is participating in an advertising and promotion program under another order and then transfers to either the Order 64 or Order 65 market is required to participate in the advertising and promotion program for the market to which he transferred until the start of the next quarter. This should be changed with respect to a producer transferring to either of these two markets if the producer was under an order with a lower funding rate. In such case, the producer should be treated like a new producer and should be given the opportunity to request a refund of his money withheld for the advertising and promotion program under Order 64 or 65, as the case may be.

Previously, it was presumed that a producer who was participating in an advertising and promotion program under one order would be willing to participate in a similar program under any other order since the rate of withholding was the same. However, since the rate of withholding under Orders 64 and 65 would be somewhat higher than the rate now applicable under several other Federal orders, a producer should be given an opportunity upon coming onto these markets to decide if he wants to participate in the program under these orders at the higher rate.

Conforming changes have been made in the orders to recognize that the current references in several sections to "weighted average price plus 5 cents" or "uniform price plus 5 cents" would no longer be appropriate. In implementing the revised funding rate for the advertising and promotion programs, the provisions for computing the uniform price have been modified. A "weighted average price" would first be computed that would not include any deduction of the money to be withheld for such programs. Thus, the current references to "weighted average price plus 5 cents" and "uniform price plus 5 cents" are changed to read "weighted average price". Under the adopted changes, the uniform price computations would continue, however, to reflect the deductions applicable for funding the advertising and promotion programs.

The changes adopted herein that relate to the Advertising and Promotion Program should be implemented in two steps. It is preferable from an operational standpoint that the change in the funding rate become effective at the beginning of a calendar quarter. At this stage of the proceeding, it appears that the rate change could be made effective on April 1, 1979. The orders provide, however, that producers who desire not to participate in the program during the April-June period must submit their refund requests during the period of March 1 through March 15. Therefore, the provisions directing the market administrator to compute the funding rate and to notify producers of the new rate sould be made effective prior to March 1, 1979. In this way, producers would be aware of the forthcoming rate change when deciding whether or not they want to participate in the program during the following calendar quarter.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

GENERAL FINDINGS

The findings and determinations set forth below are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and the previously issued amendments to them. All of the previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

RULINGS ON EXCEPTIONS

No exceptions were filed.

MARKETING AGREEMENT AND ORDER

Annexed hereto and made a part hereof are two documents, a MARKETING AGREEMENT regulating the handling of milk, and an ORDER amending the orders regulating the handling of milk in the Greater Kansas City and Nebraska-Western Iowa marketing areas which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreements, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreements are identical with those contained in the orders as hereby proposed to be amended by the attached order which is published with this decision.

DETERMINATION OF PRODUCER APPROVAL OF THE ADVERTISING AND PROMOTION PROGRAM AND DETERMINATION OF REPRESENTATIVE PERIOD

November 1978 is hereby determined to be the representative period for the purpose of ascertaining whether the proposed order provisions, relating to the advertising and promotion program in the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Greater Kansas City and Nebraska-Western Iowa marketing areas are separately approved or favored by producers, as defined under the terms of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within each respective marketing area.

(This decision constitutes the Department's Final Impact Analysis Statement for this proceeding.)

Signed at Washington, D.C., on January 24, 1979.

JERRY C. HILL,
Deputy Assistant Secretary.

Order[1] amending the orders regulating the handling of milk in the Greater Kansas City and Nebraska-Western Iowa marketing areas.

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas.

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Greater Kansas City and Nebraska-Western Iowa marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and order amending the orders contained in the recommended decision issued by the Deputy Administrator, Marketing Program Operations, on December 15, 1978, and published in the FEDERAL REGISTER on December 21, 1978 (43 FR 59511) shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

1. Section 1064.61 is revised to read as follows:

§ 1064.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute in the following manner the "uniform price" (and "weighted average price") per hundredweight of milk of 3.5 percent butterfat content that was received from producers:

(a) Combine into one total the values computed pursuant to § 1064.60 for all handlers who filed the reports prescribed by § 1064.30 for the month and who made the payments pursuant to §§ 1064.71 and 1064.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1064.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1064.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price".

(f) Subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1064.121(e). The result shall be the "uniform price" for milk received from producers.

§ 1064.71 [Amended]

2. In § 1064.71(a)(2)(ii), the words "plus 5 cents" are deleted.

§ 1064.73 [Amended]

3. In § 1064.73(d)(2), the reference "§ 1064.61(a)" is changed to read "§ 1064.61."

§ 1064.75 [Amended]

4. In § 1064.75, the reference "§ 1064.61(a)" in paragraph (a) is changed to read "§ 1064.61" and the words "plus 5 cents" in paragraph (b) are deleted.

§ 1064.76 [Amended]

5. In § 1064.76(a)(4), the words "plus 5 cents" are deleted wherever they appear.

§ 1064.1134 [Amended]

6. In the section numbered as § 1064.1134, the section number in the heading is changed to read "§ 1064.113:"

7. In § 1064.120, the reference "§ 1064.61(a)(4)" in paragraph (d) is changed to read "§ 1064.121(b)" and paragraph (c) is revised to read as follows:

§ 1064.120 Procedure for requesting refunds.

* * * * *

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1064.121(b). Such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September was a producer under another order with an advertising and promotion program if the refund notification period under the other order was the same as under this order and if the funding rate under the other order was at least equal to the funding rate under this order.

* * * * *

8. In § 1064.121, the introductory text of paragraph (b) and paragraph (b)(2) and (3) are revised and new paragraphs (e) and (f) are added as follows:

§ 1064.121 Duties of the market administrator.

* * * * *

(b) Each month set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (e) of this section times the amount of producer milk included in the uniform price computation for such month. The amount set aside shall be disbursed as follows:

* * * * *

(2) Refund to producers the amount of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1064.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section by the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

* * * * *

(e) As soon as possible after the beginning of each year, compute the rate of withholding by multiplying the simple average of the monthly "uniform prices" for the last quarter of the preceding year by 0.75 percent and rounding the result to the nearest whole cent. This rate shall apply during the 12-month period beginning with April of the current year.

(f) As soon as possible after the rate of withholding is computed, notify in writing each producer currently on the market and any new producer that subsequently enters the market of the withholding rate. This notification shall be repeated annually thereafter only if there is any change in the rate from the previous period.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. Section 1065.61 is revised to read as follows:

§ 1065.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute in the following manner the "uniform price" (and "weighted average price") per hundredweight of milk of 3.5 percent butterfat content that was received from producers:

(a) Combine into one total the values computed pursuant to § 1065.60 for all handlers who filed the reports prescribed by § 1065.30 for the month and who made the payments pursuant to §§ 1065.71 and 1065.73 for the preceding month;

(b) Subtract an amount equal to the total value of the plus location adjustments computed pursuant to § 1065.75;

(c) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1065.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1065.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price."

(g) Subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1065.121(e). The result shall be the "uniform price" for milk received from producers.

§ 1065.71 [Amended]

2. In § 1065.71(a)(ii), the word "uniform" is changed to read "weighted average" and the words "plus 5 cents" are deleted.

3. In § 1065.75, paragraph (c) is revised to read as follows:

§ 1065.75 Plant location adjustment for producers and on nonpool milk.

* * * * *

(c) For purposes of computations pursuant to §§ 1065.71 and 1065.72, the weighted average price shall be adjusted at the rates set forth in § 1065.52, applicable at the location of the nonpool plant from which the milk was received, except that the adjusted

weighted average price shall not be less than the Class III price.

§ 1065.76 [Amended]

4. In § 1065.76(a)(4), the words "uniform price plus 5 cents" are changed to "weighted average price" wherever they appear.

5. In § 1065.120, the reference "§ 1065.61(e)" in paragraph (d) is changed to read "§ 1065.121(b)" and paragraph (c) is revised to read as follows:

§ 1065.120 Procedure for requesting refunds.

* * * * *

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the end of the ensuing calendar quarter may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such calendar quarter pursuant to § 1065.121(b). Such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September was a producer under another order with an advertising and promotion program if the refund notification period under the other order was the same as under this order and if the funding rate under the other order was at least equal to the funding rate under this order.

* * * * *

6. In § 1065.121, the introductory text of paragraph (b) and paragraph (b)(2) and (3) are revised and new paragraphs (e) and (f) are added as follows:

§ 1065.121 Duties of the market administrator.

* * * * *

(b) Each month set aside into an advertising and promotion fund, separately accounted for, and amount equal to the withholding rate for the month as set forth in paragraph (e) of this section times the amount of producer milk included in the uniform price computation for such month. The amount set aside shall be disbursed as follows:

* * * * *

(2) Refund to producers the amount of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1065.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section by the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such calendar quarter less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

* * * * *

(e) As soon as possible after the beginning of each year, compute the rate of withholding by multiplying the simple average of the monthly "uniform prices" for the last quarter of the preceding year by 0.75 percent and rounding to the nearest whole cent. This rate shall apply during the 12-month period beginning with April of the current year.

(f) As soon as possible after the rate of withholding is computed, notify in writing each producer currently on the market and any new producer that subsequently enters the market of the withholding rate. This notification shall be repeated annually thereafter only if there is any change in the rate from the previous period.

[FR Doc. 79-3169 Filed 1-30-79; 8:45 am]

[3410-02-M]

UNITED STATES DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1073, 1097, 1102, 1104, 1106, 1108, 1120, 1126, 1132, 1138]

[Docket Nos. AO-231-A47, etc.]

MILK IN THE TEXAS AND CERTAIN OTHER MARKETING AREAS

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Parts	Marketing areas	Docket Nos.
1126	Texas	AO-231-A47
1073	Wichita, Kansas	AO-173-A36
1097	Memphis, Tennessee	AO-219-A35
1102	Fort Smith, Arkansas	AO-237-A29
1104	Red River Valley	AO-298-A29
1106	Oklahoma Metropolitan	AO-210-A42
1108	Central Arkansas	AO-243-A33
1120	Lubbock-Plainview, Texas	AO-328-A22
1132	Texas Panhandle	AO-262-A31
1138	Rio Grande Valley	AO-335-A27

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes in the present order provisions based on an industry proposal which was considered at a public hearing held November 8, 1978. The recommended amendments would increase the funding rate for the advertising and promotion program of each order and also tie such rate to the level of producer pay prices in the 10 orders. The funding period for the program would be changed from a quarterly period to a semiannual period. Producers who do not want to participate in the program would have one month instead of 15 days to submit refund requests. Refunds to producers would be made on a monthly basis rather than quarterly. The recommended changes in funding rate are necessary to restore the promotional effort in these markets to the level initially contemplated by producers and to keep the funding rate current with changes in the econony.

DATE: Comments are due on or before February 15, 1979.

ADDRESS: Comments (six copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Robert F. Groene, Marketing Specialist, Dairy Division, Agriculture Marketing Service, U.S. Department

of Agriculture, Washington, D.C. 20250, (202)447-4824.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of hearing: issued October 20, 1978, published October 25, 1978 (43 FR 49810).

PRELIMINARY STATEMENT

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the aforesaid marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, by the 15th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in six copies. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing conducted at Dallas, Texas, on November 8, 1978. Notice of such hearing was issued October 20, 1978 (43 FR 49810).

The material issues on the record relate to:

1. The level of the funding rate for the Advertising and Promotion program.

2. Revision of administrative provisions of the Advertising and Promotion program:

(a) Semiannual operating periods.

(b) Time period for market administrator to refund deductions to nonparticipating producers.

(c) Term of office of Agency members.

(d) Conforming changes.

(i) Semiannual preparation of Agency budgets.

(ii) Announcement by market administrator of the funding rate.

(iii) Miscellaneous conforming changes.

(iv) Changes required to accommodate to the seasonal base plan provisions scheduled to become effective on September 1, 1979.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *The level of the funding rate for the Advertising and Promotion Program.* The funding rate for the advertising and promotion program under each of the 10 orders included in this proceeding should be modified by changing the present 5-cent rate to a rate determined yearly by multiplying the simple average of the "weighted average prices" applicable during the preceding calendar year for each of the 10 orders by 0.8 percent.

Under the revised funding formula, a simple average of the monthly "weighted average prices" for the preceding calendar year under each of the 10 orders involved in this proceeding would be computed by the market administrator of the respective order as soon as possible after the end of the preceding calendar year to determine the annual weighted average price for each order.[1] A simple average of the annual weighted average prices for the 10 markets would then be computed to determine the annual weighted average price for the 10-markets combined. This annual weighted average price would then be multiplied by 0.008 and rounded to the nearest ½-cent to determine the actual rate of assessment to be effective for the following July 1-June 30 period.

The advertising and promotion program applicable under the 10 orders was made effective in April 1973. The program has been funded since its inception through a monthly 5-cent per hundredweight assessment on milk delivered during the month by participating producers. The money is deducted by the market administrator in the computation of the blend price and turned over to an agency of producer representatives. Certain reserves are withheld by the market administrator to cover refunds to producers and administrative costs.

The advertising and promotion agency under each of the 10 orders is responsible for the development and implementation of programs and projects approved by the Secretary and designed to carry out the purposes of the Act. The scope of the agency's activities may include the establishment of research and development projects, advertising on a non-brand basis, sales promotion, and education, and other programs designed to improve or promote the domestic marketing and consumption of milk and its products.

[1] For computations prior to the month of July 1979, the month when the market administrator first computes a weighted average price for each of the 10 markets, it will be necessary to use the "uniform price plus 5 cents." Also, for the computations involving the Memphis, Tennessee and Fort Smith, Arkansas milk orders, which are individual-handler pool orders, it will be necessary to use a market-wide weighted average price.

An increase in the funding rate was proposed by Associated Milk Producers, Inc. (AMPI), on behalf of more than 4,000 dairy farmer members whose milk is marketed as producer milk under the 10 orders included in this proceeding. The cooperative's representative testified that the costs of operating the agencies in the separate markets had escalated since the program was initiated while revenue to support the agencies had not kept pace. For this reason, the cooperative proposed that the revenue for funding the program be fixed as a percentage of the producer's income in order to keep pace with the inflationary trend in the nation's economy.

The cooperative representative indicated that the advertising and promotion activities of the 10 separate agencies are coordinated through the Southwest United Dairy Industry Association (UDIA) which was formed for that purpose in 1973. Southwest UDIA provides assistance to the separate order agencies in their overall budget preparation and program development. This is accomplished through the development of a proposed program for the 10-market region by Southwest UDIA. The proposed program is then presented to each of the order agencies for their consideration and approval. Each of the 10 agencies contributes to the total cost of the overall program based upon the funds available through the advertising and promotion program of the respective order.

Proponent cooperative indicated that the advertising and promotion agencies in the 10 federal orders allot approximately 50 percent of their funds to Dairy Council, Inc. (DCI). The remaining funds of the separate agencies of the 10 orders are expended through coordinated advertising and promotion activities recommended by Southwest UDIA and approved by the separate agencies.

At the request of the proponent cooperative, a representative of DCI presented information at the hearing regarding the Council's organizational structure, its activities and its need for additional funds to operate a more effective program. The representative stated that DCI is a non-profit, nutrition, education and communications organization. It is an affiliated unit of National Dairy Council (NDC) and has its headquarters in San Antonio, Texas. At the time of the hearing, DCI maintained 17 field offices in major cities throughout the 10 Federal order markets. Its staff consists of nutritionists, dietitians, home economists, and communication specialists who disseminate nutritional information to 21.5 million people in six states.

The representative indicated that the advertising and promotion agen-

cies under each of the 10 orders involved in this proceeding invest in the Council's basic program. Each agency's investment is proportionate to the funding by participating producers of the respective orders. In addition, two agencies were investing funds in supplementary programs to intensify the Council's efforts in the respective markets.

The Council's representative indicated that additional funds are needed to restore the Council's activities to the level of operation in effect when the advertising and promotion program was initiated in 1973 under the 10 orders. Funds available to DCI at that time permitted an expenditure of 4.08 cents per capita. DCI's funding in 1978 averaged 5.3 cents per capita. The representative contended, however, that its per capita investment in 1978 when adjusted to reflect changes in the Consumer Price Index since 1973 averaged 2.25, or approximately one-half of the initial funding rate in 1973.

As further evidence of the need to increase the funding rate, proponent cooperative introduced data on advertising costs in the 10 markets. The data indicated that the cost of television advertising had increased significantly in the six years between 1972 and 1978. Newspaper and radio advertising costs in the 10 markets increased during the same six-year period but to a lesser extent than television advertising costs.

To keep the funding rate of the advertising and promotion program current with changes in the economy, the cooperative's representative proposed that the funding rate be tied to the pay price that dairy farmers receive for their milk. Then, the actual contribution by the dairy farmer would change as the price for his milk changes. The cooperative proposed that the new rate be determined by multiplying the annual average of producer pay prices in the 10 markets for the preceding year by 0.8 percent. The new rate would approximate the level at which producers initially funded the program when the rate was first established in 1973. At that time the 5-cent rate represented approximately 0.75 percent of blend prices received by dairy farmers in the 10-market area.

A further reason cited by the cooperative's representative for tying the funding rate to the pay price is that it would eliminate the need for holding hearings to establish a new rate reflecting changes in the prices received by dairy farmers and cost increases of operating the program resulting from inflationary pressures in the economy.

The representative contended that the rate of deduction for funding the program should be a common rate for the 10 orders. He held that the separate agencies under each of the 10 orders, through the funding of Dairy Council and Southwest UDIA, fund and operate advertising, promotion and nutrition education programs in common throughout the 10-order area. Also, the cooperative held that the procurement area of the handlers regulated under the 10 orders constitutes one area of reserve milk supply for the 10 orders. Producers under the 10 orders are shifted, as needed, to balance the fluid milk requirements of regulated handlers daily, weekly, and seasonally. For these reasons, he proposed that the funding rate be the same for the 10 orders, a rate based upon a simple average of the blend prices of the 10 orders for the preceding calendar year.

The proposed increase in the funding rate for the advertising and promotion program is warranted in view of the increased costs for advertising that have occurred since the program was established under the 10 orders. The greatest increase in the cost of advertising has occurred in local television. In terms of a dollar's worth of advertising in 1972, television advertising in the 10-market area currently costs $2.78 (simple average of the television advertising charges in 13 major cities located in the 10-market area). The cost of newspaper and radio advertising in the 10-market area also has increased but not to the same extent as television advertising. One dollar's worth of radio advertising in 1972 now costs $1.45 while the previous one dollar's worth of newspaper advertising now costs $1.88.

Based upon the increased costs for radio advertising, the funding rate would need to be increased by 2½ cents to enable the agencies to purchase the same quantity of advertising as when the program was initiated. To purchase the same quantity of newspaper advertising, a 4-cent increase would be necessary. To purchase the same quantity of television advertising, a 9-cent increase would be necessary.

Under the funding rate adopted herein, the withholding rate for July 1979–June1980 would be 9 cents (a 4-cent increase over the current rate) per hundredweight. Thus, the funding rate adopted herein is somewhat higher than the cost increases for radio advertising and somewhat less than the cost increases for television advertising. The funding rate, however, is in line with the cost increases for newspaper advertising.

Also, the proposed rate as a percentage of the weighted average price is in line with the rate at which producers in the 10 markets originally funded the program. In 1973, when the advertising and promotion program was adopted, the 5-cent rate was equal to 0.75 percent of the weighted average price for the preceding year. By 1978, the 5-cent rate represented only 0.45 percent of the annual weighted average price. The reason for this decline, of course, is that the annual weighted average price increased from $6.79 in 1972 to $11.05 in 1978, while the 5-cent funding rate has remained constant.[2]

The proposed funding rate of 0.8 percent of the annual weighted average price will permit the advertising and promotion programs in the 10 markets to be operated at the level initially contemplated by producers. Also, by tying the funding rate to the level of producer pay prices, producers will be assured that promotional efforts by the agencies can be maintained at the same level despite changes in the economy.

2. *Revision of administrative provisions of the Advertising and Promotion program.*

(1) *Semiannual operating periods.* The yearly operation of the advertising and promotion program in the 10 orders involved in this proceeding shall consist of two semiannual periods, July–December and January–June. A producer who does not want to participate in the advertising and promotion program shall submit two requests during the year to obtain a refund of his deductions. Such requests must be submitted during the month of April for milk to be marketed during the following July through December period and during the month of October for milk to be marketed during the following January through June period.

Under the current provisions of the 10 orders, the advertising and promotion agencies conduct their operations on a quarterly basis. Producers who participate in the program fund the program for a calendar quarter. Those producers who do not want to participate in the program during a calendar quarter must submit a request to the market administrator during the first 15 days of the month preceding such calendar quarter.

Proponent cooperative proposed that the program be operated semiannualy rather than quarterly. The cooperative's representative contended that the current quarterly operations do not provide sufficient time for the agencies to complete the required administrative procedures in a satisfactory manner. He noted, in particular, that additional time is needed by the agencies to prepare budgets.

It is apparent that the operation of the program by the agencies would be facilitated by the adoption of the coo-

[2]Official notice is taken of the monthly "Computation of Uniform Price" for each of the 10 orders involved in this proceeding for the period of January through December 1978.

perative's proposal to operate the program on a semiannual basis. Under the provisions adopted herein, agency members would have the interval following the close of the refund request period and the beginning of the subsequent semiannual period, or one month, in which to prepare and submit to the Secretary for approval a budget showing the projected amounts to be collected during the subsequent semiannual period and how such funds are to be disbursed by the Agency. Presently, the agencies have the interval between the close of the refund request period and the beginning of the subsequent quarterly period, approximately one-half month, to prepare their budgets. Extending such interval to one month will allow the agencies sufficient time to estimate the funds available to operate the program, to prepare a budget reflecting the proposed disposition of such funds and to obtain the Secretary's approval of the proposed budget.

A further advantage of operating the advertising and promotion program on a six-month's basis is that additional time can be made available for producers to submit refund requests. Under the provisions adopted herein, producers would have one month in which to submit refund requests instead of the 15 days currently provided.

One disadvantage of extending the operating period of the advertising and promotion program from a quarterly to a semiannual basis is that a producer who forgets to file for a refund would be required to participate in the program for six months. Presently, a producer who fails to file for a refund must participate in the program for only a calendar quarter since he has an opportunity to file for a refund every 3 months. In view of the longer operational periods recommended herein, it is concluded that an additional safeguard against a producer's inadvertent failure to file for a refund on a timely basis should be provided under the orders. Accordingly, the orders should specify that the market administrator shall notify in writing all producers during the months of March and September of the opportunity during the following months of April and October, respectively, to submit refund requests for deductions to be made during the subsequent 6-month period.

(b) *Time period for market administrator to refund deductions to nonparticipating producers.* The market administrator shall make monthly refunds to each producer who has made an application for a refund of the assessment against his marketings that is used to fund the advertising and promotion program.

Currently, producers under the 10 orders who apply for a refund receive such refund from the market administrator following the calendar quarter during which such deductions are made.

Proponent cooperative proposed that refunds to producers be made every two months. Its representative contended that producers who do not want to participate in the program should not have their funds withheld any longer than necessary.

A producer who testified at the hearing contended that money should not be deducted from a producer's paycheck to fund the advertising and promotion program unless the producer authorized the deduction. He indicated that currently producers who do not want to participate in the program are deprived for a lengthy period of time of the use of funds due such producer.

The objections raised by the producer have merit. However, if the orders were amended so that funds were not deducted from money due non-participating producers, there would be no way of preserving the confidentiality of producers who do not wish to participate in the advertising and promotion program. Currently, only the market administrator knows which producers are not participating in the program. Under the changes suggested by the producer, the market administrator would need to release the identity of those producers who do not want to pariticpate in the program to the proprietary handler or cooperative association that is responsible for making payments to such producer. The release of such information would make it less likely that a producer would be able to make a voluntary decision whether or not to participate in the program.

The principal complaint against the withholding of funds of producers who do not want to participate in the program is that such producers lose the use of such funds for up to 90 days. Adoption of the cooperative's proposal that refunds be made every 2 months would, of course, reduce the length of time that funds would be withheld from producers. Proponent presented no persuasive reason, however, for limiting the market administrator to refunding deductions every two months. In view of the complaints regarding the length of time that deductions are withheld, it is concluded that the market administrators of the respective orders should refund deductions to producers on a monthly basis. Such change will reduce to a minimum the amount of time that producer's funds are withheld by the market administrator and permit the identity of nonparticipating producers to continue to remain confidential.

(c) *Term of office of agency members.* The term of office of each person who is a member of the agency operating under each of the 10 orders involved in this proceeding on June 30, 1979, shall expire on that date. Thereafter, the term of office of each member of such agency shall be one year or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

Currently, the term of office of members of each agency is for one year. However, the term of office for members of the 10 agencies do not run concurrently. Under the Texas order, the annual term of office is from July 1 through June 30; under the Oklahoma Metropolitan, Red River Valley, Wichita, Texas Panhandle, Lubbock-Plainview and Rio Grande Valley orders, the term of office is from December 1 through the following November 30; and under the Fort Smith, Central Arkansas, and Memphis orders, the term of office is from January 1 through December 31 of each year.

The major cooperative proposed that the term of office of the members of each agency be identical. It proposed that the term of office of each agency begin on July 1, 1979, and that members serve annually thereafter. The cooperative contended that identical terms of office among the 10 agencies would facilitate the operation of the advertising and promotion program in the 10-market area.

The proposal by the cooperative should be adopted. Adoption of the proposal would permit Southwest U.D.I.A. which is responsible for coordinating the advertising and promotion functions of the 10 agencies to operate more effectively and efficiently. By providing for concurrent terms of office of the separate agencies, the organization would be assured of dealing with the same agency members during a one-year time span.

(d) *Conforming changes.*

(i) *Semiannual preparation of Agency budgets.* The Agency of each of the 10 orders involved in this proceeding shall submit to the Secretary for approval prior to each semiannual period a proposed budget showing the anticipated income of the Agency and the proposed disbursement of such funds.

The provisions of the respective orders currently provide that the Agencies shall prepare quarterly budgets.

The changes adopted herein were proposed by proponent cooperative as conforming changes.

Proposed amendments previously discussed and recommended for adoption would provide for funding each agency semiannually instead of quarterly. It is necessary, therefore, that

each agency prepare budgets semiannually instead of quarterly.

(ii) *Announcement by the market administrator of the funding rate.*

Prior to each April and October, the market administrator in notifying each producer in writing of the opportunity to submit a request for deductions withheld for the advertising and promotion program during the immediately following period of July through December or January through June, as the case may be, shall specify the withholding rate to be applicable during the respective period. Each new producer subsequently entering the market shall be notified in writing of the current withholding rate.

Proponent cooperative proposed that the market administrator shall notify producers on or before March 15 of each year of the withholding rate to be effective for the following months of July through June.

The adoption of a withholding rate that changes in relation to the pay prices of producers makes it necessary that producers be notified annually of the withholding rate. Producers need this information prior to the period for submitting refund requests so that they may then decide whether or not they want to fund the program at the new rate. It is necessary, therefore, that the market administrator notify producers in writing prior to April 1 of the withholding rate to be effective during the 12 months beginning on July 1. The announcement of the rate by the market administrator should be included in the notice given to producers during March and September of the opportunity to submit refund requests.

(iii) *Miscellaneous conforming changes.* Conforming changes have been made in the separate orders to recognize that the current references in several sections to "adjusted uniform price plus 5 cents" ("weighted average price plus 5 cents" in Central Arkansas order) will no longer be appropriate. In implementing the revised funding rate for the advertising and promotion program, the orders have been revised to provide for the computation of a "weighted average price" instead of an "adjusted uniform price plus 5 cents" or "weighted average price plus 5 cents." The weighted average price would be computed without the deduction for funding the advertising and promotion program. Under the adopted changes, the uniform price computation would continue, however, to reflect the deduction applicable for funding the advertising and promotion program.

One of the sections of the Texas order involving the advertising and promotion program, § 1126.123, "Initial operating procedures under merger of orders," should be deleted. The initial operating period for the Texas order has ended and, thus, § 1126.123 no longer serves any purpose in the operation of the Texas order. Accordingly, § 1126.123 is hereby deleted.

A producer proposed at the hearing that provisions of the advertising and promotion program be revised to permit producers who do not participate in the program to vote in referendums to select Agency members and to require that Agency members be elected at large rather than as representatives of producer groups.

The proposed changes desired by this producer are outside the scope of the proposals set forth in the notice of hearing. Accordingly the changes desired by the producer cannot be dealt with in this proceeding.

(iv) *Changes required to accommodate to the seasonal base plan provisions scheduled to become effective on September 1, 1979.* It is necessary that the provisions implementing seasonal base plans in 7 orders involved in this proceeding and the amendment of current seasonal base plans in 3 remaining orders involved in this proceeding, each of which are scheduled to become effective on September 1, 1979, be changed to conform to amendments to the advertising and promotion provisions scheduled to be effective at an earlier date.

Seven of the 10 orders involved in this proceeding currently provide for the computation of the uniform price each month. However, as the result of a prior proceeding, these orders would be changed on September 1, 1979, to provide for the computation of uniform base and excess prices during the months of March through July. During the remaining months of the year, the orders would continue to provide for the computation of a uniform price during such months. The three remaining orders currently provide for seasonal base plans. However, the method of computing the uniform base and excess prices under the 3 orders is also scheduled to be modified on September 1, 1979, resulting in a uniform method of price computation of the base and excess prices in the 10 orders involved in this proceeding.

A separate set of amendments incorporating the changes in the advertising and promotion program that are adopted herein in the seasonal base plan amendments scheduled to become effective on September 1, 1979, are set forth under the heading "Amendment of order provisions which were issued on August 29, 1978 (43 FR 39324) and which are scheduled to become effective on September 1, 1979."

General Findings

The findings and determinations set forth below are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments to them. All of the previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner, as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the aforesaid specified marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were consid-

ered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

AMENDMENT OF ORDER PROVISIONS NOW IN EFFECT

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. Section 1126.61 is revised to read as follows:

§ 1126.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the "uniform price" (and "weighted average price") per hundredweight for milk of 3.5 percent butterfat content received at pool plants at which no location adjustment applies as follows:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers who filed the reports prescribed by § 1126.30 for the month and who made the payments pursuant to § 1126.71 for the preceding month;

(b) Add not less than one-fourth of the unobligated balance in the producer-settlement fund;

(c) Add the aggregate of all minus location adjustments and substract the aggregate of all plus location adjustments pursuant to § 1126.75;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1126.60(f); and

(e) Substract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price."

(f) Substract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1126.121(e). The result shall be the "uniform price" for milk received from producers.

2. In § 1126.71, paragraph (b)(4) is revised to read as follows:

§ 1126.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(4) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value was computed pursuant to § 1126.60(f).

* * * * * * *

3. In § 1126.75, paragraph (b) is revised to read as follows:

§ 1126.75 Plant location adjustments for producers and on nonpool milk.

* * * * *

(b) For purposes of computing the value of other source milk pursuant to § 1126.71, the weighted average price shall be adjusted by the amount set forth in § 1126.52 that is applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

4. In § 1126.76, paragraph (a)(4) is revised to read as follows:

§ 1126.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price shall not be less than the Class III price); and

* * * * * *

5. Section 1126.112 is revised to read as follows

§ 1126.112 Term of office.

The term of office of each person who is a member of the Agency on June 30, 1979, shall expire on that date. Thereafter, the term of office of each member of the Agency shall be one year or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

6. In § 1126.113, paragraph (c)(1) is revised to read as follows:

§ 1126.113 Selection of Agency members.

* * * * * *

(c) * * *

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

* * * * *

7. In § 1126.116, paragraph (d) is revised to read as follows:

§ 1126.116 Duties of the Agency.

* * * * *

(d) Prepare and submit to the Secretary for approval before each January through June and July through December period a budget showing the projected amounts to be collected during the period and how such funds are to be dispersed by the Agency.

* * * * *

8. In § 1126.120, paragraphs (b) and (c) are revised to read as follows:

§ 1126.120 Procedure for requesting refunds.

* * * * *

(b) Except as provided in paragraph (c) of this section, the request must be submitted during the month of April for milk to be marketed during the following July through December period and during the month of October for milk to be marketed during the following January through June period.

(c) Upon first acquiring producer status under this part, a dairy farmer may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld as follows:

(1) If he acquires producer status during the months of April through September and files and application with the market administrator by the end of the month immediately following the month in which he acquires Producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of December; or

(2) If he acquires producer status during the months of October through March and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of June.

9. In § 1126.121, paragraph (a), the introductory text of paragraph (b), paragraphs (b) (2) and (3), and paragraph (c) are revised and new para-

graphs (e) and (f) are added to read as follows:

§ 1126.121 Duties of the market administrator.

* * * * *

(a) Promptly after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1126.113(c).

(b) Set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (d) of this section times the amount of producer milk included in the uniform price computation for such month. The amount set aside shall be disbursed as follows:

* * * * *

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producer, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) After the end of each month, make a refund to each producer who has made application for such refund pursuant to § 1126.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1126.110 through 1126.122).

* * * * *

(e) As soon as possible after the beginning of each year, compute the rate of withholding as follows:

(1) Compute a simple annual average of the monthly weighted average prices (the uniform prices plus 5 cents for months prior to July 1979) for the preceding year for each of the following milk orders: Wichita, Kansas; Memphis, Tennessee (weighted average price for the market); Fort Smith, Arkansas (weighted average price for the market); Red River Valley; Oklahoma Metropolitan; Central Arkansas; Lubbock-Plainview, Texas; Texas; Texas Panhandle; and Rio Grande Valley (Parts 1073, 1097, 1102, 1104, 1106, 1108, 1120, 1126, 1132 and 1138, respectively, of this chapter);

(2) Compute a simple average of the prices resulting from the computations pursuant to paragraph (e)(1) of this section; and

(3) Multiply the price computed pursuant to paragraph (e)(2) of this section by 0.8 percent and round to the nearest one-half cent. This rate shall apply during the 12-month period that begins with July of the current year.

(f) Prior to each April and October, notify each producer in writing, of the opportunity to submit a request for a refund as specified in § 1126.120(b) and of the withholding rate that will be applicable in the immediately following period of July through December or January through June, as the case may be. Each new producer that subsequently enters the market shall be notified in writing of the current withholding rate.

§ 1126.123 [Deleted]

10. Section 1126.123 is deleted.

PART 1073—MILK IN THE WICHITA, KANSAS MARKETING AREA

1. Section 1073.61 is revised to read as follows:

§ 1073.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the "uniform price" (and "weighted average price") per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1073.60 for all handlers who filed the reports prescribed by § 1073.30 for the month and who made the payments pursuant to § 1073.71 for the preceding month;

(b) Deduct the amount of the plus adjustments and add the amount of the minus adjustments, which are applicable pursuant to § 1073.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1073.60(f); and

(e) Subtract not less than 4 cents not more than 5 cents per hundredweight. The result shall be the "weighted average price."

(f) Subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1073.121(e). The result shall be the "uniform price" for milk received from producers.

2. In § 1073.71, paragraph (a)(2)(ii) is revised to read as follows:

§ 1073.71 Payments to the producer-settlement fund.

(a) * * *

(2) * * *

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1073.60(f).

* * * * *

3. In § 1073.75, paragraph (b) is revised to read as follows:

§ 1073.75 Plant location adjustments for producers and on nonpool milk.

* * * * *

(b) For purposes of computations pursuant to §§ 1073.71(a)(2)(ii) and 1073.72 the weighted average price shall be adjusted at the rates set forth in § 1073.52, applicable at the location of the nonpool plant(s) from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

4. In § 1073.76, paragraph (a)(4) is revised to read as follows:

§ 1073.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and weighted average price shall not be less than the Class III price); and

* * * * *

Texas, et al—Recommended Decision

5. Section 1073.112 is revised to read as follows:

§ 1073.112 Term of office.

The term of office of each person who is a member of the Agency on June 30, 1979, shall expire on that date. Thereafter, the term of office of each member of the Agency shall be one year or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

6. In § 1073.113, paragraph (c)(1) is revised to read as follows:

§ 1073.113 Selection of Agency members.

* * * * *

(c) * * *

Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

* * * * *

7. In § 1073.116, paragraph (d) is revised to read as follows:

§ 1073.116 Duties of the agency.

* * * * *

(d) Prepare and submit to the Secretary for approval before each January through June and July through December period a budget showing the projected amounts to be collected during the period and how such funds are to be dispersed by the Agency.

* * * * *

8. In § 1073.120, paragraphs (b) and (c) are revised to read as follows:

§ 1073.120 Procedure for requesting refunds.

* * * * *

(b) Except as provided in paragraph (c) of this section, the request must be submitted during the month of April for milk to be marketed during the following July through December period and during the month of October for milk to be marketed during the following January through June period.

(c) Upon first acquiring producer status under this part, a dairy farmer may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld as follows:

(1) If he acquires producer status during the months of April through September and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of December; or

(2) If he acquires producer status during the months of October through March and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of June.

9. In § 1073.121, paragraph (a), the introductory text of paragraph (b), paragraphs (b) (2) and (3), and paragraph (c) are revised and new paragraphs (e) and (f) are added to read as follows:

§ 1073.121 Duties of the market administrator.

* * * * *

(a) Promptly after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1073.113(c).

(b) Set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (d) of this section times the amount of producer milk included in the uniform price computation for such month. The amount set aside shall be disbursed as follows:

* * * * *

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producer, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) After the end of each month, make a refund to each producer who has made application for such refund pursuant to § 1073.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1073.110 through 1073.122).

* * * * *

(e) As soon as possible after the beginning of each year, compute the rate of withholding as follows:

(1) Compute a simple annual average of the monthly weighted average prices (the uniform prices plus 5 cents for months prior to July 1979) for the preceding year for each of the following milk orders: Wichita, Kansas; Memphis, Tennessee (weighted average price for the market); Fort Smith, Arkansas (weighted average price for the market); Red River Valley; Oklahoma Metropolitan; Central Arkansas; Lubbock-Plainview, Texas; Texas; Texas Panhandle; and Rio Grande Valley (Parts 1073, 1097, 1102, 1104, 1106, 1108, 1120, 1126, 1132 and 1138, respectively, of this chapter);

(2) Compute a simple average of the prices resulting from the computations pursuant to paragaph (e)(1) of this section; and

(3) Multiply the price computed pursuant to paragraph (e)(2) of this section by 0.8 percent and round to the nearest one-half cent. This rate shall apply during the 12-month period that begins with July of the current year.

(f) Prior to each April and October, notify each producer in writing, of the opportunity to submit a request for a refund as specified in § 1073.120(b) and of the withholding rate that will be applicable in the immediately following period of July through December or January through June, as the case may be. Each new producer that subsequently enters the market shall be notified in writing of the current withholding rate.

PART 1097—MILK IN THE MEMPHIS, TENN., MARKETING AREA

1. Section 1097.61 is revised to read as follows:

§ 1097.61 Computation of uniform price for each handler (including weighted average price and uniform price for base milk and excess milk).

(a) The market administrator shall compute for each handler a "weighted average price" for each month and for each of the months of August through February a "uniform price" per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(1) Adjust the amount computed pursuant to § 1097.61 by adding or subtracting, as the case may be, the total of the location adjustments applicable pursuant to 1097.75;

(2) For each handler operating a fluid milk plant receiving milk from a handler described in § 1097.9(c), prorate the resulting amount between such milk and producer milk;

(3) Add the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform prices for the preceding month;

(4) Divide the resulting amount by the total hundredweight of producer milk received by the handler and deduct any fraction of a cent per hundredweight. The result shall be, the "weighted average price."

(5) For each of the months of August through February, subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1097.121(e). The result shall be such handler's "uniform price" for milk received from producers.

(b) For each of the months of March through July, the market administrator shall compute for each handler with respect to producer milk, a uniform price for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Follow the computations and adjustments provided in paragraph (a)(1) through (3) of this section;

(2) Compute the value of excess milk received by such handler as producer milk and bulk milk from a handler described in § 1097.9(c) as follows:

(i) Multiply the quantity of such milk, not in excess of the total Class III milk included in these computations, by the Class III price;

(ii) Multiply the remaining quantity of such milk, not in excess of the total Class II milk included in these computations, by the Class II price;

(iii) Multiply the remaining quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(3) Divide the total value of excess milk obtained in paragraph (b)(2) of this section by the total hundredweight of such excess milk and reduce to the nearest cent. The resulting figure, less the withholding rate for the advertising and promotion program as computed in § 1097.121(e), shall be the uniform price for such handler for excess milk;

(4) Subtract, for each handler, the total value of such handler's excess milk obtained in paragraph (b)(2)(iv) of this section from the value of all milk obtained for such handler pursuant to paragraph (b)(1) of this section; and

(5) Divide the amount obtained in paragraph (b)(4) of this section by the total hundredweight of base milk received by such handler and deduct any fraction of a cent per hundredweight. The result, less the withholding rate for the advertising and promotion program as computed in § 1097.121(e), shall be the uniform price for such handler for base milk.

2. Section 1097.112 is revised to read as follows:

§ 1097.112 Term of office.

The term of office of each person who is a member of the Agency on June 30, 1979, shall expire on that date. Thereafter, the term of office of each member of the Agency shall be one year or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

3. In § 1097.113, paragraph (c)(1) is revised to read as follows:

§ 1097.113 Selection of Agency members.

* * * * *

(c) * * *

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

* * * * *

4. In § 1097.116, paragraph (d) is revised to read as follows:

§ 1097.116 Duties of the agency.

* * * * *

(d) Prepare and submit to the Secretary for approval before each January through June and July through December period a budget showing the projected amounts to be collected during the period and how such funds are to be dispersed by the Agency.

* * * * *

5. In § 1097.120, paragraphs (b) and (c) are revised to read as follows:

§ 1097.120 Procedure for requesting refunds.

* * * * *

(b) Except as provided in paragraph (c) of this section, the request must be submitted during the month of April for milk to be marketed during the following July through December period and during the month of October for milk to be marketed during the following January through June period.

(c) Upon first acquiring producer status under this part, a dairy farmer may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld as follows:

(1) If he acquires producer status during the months of April through September and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of December; or

(2) If he acquires producer status during the months of October through March and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of June.

6. In § 1097.121, paragraph (a), the introductory text of paragraph (b), paragraphs (b)(2) and (3), and paragraph (c) are revised and new paragraphs (e) and (f) are added to read as follows:

§ 1097.121 Duties of the market administrator.

* * * * *

(a) Promptly after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1097.113(c).

(b) Set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (d) of this section times the amount of producer milk included in the uniform price computation for such month. The amount set aside shall be disbursed as follows:

* * * * *

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producer, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) After the end of each month, make a refund to each producer who has made application for such refund pursuant to § 1097.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the

provisions of the advertising and promotion program (§§ 1097.110 through 1097.122).

* * * * *

(e) As soon as possible after the beginning of each year, compute the rate of withholding as follows:

(1) Compute a simple annual average of the monthly weighted average prices (the uniform prices plus 5 cents for months prior to July 1979) for the preceding year for each of the following milk orders: Wichita, Kansas; Memphis, Tennessee (weighted average price for the market); Fort Smith, Arkansas (weighted average price for the market); Red River Valley; Oklahoma Metropolitan; Central Arkansas; Lubbock-Plainview, Texas; Texas; Texas Panhandle; and Rio Grande Valley (Parts 1073, 1097, 1102, 1104, 1106, 1108, 1120, 1126, 1132 and 1138, respectively, of this chapter);

(2) Compute a simple average of the prices resulting from the computations pursuant to paragraph (e)(1) of this section; and

(3) Multiply the price computed pursuant to paragraph (e)(2) of this section by 0.8 percent and round to the nearest one-half cent. This rate shall apply during the 12-month period that begins with July of the current year.

(f) Prior to each April and October, notify each producer in writing, of the opportunity to submit a request for a refund as specified in § 1097.120(b) and of the withholding rate that will be applicable in the immediately following period of July through December or January through June, as the case may be. Each new producer that subsequently enters the market shall be notified in writing of the current withholding rate.

PART 1102—MILK IN THE FORT SMITH, ARKANSAS MARKETING AREA

1. Section 1102.61 is revised to read as follows:

§ 1102.61 Computation of uniform price for each handler (including weighted average price and uniform prices for base milk and excess milk).

(a) The market administrator shall compute for each handler a "weighted average price" for each month and for each of the months of August through February a "uniform price" per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(1) Adjust the amount computed pursuant to § 1102.60 by adding the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform price(s) for such handler for the preceding month;

(2) Add an amount equal to the sum of the deductions to be made for location ajustments pursuant to § 1102.75;

(3) Divide the resulting amount by the total hundredweight of producer milk received by the handler and deduct any fraction of a cent per hundredweight. The result shall be the "weighted average price."

(4) For each of the months of August through February, subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1102.121(e). The result shall be such handler's "uniform price" for milk received from producers.

(b) For each of the months of March through July, the market administrator shall compute for each handler with respect to milk received from producers, a uniform price for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Follow the computations and adjustments provided for in paragraph (a) (1) and (2) of this section;

(2) Compute the value of excess milk received by such handler from producers as follows:

(i) Multiply the quantity of such milk, not in excess of the total Class III milk included in these computations, by the Class III price;

(ii) Multiply the remaining quantity of such milk, not in excess of the total Class II milk included in these computations, by the Class II price;

(iii) Multiply the remaining quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(3) Divide the total value of excess milk obtained in paragraph (b)(2) of this section by the total hundredweight of such excess milk and reduce to the nearest cent. The resulting figure, less the withholding rate for the advertising and promotion program as computed in § 1102.121(e), shall be the uniform price for such handler for excess milk;

(4) Subtract, for each handler, the value of such handler's excess milk obtained in paragraph (b)(2)(iv) of this section from the value of all milk obtained for such handler pursuant to paragraph (b)(1) of this section; and

(5) Divide the amount obtained in paragraph (b)(4) of this section by the total hundredweight of such handler's base milk included in this computation and deduct any fraction of a cent per hundredweight. The result, less the withholding rate for the advertising and promotion program as computed in § 1102.121(e), shall be such handler's uniform price for base milk.

2. Section 1102.112 is revised to read as follows:

§ 1102.112 Term of office.

The term of office of each person who is a member of the Agency on June 30, 1979, shall expire on that date. Thereafter, the term of office of each member of the Agency shall be one year or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

3. In § 1102.113, paragraph (c)(1) is revised to read as follows:

§ 1102.113 Selection of Agency members.

* * * * *

(c) * * *

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

* * * * *

4. In § 1102.116, paragraph (d) is revised to read as follows:

§ 1102.116 Duties of the Agency.

* * * * *

(d) Prepare and submit to the Secretary for approval before each January through June and July through December period a budget showing the projected amounts to be collected during the period and how such funds are to be dispersed by the Agency.

* * * * *

5. In § 1102.120, paragraphs (b) and (c) are revised to read as follows:

§ 1102.120 Procedure for requesting refunds.

* * * * *

(b) Except as provided in paragraph (c) of this section, the request must be submitted during the month of April for milk to be marketed during the following July through December period and during the month of October for milk to be marketed during the following January through June period.

(c) Upon first acquiring producer status under this part, a dairy farmer may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld as follows:

(1) If he acquires producer status during the months of April through September and files an application with the market administrator by the

end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of December; or

(2) If he acquires producer status during the months of October through March and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of June.

6. In § 1102.121, paragraph (a), the introductory text of paragraph (b), paragraphs (b)(2) and (3), and paragraph (c) are revised and new paragraphs (e) and (f) are added to read as follows:

§ 1102.121 Duties of the market administrator.

(a) Promptly after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1102.113(c).

(b) Set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (d) of this section times the amount of producer milk included in the uniform price computation for such month. The amount set aside shall be disbursed as follows:

* * * * *

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producer, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) After the end of each month, make a refund to each producer who has made application for such refund pursuant to § 1102.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1102.110 through 1102.123).

* * * * *

(e) As soon as possible after the beginning of each year, compute the rate of withholding as follows:

(1) Compute a simple annual average of the monthly weighted average prices (the uniform prices plus 5 cents for months prior to July 1979) for the preceding year for each of the following milk orders: Wichita, Kansas; Memphis, Tennessee (weighted average price for the market); Fort Smith, Arkansas (weighted average price for the market); Red River Valley; Oklahoma Metropolitan; Central Arkansas; Lubbock-Plainview, Texas; Texas; Texas Panhandle; and Rio Grande Valley (Parts 1073, 1079, 1102, 1104, 1106, 1108, 1120, 1126, 1132 and 1138, respectively, of this chapter);

(2) Compute a simple average of the prices resulting from the computations pursuant to paragraph (e)(1) of this section; and

(3) Multiply the price computed pursuant to paragraph (e)(2) of this section by 0.8 percent and round to the nearest one-half cent. This rate shall apply during the 12-month period that begins with July of the current year.

(f) Prior to each April and October, notify each producer in writing, of the opportunity to submit a request for a refund as specified in § 1102.120(b) and of the withholding rate that will be applicable in the immediately following period of July through December or January through June, as the case may be. Each new producer that subsequently enters the market shall be notified in writing of the current withholding rate.

PART 1104—MILK IN THE RED RIVER VALLEY MARKETING AREA

1. Section 1104.61 is revised to read as follows:

§ 1104.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the "uniform price" (and "weighted average price") per hundredweight of milk of 3.5 percent butterfat content received as follows:

(a) Combine into one total the values computed pursuant to § 1104.60 for all handlers who filed the reports prescribed by § 1104.30 for the month and who made the payments pursuant to §§ 1104.71 and 1104.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1104.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1104.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price."

(f) Subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1104.121(e). The result shall be the "uniform price" for milk received from producers.

2. In § 1104.71, paragraph (a)(2)(ii) is revised to read as follows:

§ 1104.71 Payments to the producer-settlement fund.

(a) * * *

(2) * * *

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value was computed pursuant to § 1104.60(f).

* * * * *

3. In § 1104.75, paragraph (b) is revised to read as follows:

§ 1104.75 Plant location adjustments for producers and on nonpool milk.

* * * * *

(b) For the purpose of computations pursuant to §§ 1104.71 and 1104.72, the weighted average price shall be adjusted at the rate set forth in § 1104.52(a) applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price); and

* * * * *

4. In § 1104.76, paragraph (a)(4) is revised to read as follows:

§ 1104.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price shall not be less than the Class III price); and

* * * * *

5. Section 1104.112 is revised to read as follows:

§ 1104.112 Term of office.

The term of office of each person who is a member of the Agency on June 30, 1979, shall expire on that date. Thereafter, the term of office of each member of the Agency shall be one year or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

6. In § 1104.113, paragraph (c)(1) is revised to read as follows:

§ 1104.113 Selection of Agency members.

* * * * *

(c) * * *

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

* * * * *

7. In § 1104.116, paragraph (d) is revised to read as follows:

§ 1104.116 Duties of the Agency.

* * * * *

(d) Prepare and submit to the Secretary for approval before each January through June and July through December period a budget showing the projected amounts to be collected during the period and how such funds are to be dispersed by the Agency.

* * * * *

8. In § 1104.120, paragraphs (b) and (c) are revised to read as follows:

§ 1104.120 Procedure for requesting refunds.

* * * * *

(b) Except as provided in paragraph (c) of this section, the request must be submitted during the month of April for milk to be marketed during the following July through December period and during the month of October for milk to be marketed during the following January through June period.

(c) Upon first acquiring producer status under this part, a dairy farmer may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld as follows:

(1) If he acquires producer status during the months of April through September and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of December; or

(2) If he acquires producer status during the months of October through March and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with this first delivery and extending through the following month of June.

9. In § 1104.121, paragraph (a), the introductory text of paragraph (b), paragraphs (b) (2) and (3), and paragraph (c) are revised and new paragraphs (e) and (f) are added to read as follows:

§ 1104.121 Duties of the market administrator.

* * * * *

(a) Promptly after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1104.113(c).

(b) Set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (d) of this section times the amount of producer milk included in the uniform price computation for such month. The amount set aside shall be disbursed as follows:

* * * * *

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producer, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) After the end of each month, make a refund to each producer who has made application for such refund pursuant to § 1104.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1104.110 through 1104.122).

* * * * *

(e) As soon as possible after the beginning of each year, compute the rate of withholding as follows:

(1) Compute a simple annual average of the monthly weighted average prices (the uniform prices plus 5 cents for months prior to July 1979) for the preceding year for each of the following milk orders: Wichita, Kansas; Memphis, Tennessee (weighted average price for the market); Fort Smith, Arkansas (weighted average price for the market); Red River Valley; Oklahoma Metropolitan; Central Arkansas; Lubbock-Plainview, Texas; Texas; Texas Panhandle; and Rio Grande Valley (Parts 1073, 1097, 1102, 1104, 1106, 1108, 1120, 1126, 1132, and 1138, respectively, of this chapter);

(2) Compute a simple average of the prices resulting from the computations pursuant to paragraph (e)(1) of this section; and

(3) Multiply the price computed pursuant to paragraph (e)(2) of this section by 0.8 percent and round to the nearest one-half cent. This rate shall apply during the 12-month period that begins with July of the current year.

(f) Prior to each April and October, notify each producer in writing, of the opportunity to submit a request for a refund as specified in § 1104.120(b) and of the withholding rate that will be applicable in the immediately following period of July through December or January through June, as the case may be. Each new producer that subsequently enters the market shall be notified in writing of the current withholding rate.

PART 1106—MILK IN THE OKLAHOMA METROPOLITAN MARKETING AREA

1. Section 1106.61 is revised to read as follows:

§ 1106.61 Computation of uniform price (including weighted average price).

For each month, the market administrator shall compute the "uniform price" (and "weighted average price") per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1106.60 for all handlers who made the reports prescribed in § 1106.30 and who made

the payments pursuant §§ 1106.71 and 1106.73 for the preceding month.

(b) Add the aggregate of the values of all allowable location adjustments to producers pursuant to § 1106.75.

(c) Add not less than one-half of the cash balance on hand in the producer-settlement fund less the total amount of the contingent obligations to handlers pursuant to § 1106.72.

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1106.60(f).

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price."

(f) Subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1106.121(e). The result shall be the "uniform price" for milk received from producers.

2. In § 1106.71, paragraph (a)(2)(ii) is revised to read as follows:

§ 1106.71 Payments to the producer-settlement fund.

(a) * * *

(2) * * *

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value was computed pursuant to § 1106.60(f).

* * * * *

3. In § 1106.75, paragraph (b) is revised to read as follows:

§ 1106.75 Plant location adjustments for producers and on nonpool milk.

* * * * *

(b) For the purpose of computations pursuant to §§ 1106.71 and 1106.72, the weighted average price shall be adjusted at the rates set forth in § 1106.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price); and

* * * * *

4. In § 1106.76, paragraph (a)(4) is revised to read as follows:

§ 1106.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price shall not be less than the Class III price); and

* * * * *

5. Section 1106.112 is revised to read as follows:

§ 1106.112 Term of office.

The term of office of each person who is a member of the Agency on June 30, 1979, shall expire on that date. Thereafter, the term of office of each member of the Agency shall be one year or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

6. In § 1106.113, paragraph (c)(1) is revised to read as follows:

§ 1106.113 Selection of Agency members.

* * * * *

(c) * * *

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

* * * * *

7. In § 1106.116, paragraph (d) is revised to read as follows:

§ 1106.116 Duties of the Agency.

* * * * *

(d) Prepare and submit to the Secretary for approval before each January through June and July through December period a budget showing the projected amounts to be collected during the period and how such funds are to be dispersed by the Agency.

* * * * *

8. In § 1106.120, paragraph (b) and (c) are revised to read as follows:

§ 1106.120 Procedure for requesting refunds.

* * * * *

(b) Except as provided in paragraph (c) of this section, the request must be submitted during the month of April for milk to be marketed during the following July through December period and during the month of October for milk to be marketed during the following January through June period.

(c) Upon first acquiring producer status under this part, a dairy farmer may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld as follows:

(1) If he acquires producer status during the months of April through September and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld begining with his first delivery and extending through the following month of December; or

(2) If he acquires producer status during the months of October through March and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of June.

9. In § 1106.121, paragraph (a), the introductory text of paragraph (b), paragraphs (b) (2) and (3), and paragraph (c) are revised and new paragraphs (e) and (f) are added to read as follows:

§ 1106.121 Duties of the market administrator.

* * * * *

(a) Promptly after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1106.113(c).

(b) Set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (d) of this section times the amount of producer milk included in the uniform price computation for such month. The amount set aside shall be disbursed as follows:

* * * * *

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producer, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) After the end of each month, make a refund to each producer who

has made application for such refund pursuant to § 1106.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1106.110 through 1106.122).

* * * * *

(e) As soon as possible after the beginning of each year, compute the rate of withholding as follows:

(1) Compute a simple annual average of the monthly weighted average prices (the uniform prices plus 5 cents for months prior to July 1979) for the preceding year for each of the following milk orders: Wichita, Kansas; Memphis, Tennessee (weighted average price for the market); Fort Smith, Arkansas (weighted average price for the market); Red River Valley; Oklahoma Metropolitan; Central Arkansas; Lubbock-Plainview, Texas; Texas; Texas Panhandle; and Rio Grande Valley (Parts 1073, 1097, 1102, 1104, 1106, 1108, 1120, 1126, 1132 and 1138, respectively, of this chapter);

(2) Compute a simple average of the prices resulting from the computations pursuant to paragraph (e)(1) of this section; and

(3) Multiply the price computed pursuant to paragraph (e)(2) of this section by 0.8 percent and round to the nearest one-half cent. This rate shall apply during the 12-month period that begins with July of the current year.

(f) Prior to each April and October, notify each producer in writing, of the opportunity to submit a request for a refund as specified in § 1106.120(b) and of the withholding rate that will be applicable in the immediately following period of July through December or January through June, as the case may be. Each new producer that subsequently enters the market shall be notified in writing of the current withholding rate.

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

1. Section 1108.61 is revised to read as follows:

§ 1108.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the "weighted average price" for each month and the "uniform price" for each of the months of August through February per hundredweight of milk of 3.5 percent butterfat content as follows;

(1) Combine into one total the values computed pursuant to § 1108.60 for all handlers who filed the reports prescribed by § 1108.30 for the month and who made the payments pursuant to §§ 1108.71 and 1108.73 for the preceding month;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to § 1108.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1108.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price" for milk.

(6) For each of the months of August through February, subtract from the weighted average price computed pursuant to paragraph (a)(5) of this section the withholding rate for the advertising and promotion program as computed in § 1108.121(e). The result shall be the "uniform price" for milk received from producers.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk as follows:

(1) Subtract from the amount resulting from the computations made pursuant to paragraph (a)(1) through (3) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(2) Compute the aggregate value of excess milk by assigning such milk in series beginning with Class III, to the hundredweight of producer milk in each class, multiplying the quantities of milk so assigned to each class by the respective class prices and adding together the resulting amounts;

(3) Divide the aggregate value of excess milk obtained in paragraph (b)(2) of this section by the total hundredweight of such milk and subtract not less than 4 cents nor more than 5 cents per hundredweight;

(4) Subtract the withholding rate for the advertising and promotion program as computed in § 1108.121(e). The result shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(5) Subtract the aggregate value of excess milk obtained in paragraph (b)(2) of this section from the value of milk obtained in paragraph (b)(1) of this section;

(6) Divide the result obtained in paragraph (b)(5) of this section by the total hundredweight of base milk of handlers included in these computations and subtract not less than 4 cents nor more than 5 cents per hundredweight; and

(7) Subtract the withholding rate for the advertising and promotion program as computed in § 1108.121(e). The result shall be the uniform price for base milk or 3.5 percent butterfat content received from producers f.o.b. market.

2. In § 1108.71, paragraph (a)(2)(ii) is revised to read as follows:

§ 1108.71 Payments to the producer-settlement fund.

(a) * * *

(2) * * *

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value was computed pursuant to § 1108.60(f).

* * * * *

3. In § 1108.75, paragraph (b) is revised to read as follows:

§ 1108.75 Plant location adjustments for producers and on nonpool milk.

* * * * *

(b) For purposes of computations pursuant to §§ 1108.71 and 1108.72 the weighted average price shall be adjusted at the rates set forth in § 1108.52 applicable at the location of the nonpool plant from which the milk was recieved, except that the adjusted weighted average price shall not be less than the Class III price.

4. In § 1108.76, paragraph (a)(4) is revised to read as follows:

§ 1108.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price

shall not be less than the Class III price); and

* * * * *

5. Section 1108.112 is revised to read as follows:

§ 1108.112 Term of office.

The term of office of each person who is a member of the Agency on June 30, 1979, shall expire on that date. Thereafter, the term of office of each member of the Agency shall be one year or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

6. In § 1108.113, paragraph (c)(1) is revised to read as follows:

§ 1108.113 Selection of agency members.

* * * * *

(c) * * *

(1) Promptly after the effective date of this amending order, and annualy thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

* * * * *

7. In § 1108.116, paragraph (d) is revised to read as follows:

§ 1108.116 Duties of the Agency.

* * * * *

(d) Prepare and submit to the Secretary for approval before each January through June and July through December period a budget showing the projected amounts to be collected during the period and how such funds are to be dispersed by the Agency.

* * * * *

8. In § 1108.120, paragraphs (b) and (c) are revised to read as follows:

§ 1108.120 Procedure for requesting refunds.

* * * * *

(b) Except as provided in paragraph (c) of this section, the request must be submitted during the month of April for milk to be marketed during the following July through December period and during the month of October for milk to be marketed during the following July through December period and during the month of October for milk to be marketed during the following January through June period.

(c) Upon first acquiring producer status under this part, a dairy farmer may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld as follows:

(1) If he acquires producer status during the months of April through September and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of December; or

(2) If he acquires producer status during the months of October through March and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of June.

9. In § 1108.121, paragraph (a), the introductory text of paragraph (b), paragraphs (b) (2) and (3), and paragraph (c) are revised and new paragraphs (e) and (f) are added to read as follows:

§ 1108.121 Duties of the market administrator.

* * * * *

(a) Promptly after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1108.113(c).

(b) Set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (d) of this section times the amount of producer milk included in the uniform price computation for such month. The amount set aside shall be disbursed as follows:

* * * * *

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producer, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) After the end of each month, make a refund to each producer who has made application for such refund pursuant to § 1108.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1108.110 through 1108.122).

* * * * *

(e) As soon as possible after the beginning of each year, compute the rate of withholding as follows:

(1) Compute a simple annual average of the monthly weighted average prices (the uniform prices plus 5 cents for months prior to July 1979) for the preceding year for each of the following milk orders: Wichita, Kansas; Memphis, Tennessee (weighted average price for the market); Fort Smith, Arkansas (weighted average price for the market); Red River Valley; Oklahoma Metropolitan; Central Arkansas; Lubbock-Plainview, Texas; Texas; Texas Panhandle; and Rio Grande Valley (Parts 1073, 1097, 1102, 1104, 1106, 1108, 1120, 1126, 1132 and 1138, respectively, of this chapter);

(2) Compute a simple average of the prices resulting from the computations pursuant to paragraph (e)(1) of this section; and

(3) Multiply the price computed pursuant to paragraph (e)(2) of this section by 0.8 percent and round to the nearest one-half cent. This rate shall apply during the 12-month period that begins with July of the current year.

(f) Prior to each April and October, notify each producer in writing, of the opportunity to submit a request for a refund as specified in § 1108.120(b) and of the withholding rate that will be applicable in the immediately following period of July through December or January through June, as the case may be. Each new producer that subsequently enters the market shall be notified in writing of the current withholding rate.

PART 1120—MILK IN THE LUBBOCK-PLAINVIEW MARKETING AREA

1. Section 1120.61 is revised to read as follows:

§ 1120.61 Computation of uniform price (including weighted average price).

For each month, the market administrator shall compute the "uniform price" (and "weighted average price")

per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1120.60 for all pool handlers who made the reports prescribed in § 1120.30 for the month and who have made the payments required pursuant to § 1120.71 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1120.75;

(c) Add an amount equal to not less than one-half of the unobligated balance on hand in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in such computations;

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1120.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "weighted average price."

(f) Subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1120.121(e). The result shall be the "uniform price" for milk received from producers.

2. In § 1120.71, paragraph (a)(2)(ii) is revised to read as follows:

§ 1120.71 Payments to the producer-settlement fund.

(a) * * *

(2) * * *

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1120.60(f).

* * * * *

3. In § 1120.75, paragraph (b) is revised to read as follows:

§ 1120.75 Plant location adjustments for producers and on nonpool milk.

* * * * *

(b) For purposes of computations pursuant to §§ 1120.71 and 1120.72 the weighted average price shall be adjusted at the rates set forth in § 1120.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

4. In § 1120.76, paragraph (a)(4) is revised to read as follows:

§ 1120.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price shall not be less then the Class III price); and

* * * * *

5. Section 1120.112 is revised to read as follows:

§ 1120.112 Term of office.

The term of office of each person who is a member of the Agency on June 30, 1979, shall expire on that date. Thereafter, the term of office of each member of the Agency shall be one year or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

6. In § 1120.113, paragraph (c)(1) is revised to read as follows:

§ 1120.113 Selection of Agency members.

* * * * *

(c) * * *

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

* * * * *

7. In § 1120.116, paragraph (d) is revised to read as follows:

§ 1120.116 Duties of the Agency.

* * * * *

(d) Prepare and submit to the Secretary for approval before each January through June and July through December period a budget showing the projected amounts to be collected during the period and how such funds are to be dispersed by the Agency.

* * * * *

8. In § 1120.120, paragraphs (b) and (c) are revised to read as follows:

§ 1120.120 Procedure for requesting refunds.

* * * * *

(b) Except as provided in paragraph (c) of this section, the request must be submitted during the month of April for milk to be marketed during the following July through December period and during the month of October for milk to be marketed during the following January through June period.

(c) Upon first acquiring producer status under this part, a dairy farmer may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld as follows:

(1) If he acquires producer status during the months of April through September and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of December; or

(2) If he acquires producer status during the months of October through March and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of June.

9. In § 1120.121, paragraph (a), the introductory text of paragraph (b), paragraphs (b)(2) and (3), and paragraph (c) are revised and new paragraphs (e) and (f) are added to read as follows:

§ 1120.121 Duties of the market administrator.

* * * * *

(a) Promptly after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1120.113(c).

(b) Set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (d) of this section times the amount of producer milk included in the uniform price computation for such month. The amount set aside shall be disbursed as follows:

* * * * *

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producer, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such

producer for which deductions were made pursuant to this paragraph.

(3) After the end of each month, make a refund to each producer who has made application for such refund pursuant to § 1120.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1120.110 through 1120.122).

* * * * *

(e) As soon as possible after the beginning of each year, compute the rate of withholding as follows:

(1) Compute a simple annual average of the monthly weighted average prices (the uniform prices plus 5 cents for months prior to July 1979) for the preceding year for each of the following milk orders: Wichita, Kansas; Memphis, Tennessee (weighted average price for the market); Fort Smith, Arkansas (weighted average price for the market); Red River Valley; Oklahoma Metropolitan; Central Arkansas; Lubbock-Plainview, Texas; Texas; Texas Panhandle; and Rio Grande Valley (Parts 1073, 1097, 1102, 1104, 1106, 1108, 1120, 1126, 1132 and 1138, respectively, of this chapter);

(2) Compute a simple average of the prices resulting from the computations pursuant to paragraph (e)(1) of this section; and

(3) Multiply the price computed pursuant to paragraph (e)(2) of this section by 0.8 percent and round to the nearest one-half cent. This rate shall apply during the 12-month period that begins with July of the current year.

(f) Prior to each April and October, notify each producer in writing, of the opportunity to submit a request for a refund as specified in §.1120.120(b) and of the withholding rate that will be applicable in the immediately following period of July through December or January through June, as the case may be. Each new producer that subsequently enters the market shall be notified in writing of the current withholding rate.

PART 1132—MILK IN THE TEXAS PANHANDLE MARKETING AREA

1. Section 1132.61 is revised to read as follows:

§ 1132.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the "uniform price" (and "weighted average price") for all milk of 3.5 percent butterfat content f.o.b. pool plants located within 100 miles of the city hall of Amarillo, Texas, as follows:

(a) Combine into one total the values computed pursuant to § 1132.60 for all handlers who made the reports prescribed in § 1132.30 for such month, except those in default of payments required pursuant to § 1132.71 for the preceding month;

(b) Add an amount equal to the sum of the location adjustments to be made pursuant to § 1132.75;

(c) Add an amount equal to one-half of the unobligated cash balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1132.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be the "weighted average price."

(f) Subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1132.121(e). The result shall be the "uniform price" for milk received from producers.

2. In § 1132.71, paragraph (a)(2)(ii) is revised to read as follows:

§ 1132.71 Payments to the producer-settlement fund.

(a) * * *

(2) * * *

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1132.60(f).

* * * * *

3. In § 1132.75, paragraph (b) is revised to read as follows:

§ 1132.75 Plant location adjustments for producers and on nonpool milk.

* * * * *

(b) For purposes of computations pursuant to §§ 1132.71 and 1132.72, the weighted average price shall be adjusted at the rates set forth in § 1132.52 applicable at the location of the nonpool plant from which the milk was received (but the resulting price shall not be less than the Class III price).

4. In § 1132.76, paragraph (a)(4) is revised to read as follows:

§ 1132.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price shall not be less than the Class III price); and

* * * * *

5. Section 1132.112 is revised to read as follows:

§ 1132.112 Term of office.

The term of office of each person who is a member of the Agency on June 30, 1979, shall expire on that date. Thereafter, the term of office of each member of the Agency shall be one year or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

6. In § 1132.113, paragraph (c)(1) is revised to read as follows:

§ 1132.113 Selection of Agency members.

* * * * *

(c) * * *

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

* * * * *

7. In § 1132.116, paragraph (d) is revised to read as follows:

§ 1132.116 Duties of the Agency.

* * * * *

(d) Prepare and submit to the Secretary for approval before each January through June and July through December period a budget showing the projected amounts to be collected during the period and how such funds are to be dispersed by the agency.

* * * * *

8. In § 1132.120, paragraphs (b) and (c) are revised to read as follows:

§ 1132.120 Procedure for requesting refunds.

* * * * *

(b) Except as provided in paragraph (c) of this section, the request must be submitted during the month of April for milk to be marketed during the following July through December period and during the month of October for milk to be marketed during the following January through June period.

(c) Upon first acquiring producer status under this part, a dairy farmer may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld as follows:

(1) If he acquires producer status during the months of April through September and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of December; or

(2) If he acquires producer status during the months of October through March and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of June.

9. In § 1132.121, paragraph (a), the introductory text of paragraph (b), paragraphs (b) (2) and (3), and paragraph (c) are revised and new paragraphs (e) and (f) are added to read as follows:

§ 1132.121 Duties of the market administrator.

* * * * *

(a) Promptly after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1132.113(c).

(b) Set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (d) of this section times the amount of producer milk included in the uniform price computation for such month. The amount set aside shall be disbursed as follows:

* * * * *

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producer, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) After the end of each month, make a refund to each producer who has made application for such refund pursuant to § 1132.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1132.110 through 1132.122).

* * * * *

(e) As soon as possible after the beginning of each year, compute the rate of withholding as follows:

(1) Compute a simple annual average of the monthly weighted average prices (the uniform prices plus 5 cents for months prior to July 1979) for the preceding year for each of the following milk orders: Wichita, Kansas; Memphis, Tennessee (weighted average price for the market); Fort Smith, Arkansas (weighted average price for the market); Red River Valley; Oklahoma Metropolitan; Central Arkansas; Lubbock-Plainview, Texas; Texas; Texas Panhandle; and Rio Grande Valley (Parts 1073, 1097, 1102, 1104, 1106, 1108, 1120, 1126, 1132 and 1138, respectively, of this chapter);

(2) Compute a simple average of the prices resulting from the computations pursuant to paragraph (e)(1) of this section; and

(3) Multiply the price computed pursuant to paragraph (e)(2) of this section by 0.8 percent and round to the nearest one-half cent. This rate shall apply during the 12-month period that begins with July of the current year.

(f) Prior to each April and October, notify each producer in writing, of the opportunity to submit a request for a refund as specified in § 1132.120(b) and of the withholding rate that will be applicable in the immediately following period of July through December or January through June, as the case may be. Each new producer that subsequently enters the market shall be notified in writing of the current withholding rate.

PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA

1. Section 1138.61 is revised to read as follows:

§ 1138.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the "uniform price" (and "weighted average price") per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1138.60 for all handlers who filed the reports prescribed by § 1138.30 for the month and who made the payments pursuant to §§ 1138.71 and 1138.73 for the preceding month;

(b) Add an amount equal to the sum of the deductions for location adjustments computed pursuant to § 1138.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1138.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price."

(f) Subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1138.121(e). The result shall be the "uniform price" for milk received from producers.

2. In § 1138.71, paragraph (a)(2)(ii) is revised to read as follows:

§ 1138.71 Payments to the producer-settlement fund.

(a) * * *

(2) * * *

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1138.60(f).

* * * * *

3. In § 1138.75, paragraph (b) is revised to read as follows:

§ 1138.75 Plant location adjustments for producers and on nonpool milk.

* * * * *

(b) For purposes of computations pursuant to §§ 1138.71 and 1138.72, the weighted average price shall be adjust-

ed at the rates set forth in § 1138.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

4. In § 1138.76, paragraph (a)(4) is revised to read as follows:

§ 1138.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price shall not be less than the Class III price); and

* * * * *

5. Section 1138.112 is revised to read as follows:

§ 1138.112 Term of office.

The term of office of each person who is a member of the Agency on June 30, 1979, shall expire on that date. Thereafter, the term of office of each member of the Agency shall be one year or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

6. In § 1138.113, paragraph (c)(1) is revised to read as follows:

§ 1138.113 Selection of Agency members.

* * * * *

(c) * * *

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

* * * * *

7. In § 1138.116, paragraph (d) is revised to read as follows:

§ 1138.116 Duties of the Agency.

* * * * *

(d) Prepare and submit to the Secretary for approval before each January through June and July through December period a budget showing the projected amounts to be collected during the period and how such funds are to be dispersed by the Agency.

* * * * *

8. In § 1138.120, paragraphs (b) and (c) are revised to read as follows:

§ 1138.120 Procedure for requesting refunds.

* * * * *

(b) Except as provided in paragraph (c) of this section, the request must be submitted during the month of April for milk to be marketed during the following July through December period and during the month of October for milk to be marketed during the following January through June period.

(c) Upon first acquiring producer status under this part, a dairy farmer may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld as follows:

(1) If he acquires producer status during the months of April through September and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of December; or

(2) If he acquires producer status during the months of October through March and files an application with the market administrator by the end of the month immediately following the month in which he acquires producer status, he shall be eligible for refund on all his marketings against which an assessment is withheld beginning with his first delivery and extending through the following month of June.

9. In § 1138.121, paragraph (a), the introductory text of paragraph (b), paragraphs (b)(2) and (3), and paragraph (c) are revised and new paragraphs (e) and (f) are added to read as follows:

§ 1138.121 Duties of the market administrator.

* * * * *

(a) Promptly after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1138.113(c).

(b) Set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (d) of this section times the amount of producer milk included in the uniform price computation for such month. The amount set aside shall be disbursed as follows:

* * * * *

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producer, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) After the end of each month, make a refund to each producer who has made application for such refund pursuant to § 1138.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1138.110 through 1138.122).

* * * * *

(e) As soon as possible after the beginning of each year, compute the rate of withholding as follows:

(1) Compute a simple annual average of the monthly weighted average prices (the uniform prices plus 5 cents for months prior to July 1979) for the preceding year for each of the following milk orders: Wichita, Kansas; Memphis, Tennessee (weighted average price for the market); Fort Smith, Arkansas (weighted average price for the market); Red River Valley; Oklahoma Metropolitan; Central Arkansas; Lubbock-Plainview, Texas; Texas; Texas Panhandle; and Rio Grande Valley (Parts 1073, 1097, 1102, 1104, 1106, 1108, 1120, 1126, 1132 and 1138, respectively, of this chapter);

(2) Compute a simple average of the prices resulting from the computations pursuant to paragraph (e)(1) of this section; and

(3) Multiply the price computed pursuant to paragraph (e)(2) of this section by 0.8 percent and round to the nearest one-half cent. This rate shall apply during the 12-month period that begins with July of the current year.

(f) Prior to each April and October, notify each producer in writing, of the opportunity to submit a request for a refund as specified in § 1138.120(b) and

of the withholding rate that will be applicable in the immediately following period of July through December or January through June, as the case may be. Each new producer that subsequently enters the market shall be notified in writing of the current withholding rate.

AMENDMENT OF ORDER PROVISIONS WHICH WERE ISSUED ON AUGUST 29, 1978 (43 FR 39324) AND WHICH ARE SCHEDULED TO BECOME EFFECTIVE ON SEPTEMBER 1, 1979

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. Section 1126.61 is revised to read as follows:

§ 1126.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the "weighted average price" for each month and the "uniform price" for each of the months of August through February per hundredweight for milk of 3.5 percent butterfat content at pool plants at which no location adjustment applies as follows:

(1) Combine into one total the values computed pursuant to § 1126.60 for all handlers who filed the reports prescribed in § 1126.30 for the month and who made the payments pursuant to § 1126.71 for the preceding month;

(2) Add not less than one-fourth of the unobligated balance in the producer-settlement fund;

(3) Add the aggregate of all minus location adjustments and subtract the aggregate of all plus location adjustments pursuant to § 1126.75;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1126.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "weighted average price."

(6) For each of the months of August through February, subtract from the weighted average price computed in paragraph (a)(5) of this section the withholding rate for the advertising and promotion program as computed in § 1126.121(e). The result shall be the "uniform price" for milk received from producers.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the uniform price for excess milk by deducting the withholding rate for the advertising and promotion program as computed in § 1126.121(e) from the class III price for the month.

(2) Compute the uniform price for base milk as follows:

(i) From the amount resulting from the computations pursuant to paragraph (a)(1) through (3) of this section, subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(ii) Subtract an amount computed by multiplying the Class III price for the month times the hundredweight of excess milk;

(iii) Divide the resulting amount by the total hundredweight of base milk included in these computations;

(iv) Subtract not less than 4 cents nor more than 5 cents; and

(v) Subtract the withholding rate for the advertising and promotion program as computed in § 1126.121(e).

2. Section 1126.75 is revised as follows:

§ 1126.75 Plant location adjustments for producers and on nonpool milk.

(a) In making the payments required pursuant to § 1126.73, the uniform price and the uniform price for base milk for the month shall be adjusted by the amounts set forth in § 1126.52 according to the location of the plant where the milk being priced was received.

(b) For purposes of computing the value of other source milk pursuant to § 1126.71, the weighted average price shall be adjusted by the amount set forth in § 1126.52 that is applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the class III price.

PART 1073—MILK IN THE WICHITA, KANS., MARKETING AREA

1. Section 1073.61 is revised to read as follows:

§ 1073.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the "weighted average price" for each month and the "uniform price" for each of the months of August through February per hundredweight of milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1073.60 for all handlers who filed the reports prescribed by § 1073.30 for the month and who made the payments pursuant to § 1073.71 for the preceding month;

(2) Deduct the amount of the plus adjustments and add the amount of the minus adjustments, which are applicable pursuant to § 1073.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1073.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "weighted average price."

(6) For each of the months of August through February, subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1073.121(e). The result shall be the "uniform price" for milk received from producers.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the uniform price for excess milk by deducting the withholding rate for the advertising and promotion program as computed in § 1073.121(e) from the Class III price for the month.

(2) Compute the uniform price for base milk as follows:

(i) From the amount resulting from the computations pursuant to paragraph (a) (1) through (3) of this section, subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(ii) Subtract an amount computed by multiplying the Class III price for the month times the hundredweight of excess milk;

(iii) Divide the resulting amount by the total hundredweight of base milk included in these computations;

(iv) Subtract not less than 4 cents nor more than 5 cents; and

(v) Subtract the withholding rate for the advertising and promotion program as computed in § 1073.121(e).

2. Section 1073.75 is revised to read as follows:

§ 1073.75 Plant location adjustments for producers and on nonpool milk.

(a) For producer milk received at plants located outside zone 1 the uniform price and the uniform price for base milk shall be increased or decreased by an adjustment for each

such plant at the rates specified in § 1073.52(a).

(b) For purposes of computations pursuant to §§ 1073.71(a)(2)(ii) and 1073.72, the weighted average price shall be adjusted at the rates set forth in § 1073.52, applicable at the location of the nonpool plant(s) from which the milk was received, except that the adjusted weighted average price shall not be less than the class III price.

PART 1097—MILK IN THE MEMPHIS, TENN., MARKETING AREA

1. Section 1097.61, paragraph (b) is revised as follows:

§ 1097.61 Computation of uniform price for each handler (including uniform prices for base milk and excess milk).

* * * * *

(b) For each month of March through July, the market administrator shall compute for each handler with respect to producer milk, a uniform price for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the uniform price for excess milk by deducting the withholding rate for the advertising and promotion program as computed in § 1097.121(e) from the Class III price for the month.

(2) Compute the uniform price for base milk as follows:

(i) From the amount resulting from the computations pursuant to paragraph (a) (1) through (3) of this section, subtract, for each handler, an amount computed by multiplying the Class III price for the month times the hundredweight of excess milk received by such handler as producer milk and bulk milk received from a handler described in § 1097.9(c);

(ii) Divide the resulting amount by the total hundredweight of such handler's base milk and deduct any fraction of a cent; and

(iii) Subtract the withholding rate for the advertising and promotion program as computed in § 1097.121(e).

PART 1102—MILK IN THE FORT SMITH, ARK., MARKETING AREA

1. In § 1102.61, paragraph (b) is revised as follows:

§ 1102.61 Computation of uniform price for each handler (including uniform prices for base milk and excess milk).

* * * * *

(b) For each month of March through July, the market administrator shall compute for each handler with respect to milk received from producers, a uniform price for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the uniform price for excess milk by deducting the withholding rate for the advertising and promotion program as computed in § 1102.121(e) from the class III price for the month.

(2) Compute the uniform price for base milk as follows:

(i) From the amount resulting from the computations pursuant to paragraphs (a)(1) through (2) of this section, subtract, for each handler, an amount computed by multiplying the Class III price for the month times the hundredweight of such handler's excess milk;

(ii) Divide the resulting amount by the total hundredweight of such handler's base milk, and deduct any fraction of a cent; and

(iii) Subtract the withholding rate for the advertising and promotion program as computed in § 1102.121(e).

PART 1104—MILK IN THE RED RIVER VALLEY MARKETING AREA

1. Section 1104.61 is revised as follows:

§ 1104.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the weighted average price for each month and the uniform price for each of the months of August through February per hundredweight of milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1104.60 for all handlers who filed the reports prescribed by § 1104.30 for the month and who made the payments pursuant to §§ 1104.71 and 1104.73 for the preceding month;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to § 1104.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1104.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "weighted average price."

(6) For each of the months of August through February, subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1104.121(e). The result shall be the "uniform price" for milk received from producers.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content as follows:

(1) Compute the uniform price for excess milk by deducting the withholding rate for the advertising and promotion program as computed in § 1104.121(e) from the Class III price for the month.

(2) Compute the uniform price for base milk as follows:

(i) From the amount resulting from the computations pursuant to paragraphs (a) (1) through (3) of this section, subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(ii) Subtract an amount computed by multiplying the Class III price for the month times the hundredweight of excess milk;

(iii) Divide the resulting amount by the total hundredweight of base milk included in these computations;

(iv) Subtract not less than 4 cents nor more than 5 cents; and

(v) Subtract the withholding rate for the advertising and promotion program as computed in § 1104.121(e).

2. Section 1104.75 is revised as follows:

§ 1104.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1104.73 for producer milk received at a pool plant, the uniform price and the uniform price for base milk shall be reduced according to the location of the pool plant at the rate set forth in § 1104.52(a);

(b) For the purpose of computations pursuant to §§ 1104.71 and 1104.72, the weighted average price shall be adjusted at the rate set forth in § 1104.52(a) applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price); and

(c) In making payments to producers pursuant to § 1104.73 for producer milk diverted from a pool plant to a nonpool plant, the uniform price and the uniform price for base milk shall be reduced according to the location of the nonpool plant at which the milk is received at the rate set forth in § 1104.52(a).

PART 1106—MILK IN THE OKLAHOMA METROPOLITAN MARKETING AREA

1. Section 1106.61 is revised as follows:

§ 1106.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the "weighted average price" for each month and the "uniform price" for each of the months of August through February per hundredweight for milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1106.60 for all handlers who made the reports prescribed in § 1106.30 and who made the payments pursuant to §§ 1106.71 and 1106.73 for the preceding month.

(2) Add the aggregate of the values of all allowable location adjustments to producers pursuant to § 1106.75.

(3) Add not less than one-half of the cash balance on hand in the producer-settlement fund less the total amount of the contingent obligations to handlers pursuant to § 1106.72.

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1106.60(f).

(5) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "weighted average price."

(6) For each of the months of August through February, subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1106.121(e). The result shall be the "uniform price" for milk received from producers.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the uniform price for excess milk be deducting the withholding rate for the advertising and promotion program as computed in § 1106.121(e) from the class III price for the month.

(2) Compute the uniform price for base milk as follows:

(i) From the amount resulting from the computations pursuant to paragraphs (a) (1) through (3) of this section, subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(ii) Subtract an amount computed by multiplying the Class III price for the month times the hundredweight of excess milk;

(iii) Divide the resulting amount by the total hundredweight of base milk included in these computations;

(iv) Subtract not less than 4 cents nor more than 5 cents; and

(v) Subtract the withholding rate for the advertising and promotion program as computed in § 1106.121(e).

2. Section 1106.75 is revised as follows:

§ 1106.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1106.73 for producer milk received at a pool plant, the uniform price and the uniform price for base milk shall be reduced according to the location of the pool plant at the rates set forth in § 1106.52;

(b) For the purpose of computations pursuant to §§ 1106.71 and 1106.72, the weighted average price shall be adjusted at the rates set forth in § 1106.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the class III price); and

(c) In making payments to producers pursuant to § 1106.73 for producer milk diverted from a pool plant to a nonpool plant, the uniform price and the uniform price for base milk shall be reduced according to the location of the nonpool plant at which the milk is received at the rates set forth in § 1106.52.

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

1. In § 1108.61 the introductory text of paragraph (a) (immediately preceding subparagraph (1)), and paragraph (a)(6) and (b) are revised as follows:

§ 1108.61 Computation of uniform price (including weighted average price and base and excess prices).

(a) the market administrator shall compute the weighted average price for each month and the uniform price for each of the months of August through February per hundredweight for milk containing 3.5 percent butterfat content as follows:

* * * * *

(6) For each of the months of August through February, subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1108.121(e). The result shall be the "uniform price" for milk received from producers.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the uniform price for excess milk by deducting the withholding rate for the advertising and promotion program as computed in § 1108.121(e) from the class III price for the month.

(2) Compute the uniform price for base milk as follows:

(i) From the amount resulting from the computations pursuant to paragraphs (a)(1) through (e) of this section, subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(ii) Subtract an amount computed by multiplying the Class III price for the month times the hundredweight of excess milk;

(iii) Divide the resulting amount by the total hundredweight of base milk included in these computations;

(iv) Subtract not less than 4 cents nor more than 5 cents; and

(v) Subtract the withholding rate for the advertising and promotion program as computed in § 1108.121(e).

PART 1120—MILK IN THE LUBBOCK-PLAINVIEW, TEX., MARKETING AREA

1. Section 1120.61 is revised as follows:

§ 1120.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the weighted average price for each month and the uniform price for each of the months of August through February per hundredweight for milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1120.60 for all pool handlers who made the reports prescribed in § 1120.30 for the month and who have made the payments required pursuant to § 1120.71 for the preceding month;

(2) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1120.75;

(3) Add an amount equal to not less than one-half the unobligated balance on hand in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in such computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1120.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "weighted average price."

(6) For each of the months of August through February, subtract from the weighted average price the withholding rate for the advertising and promotion program as computed

in § 1120.121(e). The result shall be the "uniform price" for milk received from producers.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each 3.5 percent butterfat content, as follows:

(1) Compute the uniform price for excess milk by deducting the withholding rate for the advertising and promotion program as computed in § 1120.121(e) from the class III price for the month.

(2) Compute the uniform price for base milk as follows:

(i) From the amount resulting from the computations pursuant to paragraph (a)(1) through (3) of this section, subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(ii) Subtract an amount computed by multiplying the Class III price for the month times the hundredweight of excess milk;

(iii) Divide the resulting amount by the total hundredweight of base milk included in these computations;

(iv) Subtract not less than 4 cents nor more than 5 cents; and

(v) Subtract the withholding rate for the advertising and promotion program as computed in § 1120.121(e).

2. Section 1120.75 is revised as follows:

§ 1120.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price and the uniform price for base milk to be paid for milk which is received from producers at pool plants located either outside the State of Texas or within the State but north of the counties of Parmer, Castro, Swisher, Briscoe, Hall, and Childress and 100 miles or more from the city hall of Lubbock, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced at the rate set forth in the table contained in § 1120.52 according to the location of the pool plant at which such milk was received from producers; and

(b) For purposes of computations pursuant to §§ 1120.71 and 1120.72 the weighted average price shall be adjusted at the rates set forth in § 1120.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the class III price).

PART 1132—MILK IN THE TEXAS PANHANDLE MARKETING AREA

1. Section 1132.61 is revised as follows:

§ 1132.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the "weighted average price" for each month and the "uniform price" for each of the months of August through February per hundredweight for milk of 3.5 percent butterfat content f.o.b. pool plants located within 100 miles of the City Hall of Amarillo, Tex., as follows:

(1) Combine into one total the value computed pursuant to § 1132.60 for all handlers who made the reports prescribed in § 1132.30 for such month, except those in default of payments required pursuant to § 1132.71 for the preceding month;

(2) Add an amount equal to the sum of the location adjustments to be made pursuant to § 1132.75;

(3) Add an amount equal to one-half of the unobligated cash balance in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1132.60(f).

(5) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "weighted average price."

(6) For each of the months of August through February, subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1132.121(e). The result shall be the "uniform price" for milk received from producers.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the uniform price for excess milk by deducting the withholding rate for the advertising and promotion program as computed in § 1132.121(e) from the class III price for the month.

(2) Compute the uniform price for base milk as follows:

(i) From the amount resulting from the computations pursuant to paragraph (a) (1) through (3) of this section, subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(ii) Subtract an amount computed by multiplying the Class III price for the month times the hundredweight of excess milk;

(iii) Divide the resulting amount by the total hundredweight of base milk included in these computations;

(iv) Subtract not less than 4 cents nor more than 5 cents; and

(v) Subtract the withholding rate for the advertising and promotion program as computed in § 1132.121(e).

2. Section 1132.75 is revised as follows:

§ 1132.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payment pursuant to § 1132.73 the uniform price and the uniform price for base milk to be paid for milk which is received from producers at a pool plant located 100 miles or more from the City Hall, Amarillo, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

	Rate per hundredweight (cents)
Distance from the Amarillo City Hall (miles):	
100 but less than 110	15.0
For each additional 10 miles or fraction thereof an addition	1.5

(b) For purposes of computations pursuant to §§ 1132.71 and 1132.72, the weighted average price shall be adjusted at the rates set forth in § 1132.52 applicable at the location of the nonpool plant from which the milk was received (but the resulting price shall not be less than the class III price.)

PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA

1. Section 1138 is revised as follows:

§ 1138.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the "weighted average price" for each month and the "uniform price" for each of the months of August through February per hundredweight for milk of 3.5 percent butterfat, content as follows:

(1) Combine into one total the values computed pursuant to § 1138.60 for all handlers who filed the reports prescribed by § 1138.30 for the month and who made the payments pursuant to §§ 1138.71 and 1138.73 for the preceding month;

(2) Add an amount equal to the sum of the deductions for location adjustments computed pursuant to § 1138.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1138.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "weighted average price."

(6) For each of the months of August through February, subtract from the weighted average price the withholding rate for the advertising and promotion program as computed in § 1138.121(e). The result shall be the "uniform price" for milk received from producers.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the uniform price for excess milk by deducting the withholding rate for the advertising and promotion program as computed in § 1138.121(e) from the Class III price for the month.

(2) Compute the uniform price for base milk as follows:

(i) From the amount resulting from the computations pursuant to paragraph (a)(1) through (3) of this section, subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(ii) Subtract an amount computed by multiplying the Class III price for the month times the hundredweight of excess milk;

(iii) Divide the resulting amount by the total hundredweights of base milk included in these computations;

(iv) Subtract not less than 4 cents nor more than 5 cents; and

(v) Subtract the withholding rate for the advertising and promotion program as computed in § 1138.121(e).

2. Section 1138.75 is revised as follows:

§ 1138.75 Plant location adjustments for producers and on nonpool milk.

(a) For producer milk received at pool plants located in zones II and III or at pool plants located outside the marketing area and more than 100 miles, as determined by the market administrator, from the nearest of the county courthouses in El Paso County, Tex., or Bernalillo, or Santa Fe Counties, N. Mex., there shall be deducted from the uniform price and the uniform price for base milk an adjustment for each such plant for milk at the rates specified pursuant to § 1138.52.

(b) For purposes of computations pursuant to §§ 1138.71 and 1138.72, the weighted average price shall be adjusted at the rates set forth in § 1138.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

(This recommended decision constitutes the Department's Draft Impact Analysis Statement for this proceeding.)

Signed as Washington, D.C., on January 25, 1979.

JAMES E. SPRINGFIELD,
Acting Deputy Administrator, Marketing Program Operations.

[Fr Doc. 79-3172 Filed 1-30-79; 8:45 am]

[3410-07-M]

Farmers Home Administration

[7 CFR Part 1933]

LOAN AND GRANT PROGRAMS

Community Facility Loans; Withdrawal of Proposed Rule

AGENCY: Farmers Home Administration, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Farmers Home Adminstration (FmHA) withdraws a proposed rule concerning § 1933.18(a)(9)(ii)(B) of Subpart A, Part 1933, Chapter XVIII, Title 7 in the Code of Federal Regulations. This proposal would have amended its loan regulations concerning the bidding of specified materials for projects financed by FmHA. It was published in the FEDERAL REGISTER Vol. 43, No. 226 of Wednesday, November 22, 1978, at page 54652. As of January 25, 1979, 83 comments have been received and the comments received were generally not supportive of the proposal. All written comments which have been received will be fully considered; however, the proposal is withdrawn to allow sufficient time for FmHA to further study its bidding requirements.

FOR FURTHER INFORMATION CONTACT:

Lonney H. Posey, telephone 202-447-5717.

(7 U.S.C. 1989, delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 7 CFR 2.70;

Dated: January 25, 1979.

JAMES E. THORNTON,
Associate Administrator, Farmers Home Administration.

[FR Doc. 79-3211 Filed 1-30-79; 8:45 am]

[6714-01-M]

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Part 347]

FOREIGN ACTIVITIES OF INSURED STATE NONMEMBER BANKS

Requirements for Establishing and Operating Foreign Branches and for Acquiring and Holding Ownership Interests in Foreign Entities

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: FDIC proposed to promulgate a new regulation that will implement Section 301 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Public Law 95-630 ("FIRIRCA"). The proposed regulation would give it control over the establishment and operation of foreign branches and the acquisition of the shares of foreign entities by insured State chartered banks that are not members of the Federal Reserve System (nonmember banks) similar to that exercised by the Federal Reserve Board with respect to foreign branches and foreign acquisitions of banks which are members of the Federal Reserve System (member banks).

DATE: Comments must be received on or before: March 2, 1979.

ADDRESS: Interested persons are invited to submit written data, views or arguments regarding the proposed regulations to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429. All written comments will be made available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT:

Jerry L. Langley, Senior Attorney, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429. 202-389-4237.

SUPPLEMENTARY INFORMATION: Section 301 of FIRIRCA provides that no insured State nonmember bank shall establish or operate any foreign branch, except with the prior written consent of the Corporation and upon such conditions and pursuant to such regulations as the Corporation may prescribe. As defined in the statute, the term "foreign branch" means any office or place of business located outside the United States, its territories,

Puerto Rico, Guam, American Samoa, or the Virgin Islands, at which banking operations are conducted.

Section 301 also provides that when authorized by State law, an insured State nonmember bank may, with the prior written consent of the Corporation and under such conditions and regulations as the Corporation may prescribe, acquire and hold, directly or indirectly, ownership interest in banks or other entities which are organized under the law of a foreign country or a dependency or insular possession of the United States and are not engaged, directly or indirectly, in any activity in the United States except as is incidental to the international or foreign business of the foreign bank or entity. Further, the section authorizes an insured State nonmember bank, in a manner prescribed by the Corporation, to make loans or purchase the securities of affiliates without regard to the restrictions under 12 U.S.C. 1828(j).

The new regulation would require insured State nonmember banks: (1) to obtain FDIC's prior written consent before establishing its first branch in a foreign country or acquiring any ownership interest in a foreign bank or other foreign financial entity; (2) to provide 30-day notice to the FDIC concerning its intent to relocate an existing foreign branch or to increase the number of foreign branches in a location where it has an authorized foreign branch; and (3) to maintain a specific system of records, controls, and reports with respect to its foreign activities exercised under the new regulation. Also, for competitive reasons, the regulation would authorize foreign branches to exercise certain additional powers to the extent such powers are usual in connection with the transaction of the buisness of banking in the places where they shall transact business.

Further, the regulation would permit an insured State nonmember bank to make loans to or purchase securities of foreign banks or other foreign financial entities without regard to the restrictions under 12 U.S.C. 1828(j), but subject to specific requirements in the regulation.

In general, the provisions of the Corporations' proposed regulation are similar to those in 12 CFR Part 213 which were established by the Federal Reserve Board to govern the foreign activities of member banks. This accords with the Congressional intent that is reflected in the legislative history of FIRIRCA.

Section 347.3 of the proposed regulation pertains in part to new notice requirements concerning the relocation or addition of foreign branches and refers to information required under §§ 303.2 and 303.3 of the Corporation's regulations. These sections do not now contain provisions outlining the information to be provided in the notice. However the Sections will be amended to provide the necessary instructions if the notice requirements are adopted in the final regulation. Generally, the required information for the notice of an intent to establish an additional foreign branch would consist of the following information: proposed name and location of the branch, proposed fixed asset investment, lease terms, security arrangements, estimated deposit volume, projected time required to operate profitably, date the branch is to be established, and status of required governmental approvals. The required information for the notice of an intent to relocate a foreign branch would contain the following information: location to which the branch is to be moved, reason for the relocation, any substantial change in fixed assets, anticipated deposit volume or branch earnings, the expected date for relocation, and status of required governmental approvals.

Also, § 347.4(c) of the proposed regulation refers to information that is to be submitted by an insured State nonmember bank under § 303.9 of the Corporation's rules and regulations when applying for the Corporation's consent to acquire and hold ownership interest in a foreign bank or other foreign financial entity. Section 303.9 does not now contain a provision covering the required information for such applications. However, the Section will be amended to recite the same information requirement now contained in 12 CFR 213.4(c) for the acquisition of shares of foreign entities by member banks of the Federal Reserve System if the requirements proposed under § 347.4(c) are adopted in the final regulation.

Accordingly, the Board of Directors of the Federal Deposit Insurance Corporation proposes to add 12 CFR Part 347 to its rules and regulations as set forth below.

PART 347—FOREIGN ACTIVITIES OF INSURED STATE NONMEMBER BANKS

Sec.

347.1 Authority and scope.
347.2 Definitions.
347.3 Foreign branches.
347.4 Acquisition and holding of stock in foreign banks or other financial entities.
347.5 Loans or extensions of credit to foreign banks or other financial entities.
347.6 Conditions.

AUTHORITY: Secs. 3(o), 18(d), 18(*l*), Federal Deposit Insurance Act, as amended by sec. 301, Pub.L. 95-630, 92 Stat. 3641 (12 U.S.C. 1813 (o), 1828 (d), 1828(*l*)).

§ 347.1 Authority and scope.

Under sections 3(o), 18(d), and 18(*l*) of the Federal Deposit Insurance Act, as amended by section 301, Pub.L. 95-630, 92 Stat. 3641 (12 U.S.C. 1813(o), 1828(d), 1828(*l*)), the Federal Deposit Insurance Corporation (the "Corporation") prescribes the following regulation relating to (a) foreign branches of insured State nonmember banks, (b) the acquisition and holding of stock in foreign banks and other financial entities, and (c) loans or extensions of credit to or for the account of such foreign banks or other financial entities.

§ 347.2 Definitions.

For the purposes of this part—

(a) "Foreign branch" means any office or place of business of an insured State nonmember bank located outside the United States, it territories, Puerto Rico, Guam, American Samoa, or the Virgin Islands, at which banking operations (excluding representative offices solely concerned with new business development or public relations) are conducted.

(b) "Foreign country" or "country" means any foreign nation or colony, dependency, or possession thereof.

(c) "Foreign bank" means a bank organized under the law of a foreign country or any dependency or insular possession of the United States which is principally engaged in a commercial banking business and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the Board of Directors of the Federal Deposit Insurance Corporation, shall be incidential to the international or foreign business of such foreign bank.

(d) "Other financial entities" includes foreign institutions other than foreign banks that are organized under the law of a foreign country or any dependency or insular possession of the United States for the sole purpose of holding the shares of foreign banks or performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or banking affiliate of an insured State nonmember bank.

§ 347.3 Foreign branches.

(a) *Establishing and moving foreign branches.* A foreign branch may not be established or operated without the prior written consent of the Corporation. This consent may be obtained through the branch application procedures set forth under Part 303. If an insured State nonmember bank has established an authorized foreign branch, it may, unless otherwise advised by the Corporation, establish other branches and move authorized existing branches in that country after *thirty days'* notice to the Corporation concerning each such branch by submitting the information required under either § 303.2 or 303.3, as appropriate, to the Regional Director of the

Region in which the main office exists.

(b) *Existing foreign branches.* Any insured State nonmember bank that has a foreign branch at the time of the effective date of this Part shall apply within 90 days thereafter for Corporation aproval of such branch under the procedures set forth in Part 303 for establishing branches.

(c) *Further powers of foreign branches.* In addition to its other powers, a foreign branch may, subject to paragraph (d) of this section and § 347.6 and so far as is usual in connection with the transaction of the business of banking in the places where it shall transact business:

(1) Guarantee customers' debts or otherwise agree for their benefit to make payments of the occurrence of readily ascertainable events[1] if the guarantee or agreement specifies its maximum monetary liability thereunder; but, except to the extent secured, no insured State nonmember bank may have such liabilities outstanding (i) in an aggregate amount exceeding 50 percent of its capital and surplus or (ii) for any customer in excess of the amount by which 10 percent of its capital and surplus exceeds the aggregate of such customer's "obligations" to it subject to the limitations for national banks under 12 U.S.C. 84;

(2) Accept drafts or bills of exchange drawn upon it;

(3) Acquire and hold securities (including certificates or other evidences of ownership or participation) of the central bank, clearinghouses, governmental entities, and development banks of the country in which it is located, unless after such an acquisition the aggregate amount invested by the branch in such securities (exclusive of securities held as required by the law of that country or as authorized for national banks under 12 U.S.C. 24) would exceed 1 percent of its total deposits on the preceding year end call report date (or the date of such acquisition in the case of a newly approved branch which has never reported);

(4) Underwrite, distribute, buy, and sell obligations of the national government of the country in which it is located;[2] but no bank may hold, or be under commitment with respect to, obligations of such a government as a result of underwitiing, dealing in, or purchasing for its own account, in an aggregate amount exceeding 10 percent of its capital and surplus;

(5) Take liens or other encumbrances on foreign real estate in connection with its extensions of credit, whether or not of first priority and whether or not such real estate is improved or has been appraised.

(6) Extend credit to an executive officer of the branch in an amount not to exceed $100,000 or its equivalent, in order to finance the acquisition or construction of living quarters to be used as the officer's residence abroad, providing each such credit extension is promptly reported to its home office; *Provided, however,* That with the specific prior approval of the parent bank's board of directors, such amount limitation may be exceeded when necessary to meet local housing costs.

(7) Pay to any officer or employee of the branch a greater rate of interest on deposits than that paid to other depositors on similar deposits with the branch;

(8) Act as insurance agent or broker.

(d) *Limitations.* Nothing in paragraph (c) of this section shall authorize a foreign branch to engage in the general business of producing, distributing, buying, or selling goods, wares, or merchandise, or, except as permitted by paragraph (c)(4) of this section, to engage or participate, directly, or indirectly, in the business of underwriting, selling, or distributing securities.

(e) *Suspending operations during disturbed conditions.* The officer in charge of a foreign branch may suspend its operations during disturbed conditions which, in the officer's judgment, make conduct of such operations impracticable; but every effort shall be made before and during such suspension to serve its depositors and customers. Full information concerning any such suspension shall be promptly reported to the branch's home office, which shall immediately send a copy thereof to the Corporation.

§ 347.4 Acquisition and holding of stock in foreign banks or other financial entities.

(a) *General.* When authorized by State law, an insured State nonmember bank may, with the prior consent of the Corporation and subject to the provisions of this part, acquire and hold, directly or indirectly, the stock or other evidences of ownership in one or more foreign banks or other financial entities without regard to the provisions of 12 U.S.C. 1828(j): *Provided,* That the aggregate amount invested directly or indirectly (other than through a corporation organized under section 25(a) of the Federal Reserve Act) in the stock or other evidences of ownership of all foreign banks and other financial entities, taken together with investments by the bank in the shares of corporations organized under section 25(a) of the Federal Reserve Act, shall not exceed 25 percent of the bank's capital and surplus. Nothing contained in this part shall prevent the acquisition and holding od stock of other evidences of ownership in a foreign bank or other financial entities where such acquisition is necessary to prevent a loss upon a debt previously contracted in good faith; but such stock or other evidences of ownership shall be disposed of within 12 months from the date of acquisition unless such time is extended by the Corporation.

(b) *Limitations.* Stock or other evidences of ownership in a foreign bank or other financial entities shall be disposed of as promptly as practicable if (1) Such bank or other financial entities should engage in the business of underwiting, selling, or distributing securities in the United States or (2) The insured State nonmember bank is advised by the Corporation that its holding is inappropriate under this Part. The terms "stock," "shares," and "evidences of ownership" in this section include any right to acquire stock, shares, or evidences of ownership, except that prior Corporation consent is not required for the acquisition and exercise of stock rights in lieu of dividends which are declared on shares already held by an insured State nonmember bank and which do not result in an increase in percentage ownership of the foreign bank or other financial entities.

(c) *Required Information.* An insured State nonmember bank may apply for the consent of the Corporation to acquire and hold, directly or indirectly, the stock or other evidences of ownership in a foreign bank or other financial entities by filing the information specified in § 303.9. An insured State nonmember bank that already has ownership interest in such foreign bank or entity shall apply within 90 days from the effective date of this Part for Corporation approval of such holdings.

(d) *Reports.* An insured State nonmember bank shall immediately inform the Corporation, through the Regional Director of the Region in which the bank is located, of any acquisition or dispostion of stock in a foreign bank or other financial entity, including the cost and number of shares acquired pursuant to this section.

§ 347.5 Loans or extensions of credit to foreign banks or other financial entities.

An insured State nonmember bank which holds directly or indirectly[3] stock or other evidences of ownership in a foreign bank or other financial en-

[1] Including, but not limited to, such types of events as nonpayment of taxes, rentals, customs duties, or costs of transport and loss or nonconformance of shipping documents.

[2] Including obligations issued by an agency or instrumentality, and supported by the full faith and credit, of such government.

[3] Whether through a corporation organized under section 25(a) of the Federal Reserve Act, or otherwise.

tities may make loans or extensions of credit to or for the account of such foreign bank or other financial entity without regard to the provisions of 12 U.S.C. 1828(j).

§ 347.6 Conditions.

(a) *Records, controls and reports.* An insured State nonmember bank exercising any powers under this Part shall maintain a system of records, controls and reports that, at minimum, provide for the following:

(1) *Risk assets.* To permit assessment of exposure to loss, information furnished or available to the head office should be sufficient to permit periodic and systematic appraisals of the quality of loans and other extensions of credit. Coverage should extend to a substantial proportion of the risk assets in the branch or subsidiary, and include the status of all large credit lines and of credits to customers also borrowing from other offices of the bank. Information on credit extensions should include (i) a recent financial statement of the borrower and current information on the borrower's financial condition;

(ii) credit terms, conditions, and collateral;

(iii) data on any quarantors; (iv) payment history; and (v) status of corrective measures employed.

(2) *Liquidity.* To enable assessment of local management's ability to meet its obligations from available resources, reports should identify the general sources and character of the deposits, borrowing, etc., employed in the branch or subsidiary with special reference to their terms and volatility. Information should be available on sources of liquidity—cash, balances with banks, marketable securities, and repayment flows—such as will reveal their accessibility in time and any risk elements involved.

(3) *Contingencies.* Data on the volume and nature of contingent items such as loan commitments and guaranties or their equivalents that permit analysis of potential risk exposure and liquidity requirements.

(4) *Controls.* Reports on the internal and external audits of the branch or subsidiary in sufficient detail to permit determination of conformance to auditing guidelines. Such reports should cover (i) verification and identification of entries on financial statements; (ii) income and expense accounts, including descriptions of significant chargeoffs and recoveries; (iii) operations and dual-control procedures and other internal controls; (iv) conformance to head-office guidelines on loans, deposits, foreign exchange activities, proper accounting procedures, and discretionary authority of local management; (v) compliance with local laws and regulations; and (vi) compliance with applicable U.S. laws and regulations.

(b) The continued or prospective exercise of any power under this Part shall be subject to any notice interpreting or applying the provisions of the Part that an insured State nonmember bank may receive from the Corporation, and such bank shall immediately comply therewith.

(c) The Corporation may from time to time require an insured State nonmember bank to make reports at such time and in such forms as the Corporation may prescribe regarding the exercise of any power under this part and to submit information regarding compliance with this part.

By order of the Board of Directors, January 24, 1979.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[FR Doc. 79-3313 Filed 1-30-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission.

[18 CFR Chapter I]

[Docket No. RM79-14]

NATURAL GAS POLICY ACT OF 1978

Regulations Implementing the Incremental Pricing Provisions

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of informal public conference and inquiry.

SUMMARY: On February 12, 1979, Commissioner George R. Hall will convene an informal public conference to discuss implementation of the incremental pricing provisions of Title II of the Natural Gas Policy Act of 1978. He will also meet informally with the Gas Committee of the National Association of Regulatory Utility Commissioners (NARUC), the NARUC Ad Hoc Committee on National Energy Act implementation issues and any other interested state commissioners on February 20, 1979. This meeting is open for observation by any interested member of the public.

DATES: Public conference, 10:00 a.m., February 12, 1979; NARUC conference, 2:00 p.m., February 20, 1979; Written comments, February 12, 1979; Requests to speak at the public conference, February 2, 1979.

ADDRESSES: Conferences: Hearing Room A, 825 North Capitol Street, N.E., Washington, D.C. 20426; Written comments and requests to speak: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Kenneth F. Plumb, Secretary Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C., 202-275-4166.

SUPPLEMENTARY INFORMATION:

JANUARY 12, 1979.

In the matter of regulations implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978; notice of informal public conference and inquiry.

On February 12, 1979, Commissioner George R. Hall will convene an informal public conference to discuss implementation of the incremental pricing provisions of Title II of the Natural Gas Policy Act of 1978 (NGPA). The public meeting will begin at 10:00 a.m. on February 12, 1979, in Hearing Room A at the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. Written comments may be submitted on or before February 12, 1979.

Additionally, at 2:00 p.m. on February 20, 1979, Commissioner Hall will meet informally with the Gas Committee of the National Association of Regulatory Utility Commissioners (NARUC), the NARUC Ad Hoc Committee on NEA implementation issues and any other interested state public utility regulatory commissioners who may wish to attend. This meeting will be held in Hearing Room A, and the public is invited to observe the proceedings.

Title II of the NGPA requires that by November 9, 1979, the Commission promulgate regulations to provide for incremental pricing of natural gas used in certain industrial boiler fuel facilities. The Commission's staff task force working on Title II implementation has identified several approaches that could be utilized to implement this policy.

The task force favors, at this time, the approach discussed in the appended "Staff Task Force Proposal for Regulations to Implement Incremental Pricing" (Attachment A). A paper that sets out various options is also attached (Attachment B).

Under the option presently favored by the Commission's staff task force, on May 1 and November 1 of each year a surcharge would be imposed by each natural gas supplier subject to Title II of the NGPA on each of its sale-for-resale customers and industrial boiler fuel customers to recover costs subject to incremental pricing. The surcharge would be stated as a flat dollar amount which would be collected during the succeeding six months in six equal monthly installments.

The staff task force's preferred approach would result in a surcharge which would be based entirely on actual amounts of gas consumed and actual costs of gas. It would avoid the need for projections. It is the task force's judgment that this approach would effectively carry out the objectives of Title II and would be the least burdensome regulatory arrangement for all parties concerned, including customers, distribution companies, pipelines and state and federal regulatory commissions.

Under the Staff Proposal, a reporting mechanism would be established so that all companies would get the information needed to impose incremental pricing surcharges. Additionally, the proposal would establish procedures so that by November 15, 1979 (one and a half months before the date by which pipelines would be required to begin booking costs in their incremental pricing surcharge accounts, January 1, 1980), each industrial boiler fuel facility would be informed as to whether it is exempted from incremental pricing.

Comments on the task force's proposal are requested, as well as comments on other approaches that should be considered.

The regulations proposed in the attached staff task force proposal deal only with the process of determining and collecting the incremental pricing surcharge. The proposal does not address the very significant question of whether the alternative fuel cost ceiling on incremental prices should be the price of No. 2 or No. 6 fuel oil. This issue is being addressed separately.

Data and information are needed for analysis and evaluation of what should be the regions for determining alternative fuel costs and what should be the ceiling on incremental pricing for each region. On December 29, 1978, a form (Attachment C) [1] was sent by the Energy Information Administration (EIA) to interstate pipelines, local distributors, state commissions, and other interested persons. Responses to the EIA questionnaire will be used by the staff in developing a proposed draft Notice of Proposed Rulemaking to establish the ceilings for each region.

A series of regional meetings to consider the alternative fuel cost ceiling issue is being planned to permit public discussion and comments on the forthcoming Notice of Proposed Rulemaking. Consequently, Commissioner Hall requests that comments on the staff task force's proposal for the basic incremental pricing rule not be directed to the issue of alternative fuel cost ceilings. Those wishing to comment, at this time, on this aspect of Title II should return the form appended as Attachment C.

The staff task force's proposal has not been presented to the Commission for its consideration. Commissioner Hall believes, however, that the staff would benefit from having input from interested commentators during the process of developing a formal proposal to the Commission. Also, Commissioner Hall would like to identify and develop various alternatives that the Commission might wish to consider. To these ends, he has instituted this informal comment and discussion process. This Notice should not be interpreted as implying any decision or even disposition on the part of the Commission with respect to how Title II should be implemented. Also, this informal opportunity for comment is intended to supplement but not supplant the opportunity for comment that will be provided when the Commission takes action on Title II implementation.

Interested persons and groups are invited to participate in the inquiry and informal conference by making oral presentations, by submitting written comments, or both. Persons wishing to make oral presentations at the conference should notify the Secretary of the Commission on or before February 2, 1979, in writing and should indicate the amount of time desired. The Secretary will make available by noon, February 7, 1979, a schedule of presentations. Time for individual oral presentations will be limited, so group presentations are encouraged.

Written comments should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any comments received will be included in a public reading file in the Commission's Office of Public Information. Parties who intend to make oral presentations at the February 12, 1979, conference are urged to bring copies of any written comments they may have for distribution to the conference participants.

Attachments.

KENNETH F. PLUMB,
Secretary.

ATTACHMENT A—STAFF TASK FORCE PROPOSAL FOR REGULATIONS TO IMPLEMENT INCREMENTAL PRICING

A. *General.*

1. *Purpose.* In accordance with Title II of the Natural Gas Policy Act of 1978 (NGPA), certain costs of acquiring gas will be passed through as a surcharge on sales of gas used for boiler fuel in certain industrial boiler fuel facilities.

2. *Applicability.*

a. *Costs.* Costs described in part C below which are incurred by natural gas suppliers on or after January 1, 1980, shall be subject to incremental pricing.

b. *Natural gas suppliers.* Interstate pipelines and local distribution companies, as defined below, shall be subject to incremental pricing.

3. *Definitions.*

a. "Interstate pipeline" means any person engaged in natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act.

b. "Local distribution company" means any person other than an interstate pipeline that receives gas directly or indirectly from an interstate pipeline and which is engaged in the sale of natural gas for resale or for ultimate consumption. A person is not considered as having received gas directly or indirectly from an interstate pipeline if the only service performed by an interstate pipeline for the purchaser is a transportation service.

c. "Natural gas supplier" means an interstate pipeline or a local distribution company.

d. "Boiler fuel use" means the use of any fuel for generating steam or electricity.

e. "Industrial boiler fuel facility" means any industrial facility which uses natural gas as a boiler fuel.

f. "Industrial facility" means any facility which uses natural gas primarily in a process which creates or changes raw or unfinished materials into another form or product.

g. "Pricing period" means each six month period ending December 31 and June 30.

h. "Surcharge billing period" means each six month period beginning May 1 and November 1.

B. *Exemptions and adjustments.*

1. *General.* Natural gas used for purposes described in section 3 below shall be exempt from incremental pricing. Direct sale customers may obtain an exemption for such gas in the manner described in section 4 below. Adjustments as may be necessary to prevent special hardship or unfair distribution of burdens may be obtained in the manner described in section 5 below.

2. *Definitions.*

a. "Qualifying cogenerator" means the owner or operator of a qualifying cogeneration facility as provided in section 3(18)(c) of the Federal Power Act, as amended by section 201 of the Public Utility Regulatory Policies Act of 1978.

b. "Qualifying cogeneration facility" means a cogeneration facility which:

(1) Meets the requirements prescribed in §———of the Commission's Regulations; and

(2) Is owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities).

c. "School" means a facility the primary function of which is the delivery of instruction to regularly enrolled students in attendance at such facility. Facilities used for both educational and non-educational activities are not included under this definition unless the latter activities are merely incidental to the delivery of instruction.

d. "Hospital" means a facility the primary function of which is the delivery of medical care to patients who remain at the facility. Outpatient clinics or doctor's offices are not included in this definition. Nursing homes and convalescent homes are included in this definition.

[1] Filed as a part of original document.

e. "Agricultural use" means any use of natural gas which is certified by the Secretary of Agriculture under 7 CFR § 2900.3 as an "essential agricultural use" pursuant to section 401(c) of the NGPA.

3. *Exempt end-uses.* Natural gas used for the following purposes shall be exempted from incremental pricing under this part:

a. All gas used for boiler fuel by an industrial boiler fuel facility which was in existence on the date of enactment and did not consume more than an average of 300 Mcf per day for boiler fuel during any calendar month during calendar year 1977;

b. All gas used by a qualifying cogenerator in a qualifying cogeneration facility;

c. All gas used in a facility for the generation of electricity by an electric utility;

d. All gas used by schools, hospitals, and similar institutions; and

e. All gas used by any facility to the extent of any agricultural use of natural gas.

4. *Obtaining an exemption.*

a. *General.* This section describes procedures by which direct sale customers of natural gas suppliers may obtain an exemption for natural gas used for the purposes described in section 3 above.

b. *Determination of industrial boiler fuel facilities.* Prior to October 1, 1979, each natural gas supplier shall determine which facilities served by it are industrial boiler fuel facilities, as defined above, which were in existence on November 9, 1978.

c. *Exemption on the basis of company records.*

(1) Prior to October 1, 1979, each natural gas supplier shall determine from an examination of its records which industrial boiler fuel facilities, as identified under paragraph b above, were such that:

(i) The facility did not use more than an average of 300 Mcf per day during any calendar month during calendar year 1977; or

(ii) The facility did not use more than an average of 300 Mcf per day for boiler fuel during any calendar month during calendar year 1977.

(2) natural gas used by an industrial boiler fuel facility for which an affirmative determination is made under (1) above, shall be exempt from incremental pricing.

d. *Exemption on the basis of affidavit.*

(1) *Service of exemption form.* Not later than October 1, 1979, each natural gas supplier shall mail or otherwise supply an exemption form, as described in (2) below, to each facility on such natural gas supplier's system which the natural gas supplier determined to be an industrial boiler fuel facility in existence on November 9, 1978, but which the natural gas supplier did not determine to be exempt.

(2) *Contents of exemption form.*

(i) The exemption form shall be designed by the natural gas supplier which is to mail or otherwise supply it and shall contain matter as described in (ii) below.

(ii) The exemption form shall provide the recipient with an opportunity to respond to the following questions:

(A) Did the recipient, on the basis of records, documents or data in its possession, consume no more than an average of 300 Mcf per day for boiler fuel during any calendar month during calendar year 1977?

(B) Is the recipient a qualifying cogeneration facility?

(C) Is the recipient a facility used for the generation of electricity by an electric utility?

(D) Is the recipient a school, hospital or similar institution?

(E) Does the recipient consume natural gas as boiler fuel for agricultural use?

(F) If the recipient answers questions (E) affirmatively, does it also consume natural gas as boiler fuel for purposes other than agricultural uses?

(iii) The exemption form shall provide the recipient with definitions of terms used in the form which are in accordance with the definitions given in section 2 above.

(iv) The exemption form shall indicate the record retention obligation which may be incurred by recipient under (5) below.

(v) The exemption form shall contain such other information as may be necessary for completion and return of the form.

(3) *Reply date.* Any recipient of the exemption form shall, in order to obtain an exemption from incremental pricing, mail or otherwise return the form no later than October 20, 1979, to the natural gas supplier which sent it.

(4) *Exemption.*

(i) *Questions (A) Through (D).* If a recipient of an exemption form affirmatively responds to any of the questions (A) through (D), as set out in (2)(ii) above, and returns the form, signed and dated by a responsible officer, under oath, then natural gas used by the recipient shall be exempt from incremental pricing under this part.

(ii) *Question E.*

(A) If the recipient of an exemption form affirmatevely responds to question (E) as set out in (2)(ii) above, indicating that the recipient consumes natural gas as boiler fuel for an agricultural use, and returns the form, signed and dated by a responsible officer, under oath, then, except as provided in (B) below, natural gas used by the recipient shall be exempt from incremental pricing under this part.

(B) If the recipient of an exemption form affirmatively responds to question (F), indicating that the recipient consumes natural gas for boiler fuel not only for agricultural uses, but for purposes other than agricultural uses, then the natural gas supplier which sent the form shall determine the extent to which natural gas is used for boiler fuel for other than agricultural uses and whether the natural gas used for boiler fuel for such other purposes is subject to incremental pricing under this part.

(5) *Record retention.* If the recipient of an exemption form obtains an exemption as a result of affirmatively responding to question (A), the recipient shall retain all records, documents or data which formed the basis of the responses and shall make such records, documents or data available during regular business hours for public inspection in a convenient form and place.

e. *Confirmation of exemption.* No later than November 15, 1979:

(1) Each industrial boiler fuel facility which qualified for an exemption under paragraphs c or d above, shall be provided by its natural gas supplier with written confirmation that it has obtained an exemption from incremental pricing under this part; and

(2) Each industrial boiler fuel facility which did not qualify for an exemption under paragraphs c or d shall be provided with writen notification by its natural gas supplier that natural gas consumed at the facility will be incrementally priced under this part.

f. *Special relief.* An industrial boiler fuel facility which qualifies for an exemption under section 3 above, but which failed to obtain an exemption through the procedures established in paragraphs c or d, shall be granted an exemption by its natural gas supplier as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens.

5. *Adjustments.* Pursuant to section 502(c) of the NGPA, any person may apply to the Commission for an interpretation, modification, or rescission of, exception to or exemption from the incremental pricing regulations or any other issued under them.

a *Standards for granting adjustments.* An application for an adjustment shall, consistent with other purposes of the NGPA, be granted as may be necessary to prevent special hardship, inequity, or any unfair distribution of burdens.

b. *Procedures.* An application for an adjustment shall be subject to the requirements and procedures set forth in § 1.41 of the Commission's Regulations.

C. *Determination of costs subject to incremental pricing.*

1. *Costs subject to incremental pricing.* The costs specified below are acquisition costs which shall be subject to incremental pricing.

a. *New natural gas.* In the case of new natural gas (as defined in section 102(c) of the NGPA), any portion of the first sale acquisition costs of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs shall be subject to incremental pricing.

b. *Natural gas under intrastate rollover contract.* In the case of natural gas delivered under a rollover contract which was not committed or dedicated in interstate commerce on November 8, 1978, any portion of the first sale acquisition costs of such natural gas which exceeds the incremental pricing threshold applicable for the month in which such delivery occurs shall be subject to incremental pricing.

c. *New onshore production well gas.* In the case of natural gas produced from any new, onshore production well (as defined in section 103(3) of the NGPA), any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs shall be subject to incremental pricing.

d. *LNG imports.*

(1) Subject to (2) below, in the case of liquefied natural gas imported into the United States, any portion of the first sale acquisition cost of such natural gas (whether or not liquefied when acquired) which exceeds the incremental pricing threshold applicable for the month in which such liquefied natural gas enters the United States shall be subject to incremental pricing.

(2) Costs of liquefied natural gas imported into the United States shall not be subject to incremental pricing if:

(i) the importation of the liquefied natural gas was authorized under section 3 of the Natural Gas Act on or before May 1, 1978;

(ii) an application for such authority was pending under section 3 of the Natural Gas Act on such date; or

(iii) in connection with the granting of any authority under the Natural Gas Act to import such liquefied natural gas, the Secre-

tary of the Department of Energy determines that a contract binding on the importer or other substantial financial commitment was made on or before May 1, 1978.

(3) Clauses (ii) and (iii) of (2) shall not apply with respect to any liquefied natural gas imports if, in connection with the granting of any authority under the Natural Gas Act to import liquefied natural gas, the Secretary of the Department of Energy determines that the costs of such imports shall be subject to incremental pricing.

e. *Natural gas (other than LNG) imports.*

(1) Subject to (2) below, in the case of natural gas (other than liquefied natural gas) imported into the United States, any portion of the first sale acquisition cost of such imported natural gas which exceeds the maximum lawful price, per million Btu's computed under section 102 of the Natural Gas Policy Act (relating to new natural gas) for the month in which such natural gas enters the United States without regard to section 110 of the NGPA, shall be subject to incremental pricing.

(2) Subject to (3) below, (1) shall only apply to cost of volumes of natural gas (other than liquefied natural gas) imported into the United States which exceed both the maximum for the month in which such delivery of natural gas occurs, as specified by contract entered into on or before May 1, 1978, and in effect when such delivery occurs, and the volume of natural gas imported into the United States by the interstate pipeline involved during calendar year 1977.

(3) Notwithstanding (2) above, (1) shall apply to the first sale acquisition costs of volumes of natural gas (other than liquefied natural gas) imported into the United States which exceed the volume of natural gas imported into the United States by the interstate pipeline involved during calendar year 1977 if, in connection with the granting of any authority under the Natural Gas Act to import such natural gas, the Secretary of the Department of Energy determines that (1) shall apply with respect to such natural gas imports.

f. *Stripper well natural gas.* In the case of stripper well natural gas (as defined in section 108(b) of the NGPA), any portion of the first sale acquisition cost of such natrual gas which exceeds the maximum lawful price, per million Btu's, computed under section 102 of the NGPA (relating to new natural gas), for the month in which the delivery of such gas occurs without regard to section 110 of the NGPA, shall be subject to incremental pricing.

g. *High-cost natural gas.* In the case of High-cost natural gas, (as defined in section 107(c) of the NGPA), any portion of the first sale acquisition cost of such natural gas which exceeds 130 percent of the most recent weighted average per barrel cost (as determined and published for incremental pricing purposes by the Energy Informaton Administration of the Department of Energy) of No. 2 fuel oil landed in the greater New York City metropolitan area during the third month preceding the beginning of the pricing period during which delivery of such natural gas occurs, divided by a Btu conversion factor of 5.8 million Btu's per barrel, shall be subject to this part.

h. *Alaska Natural Gas Transportation System.* In the case of natural gas produced from the Prudhoe Bay Unit of Alaska, (as defined in section 2 of the NGPA) and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976, the following amounts shall be subject to incremental pricing:

(1) any portion of the first sale acquisition cost of natural gas which is not described in (2) below and which exceeds the maximum lawful price, per million Btu's, computed under section 109 of the NGPA (relating to other categories of natural gas) for the month in which delivery of such natural gas occurs without regard to section 110 of the NGPA; and

(2) any amount paid to any person (other than the producer of such natural gas or an affiliate of such producer) for, or attributable to, any compressing, gathering, processing, treating, liquefying, or transporting such natural gas, or any similar service provided with respect to such natural gas, before the delivery of such natural gas to such system.

i. *Increased state severance taxes.*

(1) Subject to (2), any portion of the cost of natural gas at any first sale attributable to any increase in the amount of state severance taxes (as defined in section 110(c) of the NGPA), which results from a provision of state law enacted on or after December 1, 1977, shall be subject to incremental pricing.

(2) Any increase in state severance taxes resulting from a change in the method of computation of such tax by reason of any provision of state law enacted on or after December 1, 1977, shall not be subject to incremental pricing if, as of the effective date of such change in method of computation, such increase does not result in an increase in the level of such tax, expressed as a percentage of the weighted average first sale price of natural gas produced in such state, above the percentage of such average first sale price which such tax constituted on the day before such effective date, and such provision of law is equally applicable to natural gas produced in such state and delivered in interstate commerce and to natural gas produced in such state and not so delivered. The price to be used in determining the weighted average first sale price shall be the price paid at the fist sale which is used by such state in administering such tax (or an imputed value, if the state uses and event other than a first sale in administering such tax).

j. *Transactions under section 311(b) of the NGPA.* In the case of any sale under section 311(b) of the NGPA by an intrastate pipeline to an interstate pipeline or a local distribution company, any portion of the cost paid by the purchaser to the intrastate pipeline which exceeds the incremental pricing threshold for the month in which the delivery of the natural gas occurs shall be subject to incremental pricing.

k. *Pipeline produced gas.*

(1) In the case of any natural gas produced by an interstate pipeline which is priced in its overall cost of service without regard to the cost of producing the gas, any portion of the first sale acquisition cost imputed under section 3 below shall be subject to incremental pricing if it would have been so subject under paragraphs a through h had the gas been produced by an independent producer and purchased by the interstate pipeline at the imputed level.

(2) Gas produced by interstate pipelines which is treated, for rate purposes, on a cost of service basis shall not be subject to incremental pricing.

(3) Costs of gas produced by producers affiliated with interstate pipelines shall be treated as production by an independent producer and shall be subject to incremental pricing except to the extent that different treatment has been found appropriate under the Natural Gas Act.

l. *Surcharges paid to other pipelines.* The amount of any incremental pricing surcharge paid by any pipeline for natural gas acquired by such pipeline from another pipeline shall be subject to incremental pricing.

2. *Gas qualifying under more than one provision.* If natural gas qualifies under more than one paragraph of section 1 above, the paragraph which reflects a determination made in accordance with section 101(b)(5) of the NGPA shall be applicable.

3. *First sale acquisition cost.*

a. *General.* For purposes of this part, the first sale acquisition cost of natural gas is:

(1) the price paid, per million Btu's, in any first sale of such natural gas in the case of any natural gas produced in the United States and acquired in such first sale; or

(2) the price paid for such natural gas, per million Btu's at the point of entry to the United States, in the case of natural gas or liquefied natural gas imported into the United States.

b. *State severance taxes.* Any amount of State severance taxes paid at any first sale shall not be included in determining the price paid for purposes of (1) and (2) of paragraph a above.

(c) *Pipeline produced gas.* A first sale acquisition cost shall be imputed to gas produced by an interstate pipeline which is priced in its overall cost of service without regard to the cost of producing the gas. The imputed cost shall be the maximum lawful price which would have been paid under Title I of the NGPA if the gas had been produced by an independent producer. The determination of this maximum lawful price shall be made by the body which, by terms of the NGPA and the regulations promulgated thereunder, would make the determination if the gas had been produced by an independent producer.

4. *Incremental pricing threshold.*

a. *General.* For purposes of this part, the incremental pricing threshold applicable for any month shall be:

(1) $1.48 per million Btu's in the case of March, 1978; and

(2) in the case of any month thereafter, the amount, per million Btu's, determined under this section for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor (as defined in section 101(a) of the NGPA) applicable for such month.

b. *Publication.* Not later than 5 days before the beginning of any month, commencing with January, 1980, the Commission shall publish the incremental pricing threshold applicable for such month. As soon as possible thereafter, such incremental pricing threshold shall be published in the FEDERAL REGISTER.

D. *Incremental pricing amounts and surcharges.*

1. *General.* During a six month pricing period, each interstate pipeline and local distribution company served by an interstate pipeline will accumulate in an unrecovered incremental gas costs account the difference between its actual first sale acquisition cost of natural gas and the appropriate incremental pricing threshold or other

amount. During the succeeding six month surcharge billing period, the accumulated balance, plus carrying charges accrued during the pricing period, plus any incremental pricing surcharges passed on by a supplier, will be recovered by means of incremental pricing surcharges. These surcharges, subject to the alternative fuel cost ceiling, shall be determined on the basis of the maximum surcharge absorption capabilities of the customers of the interstate pipeline or local distribution company.

2. *Accounting.*

a. *General.* For incremental pricing purposes, each natural gas supplier shall establish an unrecovered incremental gas costs account, an unrecovered incremental surcharges account and an incremental gas cost adjustments account.

b. *Establishment of accounts.*

(1) *Unrecovered gas costs account.* Each natural gas supplier shall establish an unrecovered incremental gas costs account. Such account shall be designated account 192.1, Unrecovered Incremental Gas Costs, for interstate pipelines following the Uniform System of Accounts, Parts 201 and 204 of this chapter. Separate subaccounts shall be established in the unrecovered incremental gas costs account for each six month pricing period so as to keep separate the costs debited in accordance with paragraph c below. The underlying records of each pricing period subaccount shall be maintained to permit identification of each purchase that gave rise to costs being charged to the account; the provision of the Commission's Regulations under which the costs associated with such purchase qualify for inclusion in the account; the carrying charges debited to the account; the computations by which such carrying charges were determined; and any other charges to the account.

(2) *Unrecovered incremental surcharges account.* Each natural gas supplier shall establish an unrecovered incremental surcharges account. Such account shall be designated account 192.2, Unrecovered Incremental Surcharges, for interstate pipelines following the Uniform System of Accounts, Parts 201 and 204 of this chapter. The underlying records of this account shall be maintained so as to permit ready identification of each incremental pricing surcharge debited to the account in accordance with paragraph e below.

(3) *Incremental gas cost adjustments account.* Each natural gas supplier shall establish an incremental gas cost adjustments account. Such account shall be designated account 805.2, Incremental Gas Cost Adjustments, for interstate pipelines following the Uniform System of Accounts, Part 201 of this chapter. Such account shall be designated account 731.2, Incremental Gas Cost Adjustments, for interstate pipelines following the Uniform System of Accounts, Part 204 of this chapter.

c. *Debiting the unrecovered incremental gas costs account.* Each pricing period subaccount of the unrecovered incremental gas costs account shall be debited with:

(1) costs described in paragraphs a through k of part C, section 1 above which are incurred during such pricing period;

(2) carrying charges accrued on the accumulated or remaining balance in the subaccount; and

(3) any other costs as permitted by order of the Commission.

d. *Crediting the unrecovered incremental gas costs account.*

(1) The unrecovered incremental gas costs account shall be credited and the incremental gas cost adjustments account shall be debited when costs included in the unrecovered incremental gas costs account are recovered by means of incremental pricing surcharges.

(2) On the date a natural gas supplier's incremental pricing surcharges become effective, such natural gas supplier shall credit the unrecovered incremental costs subaccount for the most recently completed pricing period with any amount debited during that most recently completed pricing period which, due to the alternative fuel cost ceiling on incremental prices, cannot be collected by way of incremental pricing surcharges. Amounts so credited shall be collected as provided below.

e. *Debiting the unrecovered incremental surcharges account.* A natural gas supplier's unrecovered incremental surcharge account shall be debited with any incremental pricing surcharge which is billed to it by its supplier in accordance with a tariff sheet filed by such supplier in accordance with the Commission's regulations.

f. *Crediting the unrecovered incremental surcharges account.* The unrecovered incremental surcharges account shall be credited and the incremental gas costs adjustment account shall be debited for those amounts which are recovered by means of an increment pricing surcharge.

g. *Carrying charges.*

(1) *General.* A natural gas supplier may accrue carrying charges on balances of the costs described in paragraphs a through k of part C section 1 above and accumulated in the natural gas supplier's unrecovered incremental gas costs account. Accural of carrying charges shall be in accordance with either (2) or (3) below.

(2) *Interstate pipelines.*

(i) Carrying charges may be accrued by interstate pipelines on monthly ending balances in each pricing period subaccount of the unrecovered incremental gas costs account, exclusive of accumulated carrying charges and exclusive of any related amounts in account 283 or account 190 as of the end of the immediately preceding month.

(ii) The rate for computation of carrying charges shall be the current rate of interest or interstate pipeline refunds established by the Commission.

(iii) Carrying charges shall be debited to the related unrecovered incremental gas costs subaccount for the current pricing period and credited to account 419, Interest and Divident Income.

(iv) In order for an interstate pipeline to be eligible for carrying charges, the interstate pipeline shall adopt the principles of interperiod income tax allocation in connection with balances recorded in the unrecovered purchased gas cost account, with the resulting tax effects to be recorded in account 283, Accumulated Deferred Income Taxes—Other, or account 190, Accumulated Deferred Income Taxes, as appropriate, in accordance with the provisions of those accounts.

(3) *Local distribution companies.* Carrying charges may be accrued by local distribution companies on amounts accumulated in their unrecovered incremental gas costs accounts, unless prohibited by an appropriate state or local regulatory authority.

3. *Incremental pricing surcharge.*

a. *General.* On May 1 and November 1 of each year, each natural gas supplier shall impose an incremental pricing surcharge on each of the non-exempt industrial boiler fuel facilities which it directly serves and on each of its sale for resale customers. Each surcharge shall be collected in six equal monthly installments during the surcharge billing period commencing on the date the surcharge is imposed. Surcharges shall be calculated to recover, subject to the limitation of the alternative fuel cost ceiling:

(1) the actual balance accumulated in the natural gas supplier's unrecovered incremental gas costs subaccount for the most recently completed pricing period, including carrying charges, as of the day before commencement of the surcharge billing period;

(2) carrying charges which will be accrued on the remaining balances in such subaccount during the surcharge billing period;

(3) any incremental pricing surcharge imposed on the natural gas supplier by its own supplier(s) for the most recently completed pricing period.

b. *Surcharges on direct sales.*

(1) *General.* The incremental pricing surcharge to be collected by a natural gas supplier from each of the non-exempt industrial boiler fuel facilities which it directly serves shall be the lesser of:

(i) the maximum surcharge absorption capability of the non-exempt industrial boiler fuel facility, as determined in the manner described in (2) below; or

(ii) the non-exempt industrial boiler fuel facility's pro rata share of the sum of the actual balance accumulated in the natural gas supplier's unrecovered incremental gas costs subaccount for the most recently completed pricing period plus any incremental pricing surcharge(s) imposed on the natural gas supplier by its own supplier(s) for the most recently completed pricing period, such share being determined in the manner described in (3) below.

(2) *Maximum surcharge absorption capability (direct sales).* The maximum surcharge absorption capability for a non-exempt industrial boiler fuel facility shall be calculated by its natural gas supplier in accordance with the following formula:

$$M=[(A-R)(V)]$$

where:

M=Maximum surcharge absorption capability of the non-exempt industrial boiler fuel facility.

A=Alternative fuel cost ceiling applicable to the non-exempt industrial boiler fuel facility for the most recently completed pricing period.

R=Rate per million Btu's (before inclusion of any incremental pricing surcharge) at which the non-exempt industrial boiler fuel facility purchased gas from the natural gas supplier during the most recently completed pricing period.

V=Volume of natural gas (at 1,000 Btu's per cubic foot) purchased from the natural gas supplier and used by the non-exempt industrial boiler fuel facility for boiler fuel use during the most recently completed pricing period, as determined in accordance with section 5 below.

(3) *Pro rata share.* A non-exempt industrial boiler fuel facility's pro rata share of the sum of the actual balance accumulated in its natural gas supplier's unrecovered incre-

mental gas costs subaccount for the most recently completed pricing period plus any incremental pricing surcharge(s) imposed on the natural gas supplier by its own supplier(s) for the most recently completed pricing period shall be determined by the ratio between:

(i) the maximum surcharge absorption capability of the non-exempt industrial boiler fuel facility, as determined in accordance with (2) above; and

(ii) the sum of the maximum surcharge absorption capabilities of the nonexempt industrial boiler fuel facilities on the natural gas supplier's system, as determined for the most recently completed pricing period in accordance with (2) above; plus the sum of maximum surcharge absorption capabilities reported to the natural gas supplier by its sale for resale customers for the most recently completed pricing period in accordance with part E, section 1 below.

c. *Surcharges on sales for resale.*

(1) *General.* The incremental pricing surcharge to be collected by a natural gas supplier from each of its sale for resale customers shall be the lesser of:

(i) the maximum surcharge absorption capability of the sale of resale customer, as determined by the customer in the manner described in (2) below, and reported to the natural gas supplier pursuant to part E, section 1 below; or

(ii) the sale for resale customer's pro rata share of the sum of the actual balance accumulated in the natural gas supplier's unrecovered incremental pricing subaccount for the most recently completed pricing period plus any incremental pricing surcharge(s) imposed on the natural gas supplier by its own suppliers for the most recently completed pricing period, such share being determined in the manner described in (3) below.

(2) *Maximum surcharge absorption capability (sale for resale).* The maximum surcharge absorption capability of a sale for resale customer shall be the sum of the maximum surcharge absorption capabilities of the non-exempt industrial boiler fuel facilities on the customer's system, as determined in accordance with b(2) above, plus the sum of the maximum surcharge absorption capabilities reported to the customer by its own sale for resale customers, multiplied by the percentage determined by dividing the volume of natural gas purchased by the customer from the natural gas supplier during the most recently completed pricing period by the total volume of natural gas purchased by the customer from all sources during that period:

$$C = \xi[\xi(M_1 + M_2 + \ldots M_n) + \xi(M'_1 + M'_2 + \ldots M'_n)]\frac{S}{T}$$

where:

C=Maximum surcharge absorption capability of the sale for resale customer.

M=Maximum surcharge absorption capability as computed for each nonexempt industrial boiler fuel facility on the customer's system for the most recently computed pricing period in accordance with paragraph b above.

M=Maximum surcharge absorption capability reported to the sale for resale customer by each of its own sale for resale customers for the most recently completed pricing period in accordance with part E, section 1 below.

S=Volume of natural gas (at 1,000 Btu's per cubic foot) purchased by the sale for resale customer from the natural gas supplier during the most recently completed pricing period.

T=Total volume of natural gas (at 1,000 Btu's per cubic foot) purchased by the sale for resale customer from all sources during the most recently completed pricing period (including, in the event that the sale for resale customer is an interstate pipeline, any pipeline produced gas to which a first sale gas acquisition cost is imputed under part C, section 3 above.

(3) *Pro rata share.* A sale for resale customer's pro rata share of the sum of the actual balance accumulated in its natural gas supplier's unrecovered incremental gas costs subaccount for the most recently completed pricing period plus any incremental pricing surcharge(s) imposed on such natural gas supplier by its own supplier(s) for such most recently completed pricing period shall be determined by the ratio between:

(i) the maximum surcharge absorption capability reported to the natural gas supplier by the sale for resale customer for the most recently completed pricing period in accordance with part E, section 1 below; and

(ii) the sum of the maximum surcharge absorption capabilities of the non-exempt industrial boiler fuel facilities on the natural gas supplier's system, as determined for the most recently completed pricing period in accordance with b(2) above, plus the sum of maximum surcharge absorption capabilities reported to the natural gas supplier by its sale for resale customers for the most recently completed pricing period in accordance with part E, section 1 below.

4. *Alternative fuel cost ceiling.*

a. *General.* In no event shall the incremental pricing surcharge billed to a non-exempt industrial boiler fuel facility, when stated in terms of cents per million Btu's of gas used for boiler fuel purposes during the most recently completed pricing period, exceed the difference between:

(1) the applicable alternative fuel cost for the most recently completed pricing period, as determined and published in accordance with paragraph b; and

(2) the total tariff rate per million Btu's (before inclusion of any inclusion of any incremental pricing surcharge) applicable during the most recently completed pricing period for sales of gas to the facility.

b. *Alternative fuel cost.* Subject to a determination made under section 204(e)(2) of the NGPA to reduce the applicable alternative fuel cost to a level not lower than that of No. 6 fuel oil, the alternative fuel cost applicable to a non-exempt industrial boiler fuel facility for a pricing period shall be the most recent cost, per million Btu's, of No. 2 fuel oil pblished for purposes of administering this part by the Energy Information Administration prior to the beginning of the pricing period for the region, as defined by the Commission by rule, in which the facility is located.

5. *Determination of volumes.*

a. *Metered boilers.* For purposes of section 3 above, if all the gas-consuming boilers in a non-exempt industrial boiler fuel facility are metered, the volume of natural gas purchased and used by the non-exempt industrial boiler fuel facility for boiler fuel during a pricing period shall be the volume of natural gas shown by the meters to have been actually consumed by the boiler during such period.

b. *Unmetered boilers.* For purposes of section 3 above, if it is not the case that all the gas-consuming boilers in a non-exempt industrial boiler fuel facility are metered, the volume of natural gas purchased and used by the non-exempt industrial boiler fuel facility for boiler fuel during a pricing period shall be deemed to be the total volume of natural gas consumed at the facility for any purpose during such period.

6. *Recovery of amounts in excess of maximum surcharge absorption capabilities.* The amount in a natural gas supplier's unrecovered incremental gas costs subaccount for a pricing period which, due to the alternative fuel cost ceiling, cannot be recovered through incremental pricing surcharges during the succeeding surcharge billing period:

a. shall in the case of interstate pipelines, be credited to such subaccount, debited to account 191, Unrecovered Purchased Gas Costs, and collected under the Commission's provisions governing recovery of unrecovered gas costs as set forth in § 154.38(d)(4) of the Commission's regulations; and

b. shall, in the case of local distribution companies, be recovered in the manner permitted by an appropriate state or local authority.

E. *Reporting and filing requirements.*

1. *Reporting procedures.*

a. *General.* In order to determine the incremental pricing surcharge to be billed to each customer for the most recently completed pricing, each natural gas supplier which purchased gas from another natural gas supplier during such period shall report to such supplier the maximum incremental pricing surcharge which it can absorb. After all appropriate information regarding maximum surcharge absorption capabilities has been supplied to the natrual gas supplier which is furthest upstream, proposed incremental pricing surcharges shall be computed by each natural gas supplier and reported downstream until the sale for resale customer which is furthest downstream has received the information. The entire sequence of reporting upstream and downstream shall be completed in a period of time sufficient to permit all parties involved to file revised tariff sheets with the appropriate regulatory bodies within a period of time such that proposed incremental pricing purchasing may become effective May 1 or November 1, as appropriate.

b. *Upstream reporting.* Within a period of time as determined by the natural gas suppliers involved, but such that all appropriate information regarding maximum absorption capabilities will be supplied to the most upstream natural gas supplier within 45 days after the end of the most recently completed pricing period, each natural gas supplier shall, subject to paragraph c below, report its maximum surcharge absorption capability to its natural gas supplier.

c. *Upstream reporting to multiple suppliers.*

(1) If a natural gas supplier received gas from more than one natural gas supplier, the maximum surcharge absorption capability to be reported under paragraph b shall

be prorated, subject to (2) below, among the various natural gas suppliers on the basis of the volumes purchased from each of the suppliers during the most recently completed pricing period;

(2) If a natural gas supplier produced gas during the most recently completed pricing period and a first sale acquisition cost is imputed to such gas under part C, section 3, paragraph c above, the volume of such gas shall be included in prorating the maximum surcharge absorption capability which is to be reported by the natural gas supplier.

d. *Downstream reporting.* When upstream reporting is completed in accordance with paragraphs b and c, incremental pricing surcharges shall be computed by each natural gas supplier for each of its customers, sale for resale and direct sale. Such surcharges shall be reported to sale for resale customers within sufficient time to enable the most downstream sale for resale customer to file a revised incremental pricing surcharge rate schedule either with this Commission as provided in section 3 below, or with a state or local regulatory body, as may be appropriate, so that the surcharge may become effective on May 1 or November 1, as appropriate.

e. *Scheduling by the Commission.* To the extent that the Commission finds that in particular instances natural gas suppliers have not volimtarily arranged for the reporting of information in accordance with this section, the Commission shall prescribe by order in such instances an appropriate schedule for the expeditious transmission of the information necessary to meet the deadlines prescribed above.

2. *Incremental pricing surcharge provisions.*

a. *General.* Each interstate pipeline shall establish an incremental pricing surcharge provision in its FERC Gas Tariff. The incremental pricing surcharge provision shall provide for the passthrough of the costs described in part C, section 1 above, by means of an incremental pricing surcharge.

b. *Filing date.* The incremental pricing surcharge provision shall be filed with the Commission and served on all parties by November 1, 1979. The provision shall become effective on January 1, 1980, unless disapproved in whole or in part by the Commission.

3. *Tariff sheets.*

a. *General.* On or before October 1, 1980, each interstate pipeline shall file with the Commission a tariff sheet reflecting the incremental pricing surcharges which the interstate pipeline proposes to be effective for each of its direct sale and sale for resale customers during the surcharge billing period commencing November 1, 1980. Revisions of the original incremental pricing surcharge tariff sheet shall be filed on April 1 and October 1 of each year, as necessary, to revise the previously effective incremental pricing surcharge tariff sheet. Surcharges reflected in the original incremental pricing surcharge tariff sheet or in any revision thereof shall be calculated as provided by this part and the incremental pricing surcharge provision filed by the interstate pipeline.

b. *Effective date.* Any tariff sheet filed on April 1 or October 1 pursuant to paragraph a above, shall become effective on May 1 or November 1, respectively, and shall not be subject to suspension.

c. *Refunds.* Amounts collected under any tariff sheet filed pursuant to paragraph a above, shall be collected subject to refund if the Commission so provides within thirty days after such tariff sheet is filed.

d. *Form and filing requirements.* Any tariff sheet filed pursuant to paragraph a above, shall be subject to the provisions and requirements of Part 154 of the Commission's Regulations.

e. *Service.* Simultaneously with the filing of a tariff sheet pursuant to paragraph a above, the interstate pipeline which files the tariff sheet shall provide a copy to each jurisdictional customer subject to the tariff sheet and to each interested state commission.

f. *Material to be submitted.* Any tariff sheet filed pursuant to paragraph a above, shall be accompanied by:

(1) a report containing detailed computations which show clearly the derivation of the incremental pricing surcharges to be imposed on the pipeline's customers;

(2) a tabulation showing, by month, the amounts accumulated in the appropriate pricing period subaccount of the unrecovered incremental gas costs account which are to be recovered by the proposed incremental pricing surcharges set out in the tariff sheet;

(3) tabulations showing that the proposed incremental pricing surcharges are less than or equal to the maximum surcharge absorption capability of each of the customers to be subject to the surcharges under the tariff sheet; and

(4) calculations showing the determination of any amounts which could not be recovered through the interstate pipeline's incremental pricing surcharges during the surcharge billing period and which were debited to account 191, Unrecovered Purchased Gas Costs.

g. *Additional information.* The Commission may, upon receipt of a tariff sheet filed pursuant to paragraph a, require the submission of additional information as it deems necessary and appropriate.

4. *Informational filings.* For information purposes, on April 1 or October 1 of each year, commencing October 1, 1980, each local distribution company shall tender to both the Commission and the Energy Information Administration:

a. a copy of any original or revised tariff sheet or similar instrument which the local distribution company filed with a state or local regulatory body to put into effect incremental pricing surcharges during the succeeding surcharge billing period; or, in lieu thereof if no such filing was made,

b. a statement setting forth the incremental pricing surcharges which will be billed during the succeeding surcharge billing period.

Attachment B—Options for Implementing Incremental Pricing

I. Introduction

Title II of the Natural Gas Policy Act of 1978 (NGPA) requires the Commission to implement incremental pricing. This is to be done in two phases.

First, under section 201, within 12 months after the NGPA is enacted, the Commission must prescribe a rule for incremental pricing of gas sold to large industrial boiler fuel facilities. Rules providing for a ceiling on incremental pricing and for certain exemptions must be in place when this Phase I rule goes into effect.

Secondly, within 18 months after enactment of the NGPA, the Commission is required to prescribe an amendment to the section 201 rule to extend incremental pricing to other categories of industrial facilities. Additionally, the Commission must prescribe certain further rules on exemptions from incremental pricing within 18 months.

The Section 201 rule will go into effect without Congressional review, whereas the amendments to the rule will take effect only if not disapproved by either house of Congress.

II. The Incremental Pricing Rule Required by Section 201

Section 204 of the NGPA outlines the basic structure of the rule the Commission is to prescribe under Section 201. Pipelines shall be required to establish an incremental pricing account. Any costs subject to incremental pricing under Section 203 plus any carrying charges permitted by the Commission shall be debited to the account.

The Section 201 rule must provide "one or more methods" for clearing the incremental pricing account by way of a surcharge. The surcharge shall be based on the amount in the account and the volume delivered directly or indirectly by a pipeline for boiler fuel use to incrementally priced industrial boiler fuel facilities during a future or preceding calendar period.

The Section 201 rule must provide a method for reducing the surcharge to the extent that it would cause the rates charged to an incrementally priced industrial boiler fuel facility to exceed the appropriate alternative fuel cost. Initially, any reduction in the surcharge may be recovered from facilities for which rates have not yet reached the level of alternative fuel costs.

Once all users are billed at the level of the alternate fuel cost, any amount left in an incremental pricing account may be flowed through a regular purchased gas adjustment (PGA) account on a rolled-in basis.

III. Options

The staff's incremental pricing task force has considered a variety of passthrough methods, four of which are presented in this paper as Options A, B and C. Although these options vary in approach and present different administrative demands, each one would meet the various requirements in Title II.

Options A and B are basically extensions of the existing PGA regulations and develop surcharges stated in cents per MMBtu to be applied to future sales. The amounts to be recovered by way of the surcharge would be based on actual experience during prescribed test periods. A and B differ only with respect to the treatment of costs which cannot be recovered from industrial boiler fuel facilities because of the alternative fuel cost ceiling on incremental prices.

Options A and B have the advantages of embodying a well-known approach, but there are significant difficulties associated with these two options. These difficulties suggest there should be a departure from the traditional approach. Staff has developed Option C under which surcharges would be stated in terms of flat dollar amounts. A summary description of each option follows:

Option A:

Each interstate pipeline and distributor subject to Title II shall establish an incremental pricing account in which it shall

record the costs which are subject to incremental pricing under section 203.

The amount to be recovered each six months will be the amount accumulated in the incremental pricing account during a preceding six month period ending no more than 90 days prior to the effective date of the surcharge. The surcharge will be calculated by dividing the amount to be recovered by the volumes which it is estimated will be sold by the pipeline or distributor and ultimately used for non-exempt industrial boiler fuel purposes during the six months the surcharge will be in effect. For each monthly billing period each non-exempt industrial boiler fuel facility will be billed for an amount calculated by multiplying the cents-per-MMBtu surcharge by the volumes which the seller estimated he would sell to the facility during the billing period for boiler fuel use.

Since the volumes which are multiplied by the cents-per-MMBtu surcharge are those estimated to be sold and used for boiler fuel in incrementally priced facilities during a billing period, not those actually sold and used, the amount billed may be more than the amount the distributor collects from his incrementally priced industrial end-users, assuming the distributor bills on the basis of actual usage. Additionally, the distributor may be surcharged for more than he can collect from his non-exempt industrial boiler fuel customers due to the alternative fuel cost ceiling on incremental prices. In either case, if there is an undercollection, the distributor will have to report the amount of undercollection to his pipeline supplier. The undercollected amount will be credited against the amount the pipeline will surcharge the distributor during the succeeding six month period for which a surcharge is calculated.

If the pipeline supplying the retailer purchases, in turn, from another pipeline, the pipeline supplying the distributor will have to report to its pipeline supplier the amount that was undercollected. This "reporting back" process will continue up the chain of supplying pipelines until the reporting reaches the pipeline which purchases from the producer. That "first sale" pipeline will book the undercollected amounts in its incremental pricing account to be recovered in the next six month period for which it calculates a surcharge.

The reporting back of undercollected amounts will be complex in the instances where a distributor or a pipeline has a number of pipeline suppliers. Undercollections which are reported back along a chain of pipeline suppliers will have to be prorated among the various pipeline suppliers.

Comment:

As previously stated, Option A is an extension of FERC's existing PGA procedures. The complicated "return" of amounts which were unrecovered by distributors as a result of either the use of estimates or the alternative fuel cost ceiling would render this option very burdensome, however. Dollars "returned" to the pipeline would have to be reallocated among incrementally priced customers during a succeeding period. Additionally, since estimated volumes will be used to calculate and bill the incremental pricing surcharge, disputes may arise over the estimates used.

Option B:

The procedure for accumulating an amount in an incremental pricing account and for calculating a surcharge would be the same as in Option A. The only difference would be that undercollections experienced by a distributor (or a pipeline serving direct industrial customers) during a preceding six month period would be reported only to the pipeline suppliers directly serving the distributor. The undercollections would be prorated among the pipeline suppliers, and the prorated amounts would be booked in their incremental pricing accounts for inclusion in their respective surcharges to the distributor during the succeeding six month period. Thus, the "reporting back" along a chain of pipeline suppliers which occurs in Option A would not occur with Option B.

Comment:

Option B is simpler than Option A, insofar as a distributor's undercollections would have to be reported only to his immediate pipeline suppliers. The option is still cumbersome, though.

Option C:

Each pipeline will establish an incremental pricing account. Amounts subject to incremental pass-through will be placed in the account during a six-month accumulation period (January 1 through June 30 and July 1 through December 31) to determine the amount available for flow-through during an upcoming six-month recovery period.

After each accumulation period, for each non-exempt industrial boiler fuel facility on its system, each interstate pipeline will compute a flat dollar amount equal to the difference between the actual billings it rendered for the period, excluding any incremental costs, and the amount it could have billed if it were billing at the level of the applicable alternative fuel prices. Also, each local distributor will compute the difference between its actual billings to end users and what it could have billed if billings were at the level of alternative fuel prices. This information will then be reported to supplying pipelines. Pipelines will compile the information so supplied.

Each pipeline will then develop a lump sum semi-annual surcharge for each of its customers. The surcharges will be collected in six equal monthly installments, May 1 or November 1 as appropriate. If the amount of "incremental" dollars to be passed through is less than what the pipeline's customers are capable of passing through, such amount will be prorated between customers on the basis of their ability to absorb incremental costs. If the amount of incremental dollars available, as determined above, exceeds the amount that can be absorbed by a pipeline's customers due to the alternative fuel cost ceiling on incremental pricing, each customer will be surcharged an amount equal to its surcharge absorption capability. The amounts which cannot be reovered through the surcharge will be placed in the deferred purchase gas costs account (Account 191) to be passed through the PGA clause on a rolled-in basis.

Comment:

The staff's incremental pricing task force considers this to be the most desirable of the options. Its primary advantage is that it does not have the spill-back problems found in Options A and B.

Additionally, proceedings concerning the allocation of incremental dollars would be minimized. The use of simultaneous industry-wide filings based on identical determination periods would enable the Commission to obtain uniform data to evaluate the impact of Title II, and only minor modifications to existing pipeline tariffs would have to be made.

Option C requires the full cooperation of pipelines, distributors, state commissions and the FERC in order to work effectively. This procedure would be the least burdensome from a regulatory standpoint, however, at both the state and Federal levels in that most of the problem areas applicable to the other options are resolved.

One concern with this option is that during the respective determination periods customers cannot be sure of what their gas bill will be for that period, although they would be able to determine their maximum liability on the basis of published alternative fuel prices. In view of the overall administrative benefits of Option C, however, staff does not consider this to be a fatal problem.

[FR Doc. 79-3312 Filed 1-30-79; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-3581]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the Municipality of Anchorage, Alaska; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 58660 of the FEDERAL REGISTER, on November 10, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

The following sources of flooding were omitted from the original publication:

Source of flooding	Location	Elevation in feet [1]
North Branch of North Fork Little Campbell Creek.	Confluence with North Fork Little Campbell Creek.	133
	Lake Otis Parkway	141
	Upstream of East 68th Avenue.	161
South Fork Little Campbell Creek.	Confluence with Little Campbell Creek.	89
	East 76th Street	90

Source of flooding	Location	Elevation in feet [1]
	Upstream of Old Seward Highway.	96
	Downstream of New Seward Highway.	113
	Upstream of New Seward Highway.	118
Rabbit Creek	Upstream of New Seward Highway.	16
	Upstream of Old Seward Highway.	79
California Creek	Upstream of Alaska Railroad.	30
	Gunnysack Road (extended).	34
	Fern Circle	74
	Beaver Circle	84
	Downstream of Alyeska Road.	97
	Upstream of Alyeska	109
	Crow Creek Road	156
Glacier Creek	Confluence with Turnagain Arm.	22
	Seward Highway	22
	Upstream of Alaska Railroad.	29
	Mineral Circle	60
	Gold Circle	77
	Alyeska Road	106
	Chugach State Park Boundary.	157

[1] Greater Anchorage Area Borough Post Quake, U.S. Coastal and Geodetic Survey, Mean Sea Level Datum of 1972 (MSL).

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804 November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2923 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4652]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for Santa Cruz County, Ariz., Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 47566 of the FEDERAL REGISTER of October 16, 1978.

EFFECTIVE DATE: October 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

The following corrections are made:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Ephriam Canyon	State Highway 189 (Northbound Lane)—20 feet downstream from centerline.	3,990
Peck Canyon	Interstate Highway 19 (Northbound Lane) 50 feet downstream from centerline.	3,353
Santa Cruz River	Crebbs Road	3,144
	Confluence with Peck Canyon.	3,351

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2924 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-5016]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Cotati, Sonoma County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Cotati, Sonoma County, California. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, Cotati, California. Send comments to: Mr. Gary Milliman, City Manager, City of Cotati, P.O. Box 428, Cotati, California 94928.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Cotati, California, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Laguna De Santa Rosa Creek.	Santa Rosa Avenue—50 feet*.	94
	Commerce Avenue—25 feet*.	96
	East Cotati Avenue—75 feet*.	103
	Benson Lane—25 feet*.	108

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Cotati Creek	1st Private Bridge upstream from the confluence with Laguna De Santa Rosa Creek—50 feet*.	108
	(Old) Redwood Highway—40 feet*.	111
	Valparaiso Avenue—25 feet*.	118
	Cypress Avenue—50 feet*.	121
	Water Avenue—75 feet*.	133

*Upstream from centerline

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2932 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-5009]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Etna, Siskiyou County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Etna, Siskiyou County, California. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Clerk's Office, City Hall, 442 Main Street, Etna, California. Send comments to: Honorable Jack C. Stacher, Mayor, City of Etna, P.O. Box 460, Etna, California 96027.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Etna, California, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Johnson Creek	Downstream Corporate Limit.	847
	Upstream Corporate Limit.	888
Etna Creek	500 feet southeast of the intersection of Butcher Street and State Highway 3, at both sides of State Highway 3 road grade.	867
	600 feet northwest of the intersection of Callahan Street and Pleasure Park Road.	2
	700 feet southeast of the intersection of New Callahan Street and Old Callahan Street.	2
	New Callahan Street.....	1

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2925 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-5010]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Hawthorne, Los Angeles County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Hawthorne, Los Angeles County, California. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 4455 West 126th Street, Hawthorne, California. Send comments to: Mr.

Robert Kenneth Jue, City Manager, City of Hawthorne, City Hall, 4455 West 126th Street, Hawthorne, California 90250.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Hawthorne, California, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Storm Runoff	Intersection of Hawthorne Boulevard and 116th Street.	70
	Intersection of Prairie Avenue and Imperial Highway.	71

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc: 79-2926 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-5011]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Morro Bay, San Luis Obispo County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Morro Bay, San Luis Obispo County, California. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 595 Harbor, Morro Bay, California. Send comments to: Mr. Carl Thorton, City Manager, City Manager, City of Morro Bay, City Hall, 595 Harbor, Morro Bay, California 93442.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Morro Bay, California, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Chorro Creek	Los Osos Baywood Park Road—80 feet*.	13
Morro Creek	Main Street—40 feet*	26
Unnamed Creek	State Beach Road—40 feet*.	14
	Sandalwood Avenue—40 feet*.	28
	State Highway Route 1—90 feet**.	31
	State Highway Route 1—120 feet*.	42
Noname Creek	Tide Avenue—60 feet*	60
Toro Creek	1st crossing of State Highway Route 1—20 feet**.	14
	1st crossing of State Highway Route 1—30 feet*.	15

*Upstream from centerline.
**Downstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968); as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ
Federal Insurance Administrator.

[FR Doc. 79-2927 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-5012]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Orange, Orange County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Orange, Orange County, California. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Civic Center, 300 East Chapman Avenue, Orange, California. Send comments to: Mr. Joseph Baker, City Manager, City of Orange, Civic Center, 300 East Chapman Avenue, Orange, California 92666.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Orange, California, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Santiago Creek.....	Interstate Highway 22 (Garden Grove Freeway)**.	167
	Cambridge Street—50 feet*.	201
	Chapman Avenue**.....	238
	Loma Street—25 feet*.....	366
	Most Upstream Private Dirt Road—100 feet*.	441
	Upstream Corporate Limits.	484
Handy Creek.....	Amopola Avenue—10 feet*.	472
	Broadmoor Trail—60 feet***.	496
	Broadmoor Trail—50 feet*.	504
	Newport Boulevard**.....	510
Alameda Storm Drain.	Hewes Street—50 feet***	349
	Hewes Street—10 feet*...	354
	Linda Vista Street—50 feet*.	364
	Jamestown Way**.....	393

		Depth, feet above ground
Santa Ana River....	Intersection of Garden Grove Freeway and The City Drive.	2
	Intersection of Orange Freeway and Chapman Avenue.	1
	Intersection of Santa Ana Freeway and Chapman Avenue.	1

*Upstream from centerline.
**Centerline.
***Downstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator

[FR Doc. 79-2928 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-5013]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Palm Desert, Riverside County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Palm Desert, Riverside County, California. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, Palm Desert, California. Send comments to: Mr. Martin J. Bouman, City Manager, City of Palm Desert, P.O. Box 1977, Palm Desert, California 92260.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Plam Desert, California, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Depth, feet above ground
Palm Valley Drain	Intersection of Rolling Knoll Drive and Quail Summit Drive.	1
	Intersection of Desert Flower Drive and Starburst Drive.	2
	Intersection of Thrush Road and Frontage Road.	1
	Intersection of Beaver Tail Street and Bursera Way.	1
	Intersection of State Highway 74 and Willow Street.	1
	Intersection of State Highway 74 and El Paseo.	1
	Intersection of Park View Drive and Monterey Avenue.	1
Deep Canyon Channel.	Intersection of Haystack Road and Portola Avenue.	3
Dead Indian Canyon.	700 feet east of the intersection of Irontree Drive and Mariposa Drive.	3
Dead Indian Canyon and Palm Desert Channel.	Intersection of Mesa View Drive and Alamo Drive.	3
	Intersection of Little Bend Trail and Sun Corral Trail.	3
	Intersection of Minzah Way and Marrakesh Drive.	2
	Intersection of El Paseo and Sun Lodge Lane.	2
	Intersection of Portola Avenue and Desert Star Boulevard.	1
	Intersection of San Luis Rey Avenue and Allesandro Drive.	1
	Intersection of San Pascal Avenue and 44th Avenue.	1

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2929 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-5014]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for Riverside County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in Riverside County, California. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at County Department of Building and Safety, 4080 Lemon Street, Riverside, California. Send comments to: Mr. Robert Fitch, County Administrator, Riverside County, County Administrative Center, 4080 Lemon Street, Riverside, California 92501.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for Riverside County, California, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Bautista Creek	Cedar Avenue—40 feet*	1,678
	Olive Avenue extended—approximately 60 feet**	1,710
	Florida Avenue—40 feet**	1,753
Bear Creek	Washington Street—50 feet*	40
	Calle Tampico—100 feet*	49
	Avenida Obreson—10 feet*	59
	Calle Sonora Extended—20 feet*	110
Bly channel	Van Buren Boulevard—100 feet**	701
	Van Buren Boulevard—30 feet*	706
	Union Pacific Railroad—40 feet*	710
	Jurupa Road—10 feet*	715
	Pelspar Street—150 feet*	730
	Mission Boulevard—70 feet*	739
	Hastings Boulevard—50 feet*	747
Calimesa Channel.	Interstate Highway 10 40 feet*	2,373
	Calimesa Boulevard—60 feet*	2,394
	5th Street—50 feet*	2,426
	4th Street—40 feet*	2,450
	3rd Street—30 feet*	2,481
	2nd Street—90 feet**	2,520
	2nd Street—50 feet*	2,527
	West County Line Road—10 feet**	2,556
Country Club Creek.	Riverside Freeway—10 feet*	593
	Serfas Road—10 feet*	623
	Mountain View Drive—80 feet**	626
	Mountain View Drive—10 feet*	631
	Paseo Grande—40 feet*	712
Country Club Creek North Tributary.	Confluence with Country Club Creek—40 feet upstream of confluence point.	623
	Paseo Grande—50 feet**	700

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Paseo Grande—20 feet*	704
Day Creek	Lucretia Avenue—120 feet*.	634
	64th Street—20 feet*	643
	Linonite Avenue—50 feet*.	655
East Cathedral Channel.	H Street extended—10 feet*.	360
	Grandview Avenue Extended—approximately 320 feet*.	500
	Foothill Drive Extended—approximately 5 feet**.	681
Edgemont-B North Fork.	Atchison, Topeka and Santa Fe railroad—80 feet*.	1,520
	Edgemont Street—140 feet*.	1,531
	Dracaea Avenue—60 feet*.	1,538
	Eucalyptus Avenue—40 feet*.	1,549
El Cerrito Channel.	Minnesota Avenue—20 feet*.	790
	Quebec Avenue—30 feet*.	846
	Ontario Avenue—15 feet*.	860
	Marilyn Drive Extended—9 feet*.	871
	Kathy Way Extended—30 feet*.	889
	Corona Freeway—20 feet*.	942
Garden Air Golf Course Wash.	Interstate Highway 10 40 feet*.	2,347
	3rd Street—30 feet*	2,395
	Bryant Street extended—approximately 400 feet*.	2,570
Highland Springs Channel.	East 8th Street—90 feet*.	2,601
	East 8th Street—1,580 feet*.	2,625
Kalmia Street Wash.	Ivy Street—20 feet*	1,085
	2nd Avenue—130 feet*	1,089
	Washington Avenue—70 feet*.	1,098
	Adams Avenue—50 feet*	1,112
	Jefferson Avenue—40 feet*.	1,127
Lakeland Village Channel.	Grand Avenue—35 feet*.	1,285
	Ralley Avenue—5 feet*	1,293
	Southerland Avenue—30 feet*.	1,303
	Brightman Avenue—10 feet*.	1,311
	MacKay Avenue—10 feet*.	1,321
	Borrick Avenue—20 feet*.	1,327
	Hayes Avenue—10 feet*	1,337
Marshall Creek	14th Street—70 feet**	2,595
	14th Street—20 feet*	2,609
Murrieta Creek at Murrieta.	Washington Avenue—10 feet*.	1,061
	Ivy Street—10 feet*	1,085
	Kalmia Street—200 feet*.	1,094
	Tenaja Road—120 feet*	1,107
Murrieta Creek at Temecula.	First Street—200 feet*	1,001
	Main Street—320 feet*	1,005
	Rancho California Road—10 feet*.	1,009
North Cathedral Channel.	Date Palm Road—100 feet*.	288
	Cathedral Canyon Drive—100 feet*.	292
Park Hill Drain	Menlo Avenue—130 feet*.	1,605
	Girard Street—80 feet*	1,620
	Yale Street—10 feet**	1,634
Pigeon Pass Channel.	Fir Avenue—20 feet*	618
	Sunnymead Boulevard—105 feet*.	631
	U.S. Highway 60—220 feet*.	643
Pyrite Channel	Galena Street—10 feet*	772
	Pyrite Avenue—20 feet*	786
	Mission Boulevard—20 feet*.	819
	State Highway 60—70 feet**.	843
Reche Canyon	20 feet upstream of County Line.	1,330
	Unnamed Road—2080 feet upstream of County Line—50 feet*.	1,380
	Unnamed Road—4020 feet upstream of County Line—30 feet*.	1,430
Salt Creek	Murrieta Road—800 feet*.	1,413
	Warren Road—130 feet*	1,503
	Harrison Avenue—10 feet*.	1,507
	Fisher Street—10 feet*	1,510
Santa Ana River	River Road—100 feet*	549
	Hamner Avenue—90 feet*.	592
	Van Buren Boulevard—30 feet*.	698
	Union Pacific Railroad—1180 feet*.	730
	Mission Boulevard—180 feet*.	785
	State Highway 60—200 feet*.	806
	Market Street—100 feet*.	812
San Sevaine Channel.	Dodd Street—10 feet*	655
	Bain Street—30 feet*	686
	Jurupa Road—60 feet*	701
	Galena Street—10 feet*	730
	Van Buren Boulevard—10 feet*.	746
Smith Creek	First crossing of the Banning-Idyllwild Panoramic Highway—50 feet*.	2,205
Spring Brook	Orange Street—10 feet*	840
	Riverside Freeway—140 feet**.	872
Sun City Channel A-A.	Ridgemoor Road—10 feet*.	1,413
	Chambers Avenue—50 feet**.	1,417
Sun City Channel H-H.	Encanto Drive—35 feet*.	1,432
Sunnymead Storm Channel.	Cottonwood Avenue—75 feet*.	585
	Dracaea Avenue—80 feet*.	594
	Indian Street—10 feet*	602
	Myers Avenue—140 feet*.	610
	Fir Avenue—45 feet*	619
	Sunnymead Boulevard—10 feet*.	653
	U.S. Highway 60—10 feet*.	668
	Perris Boulevard—15 feet*.	681
	Ironwood Avenue—60 feet**.	762
	Ironwood Avenue—20 feet*.	772
	Kitching Lane—40 feet*	829
Sunnyslope Channel.	Riverview Drive—100 feet*.	779
	Limonite Avenue—50 feet*.	793
	Pacific Avenue—30 feet*	802
	Rustic Lane—50 feet*	822
	Mission Boulevard—40 feet*.	836
Temecula Creek	Escondido Freeway—200 feet*.	989
	Pala Road—80 feet*	1,000
Temescal Wash	El Sobrante Avenue—250 feet*.	630
	Compton Avenue—10 feet*.	640
	Magnolia Avenue—40 feet*.	649
West Cathedral Channel.	State Highway 111—30 feet*.	306
	Terrace Road—45 feet*	479
	Grandview Avenue extended—150 feet*.	595
	Foothill Drive extended—50 feet*.	735
West San Sevaine Creek.	60th Street—10 feet*	659
	58th Street—60 feet*	669
	56th Street—10 feet*	677
	54th Street—10 feet*	690
	Jurupa Road—10 feet*	698
	Bain Street—40 feet*	705
1001 Ranch Drain.	Limonite Avenue—10 feet*.	800
	Lakeside Drive—20 feet*	848
	Live Oak Drive—20 feet*	900
	Ironstone Drive—110 feet*.	930
1001 Ranch Drain West Tributary.	Lakeside Drive—50 feet**.	831
	Lakeside Drive—10 feet*	842
Blind Canyon Channel.	Desert Hot Springs Corporate Limits.	1,487
	525 feet upstream of Desert Hot Springs Corporate Limits.	1,520
Desert Hot Springs Channel.	Cholla Drive—30 feet*	1,135
	West Drive—25 feet**	1,103

*Upstream of centerline.
**Downstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR-17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2930 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-5015]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the City of Santa Paula, Ventura County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in

the City of Santa Paula, Ventura County, California. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at at City Hall, 970 Ventura Avenue, Santa Paula, California. Send comments to: Mr. Jim Morrison, City Manager, City of Santa Paula, P.O. Box 569, Santa Paula, California 93060.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Santa Paula, California, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Santa Clara River.	Downstream Corporate Limits.	225
	Palm Avenue Extension *.	238
	8th Street Extension-75 feet **.	244
Fagan Canyon.....	Santa Paula Street-25 feet **.	288
	Upstream Corporate Limits.	328
Santa Paula Creek	Intersection of Harvard Boulevard and Palm Avenue.	243
	Intersection of Harvard Boulevard and 12th Street.	269
	Intersection of Ojai Road and Orchard Street.	342
	Intersection of Ojai Road and Say Road.	402
	Intersection of Mariposa Drive and Birch Street.	478

Source of flooding	Location	depth in feet above ground
Shallow Flooding..	Intersection of Steckel Drive and Main Street.	1
	Intersection of Santa Barbara Street and 11th Street.	2
	Intersection of Ojai Road and Saticoy Street.	3

* At centerline.
** Upstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 STAT. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2931 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-5017]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Irvington, Essex County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Irvington, Essex County, New Jersey. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Engineer's Office, Municipal building, Civic Square, Irvington, New Jersey. Send comments to: Honorable Robert Miller, Mayor of Irvington, Municipal Building, Civic Square, Irvington, New Jersey 07111

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Irvington, Essex County, New Jersey in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Elizabeth River	Yale Avenue	105
	Lyons Avenue	115
	Nye Avenue	122
	Springfield Avenue	124
	Clinton Avenue	136
	Madison Avenue	144
	Corporate Limits	147

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2933 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR PART 1917]

[Docket No. FI-3594]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the Town of Colonie, Albany County, N.Y.; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 5862 of the FEDERAL REGISTER, on November 10, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-5581 or Toll Free Line (800) 424-8872.

The following is a corrected notice:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Hudson River	Downstream Corporate Limits.	24
	Upstream Corporate Limits.	24
Delphus Kill	Bike Path	197
	Pollock Road (Downstream).	236
	Pollock Road (Upstream).	243
	Interstate 87 (Downstream).	257
	Interstate 87 (Upstream).	266
	Northbound I-87 entrance Ramp (Upstream).	272
	Northbound I-87 Exhit Ramp (Upstream).	283
Kromma Kill	Corporate Limit	32
	Delaware and Hudson Railroad.	43
	Lincoln Avenue	43
	Spring Street	51
Lisha Kill	Corporate Limit	270
	Consaul Road	278
	Colonie Golf Course Service Road.	287
	State Highway 5	296
	Albany Street (downstream).	298
	Albany Street (upstream).	301
	Dam at Lukens Stables	313
	Private Road	319
	Conrail	324
	Cordell Road (Downstream).	335
Lisha Kill Tributary.	Mouth of Lisha Kill Tributary.	316
	Overland Street	339
	Nutwood Street	340
	Albany Street	342
	Corporate Limits	344
Mohawk River	Corporate Limit (Downstream).	149
	Niagra Mohawk Dam	165
	Crescent Dam	193
	U.S. Highway 9	194
	Interstate 87	195
	Delphus Kill	197
	Shaker Creek	200
	Corporate Limit (Upstream).	200
Sand Creek	Conrail	194
	Exchange Street	194
	Sand Creek Road (Downstream).	194
	Everett road	200
	Russell Road	210
	Private Road	213
	Foot Path (Downstream).	228
	Wilkins Avenue	242
	Foot Path (Upstream)	242
	Dirt Road	257
Shaker Creek	Mouth of Shaker Creek	200
	River Road	200
	Mill Road	236
	Farm Road	249
	State Highway 7	252
	Old Niskayuna road	252
	Pine Gorve Road	255
	Sicker Road	260
	Airport Runway 10 (Upstream).	267
	Airport Terminal Road	268
	Airport Road	268
	Ann Lee Home Road	273
	State Highway 155	276

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968); as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2922 Filed 1-30-79; 8:45 a.m.]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-5018]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of North Dansville, Livingston County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of North Dansville, Livingston County, New York. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the North Dansville Town Hall, 14 Clara Barton Street, Dansville, New York. Send comments to: Mr. Robert F. Hart, Supervisor of North Dansville, North Dansville Town Hall, 14 Clara Barton Street, Dansville, New York 14437.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator

gives notice of the proposed determinations of base (100-year) flood elevations for the Town of North Dansville, Livingston County, New York in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Canaseraga Creek.	Downstream Corporate Limits.	614
	Hartman Road (Upstream Side).	631
	State Route 436 (Upstream Side).	652
	Upstream Corporate Limits.	731
Mill Creek	Confluence with Canaseraga Creek.	672
	Upstream Corporate Limits (Village of Dansville).	779
Little Mill Creek	Confluence with Mill Creek.	796
	Stone Falls Road (Upstream Side).	836

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968); effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2934 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-5019]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Hunter, Cass County, N. Dak.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Hunter, Cass County, North Dakota. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, Hunter, North Dakota. Send comments to: Honorable Kenneth L. Thompson, Mayor, City of Hunter, City Hall, Hunter, North Dakota 58048.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Hunter, North Dakota, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, vertical datum
South Branch Elm River.	North Dakota Highway 18-50 feet*.	969
	Burlington Northern Railroad-100 feet*.	970
	Dam approximately 3060 feet upstream from the Burlington Northern Railroad-150 feet**.	972
	Dam approximately 3000 feet upstream from the Burlington Northern Railroad-100 feet*.	983

* Upstream from centerline.
** Downstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2935 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-5020]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Eagle Point, Jackson County, Oreg.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Eagle Point, Jackson County, Oregon. These base (100-year)

flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 136 Main Street, Eagle Point, Oregon. Send comments to: Mr. Robert C. Moore, City Manager, City of Eagle Point, City Hall, 136 Main Street, Eagle Point, Oregon.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Eagle Point, Oregon, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Little Butte Creek	Corporate Limits (approximately 90 feet upstream from State Highway 62)—at centerline.	1281
	Eagle Point Bridge—80 feet upstream from centerline.	1297

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2936 Filed 1-30-79; 8:45 am]

[4210-01—M]

[24 CFR Part 1917]

[Docket No. FI-5021]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Shady Cove, Jackson County, Oreg.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Shady Cove, Jackson County, Oregon. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 22451 Highway 62, Shady Cove, Oregon. Send comments to: Mr. Joe Sanders, Mayor, City of Shady Cove, City Hall, 22451 Highway 62, Shady Cove, Oregon 97539.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Shady Cove, Oregon, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Rogue River	State Highway 62—100 feet *.	1393
	Corporate Limits (1st crossing upstream from State Highway 62)—at centerline.	1400

* Upstream from centerline

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community

Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2937 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-5022]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Township of Kilbuck, Allegheny County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of Kilbuck, Allegheny County, Pennsylvania. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Kilbuck Township Municipal Building. Send comments to: Mr. John Graber, Chairman of the Board of Supervisors of Kilbuck, 119 Pineridge Road, Pittsburgh, Pennsylvania 15237.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Township of Kilbuck, Allegheny County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by §1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Lowries Run	At the Downstream Corporate Limits.	752
	Private Road located approximately 200 feet above Corporate Limits (Upstream).	753
	Footbridge located approximately 3,000 feet above Corporate Limits (Upstream).	773
	Private Road Located approximately 700 feet below the Upstream Corporate Limits (Upstream).	780
	Footbridge located approximately 500 feet below the Upstream Corporate Limits (Upstream).	781
	Upstream Corporate Limits.	782
Ohio River	At the Downstream Corporate Limits.	719
	At the Upstream Corporate Limits.	719

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2938 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-5023]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Hill City, Pennington County, S. Dak.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town Of Hill City, Pennington County, South Dakota. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, Hill City, South Dakota. Send comments to: Honorable Ralph Johnson, Mayor, Town of Hill City, Box 395, Hill City, South Dakota 57745.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Hill City, South Dakota, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Spring Creek.....	Downstream Corporate Limits.	4949
	Harney Peak Avenue (first crossing)—upstream side.	4967
	Burlington Northern Railroad—most upstream crossing.	4978
	Upstream Corporate Limits.	4989

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 STAT. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2939 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-5024]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Morton, Lewis County, Wash.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Morton, Lewis County, Washington. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, Main Street, Morton, Washington. Send comments to: Honorable Elmer Jastad, Mayor, City of Morton, P.O. Box 1089, Morton, Washington 98356.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Morton, Washington, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Tilton River.....	County Bridge (State Highway 508)—50 feet upstream of centerline.	911
Lake Creek.....	Bridge Crossing (1200 feet downstream of U.S. Highway 12)—centerline.	933

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2940 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-5025]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Pe Ell, Lewis County, Wash.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Pe Ell, Lewis County, Washington. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, Pe Ell, Washington. Send comments to: Honorable Michael Taylor, Mayor,

Town of Pe Ell, P.O. Box 215, Pe Ell, Washington 98572.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Pe Ell, Washington, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Chehalis River	Highway 6 Bridge-30 feet*.	366
Stowe Creek	Third Street Bridge-40 feet*.	401
	Burlington Northern Railroad Bridge-30 feet*.	408
	Kelso Street Bridge-40 feet*.	415

* Upstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2941 Filed 1-30-79; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-5026]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Charles Town, Jefferson County, W. Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Charles Town, Jefferson County, West Virginia. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Municipal Building, Charles Town, West Virginia. Send comments to: Honorable D. C. Master, Mayor of Charles Town, Box 14, Charles Town, West Virginia 25414.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Charles Town, Jefferson County, West Virginia in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Evitts Run	Downstream Corporate Limits.	473
	Saint Augustine Avenue Bridge.	486
	Washington Street Bridge.	491
	Upstream Corporate Limits.	495

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 19, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2942 Filed 1-30-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 65]

[Docket No. DCO-78-40; FRL 1048-3]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of Delayed Compliance Orders Issued by the South Carolina Department of Health and Environmental Control to Westvaco Corp., North Charleston, S.C.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposed to approve a delayed compliance order issued by the South Carolina Department of Health and Environmental Control to Westvaco Corporation, North Charleston, South Carolina. The delayed compliance order requires the Westvaco Corporation to bring air emmissions from the lime kilns and recovery furnaces at its North Charleston, S.C., facilities into compliance with an applicable regulation contained in the South Carolina State Implementation Plan (SIP) by June 15, 1979. Because the order has been issued to a major source and permits a delay in compliance with the provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulatons covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before March 2, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Bert Cole, U.S. Environmental Protection Agency, Region IV, Enforcement Division, Air Enforcement Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30308, Telephone Number: (404) 881-4298.

SUPPLEMENTARY INFORMATION: Westvaco Corporation operates a Pulp and Paper manufacturing facility at North Charleston, South Carolina. The order under consideration addresses emissions from lime kilns Numbered 1, 2, and 3 and recovery furnaces Numbered 6, 7, and 8 which are subject to South Carolina Air Pollution Control Regulation 62.6, Standard No. 5, Section II. This regulation in pertinent part, limits particulate emissions from lime kilns and recovery furnaces, and is part of the federally-approved South Carolina State Implementation Plan. The order requires final compliance with the regulation by June 15, 1979, through the implementation of the following schedules for the construction or installation of control equipment:

SCHEDULE A—LIME KILNS NUMBERED 1, 2, AND 3.

Westvaco shall complete the following increments with respect to these lime kilns on or before the dates specified:

1. January 15, 1978—submit to the Department necessary applications for permits for pollution control equipment for lime kilns numbered 1 and 2. Lime kiln number 3 is presently equipped with pollution control equipment. It is agreed that this increment has been met by Westvaco.

2. May 15, 1978—negotiate and sign critical purchase orders for aforementioned pollution control equipment. It is agreed that this increment has been met by Westvaco.

3. October 15, 1978—begin installation of pollution control equipment.

4. April 15, 1979—complete installation of pollution control equipment.

5. June 1979—submit to the Department acceptable source emission tests certifying that lime kilns numbered 1, 2, and 3 are in compliance with applicable South Carolina Department of Health and Environmental Control, Air Pollution Control Regulations and Standards.

SCHEDULE B—RECOVERY FURNACES 6, 7, AND 8

Westvaco shall complete the following increments with respect to its recovery furnaces numbered 6, 7, and 8 on or before the dates specified.

1. December 1, 1977—negotiate and sign a purchase order for a new electrostatic precipitator for recovery furnaces 6, 7, and 8. It is agreed that this increment has been met by Westvaco.

2. August 1, 1978—begin construction of new electrostatic precipitator for recovery furnaces 6, 7, and 8.

3. March 1, 1979—complete construction of aforementioned electrostatic precipitator.

4. March 1, 1979—tie-in one recovery furnace to aforementioned electrostatic precipitator.

5. April 1, 1979—tie-in a second recovery furnace to aforementioned electrostatic precipitator.

6. May 1, 1979—tie-in a third recovery furnace to aforementioned electrostatic precipitator.

7. June 15, 1979—submit to the Department acceptable source emission tests certifying that recovery furnaces 6, 7, and 8 are in compliance with South Carolina Department of Health and Environmental Control, Air Pollution Control Regulations and Standards.

The Source has consented to the terms of the order and has agreed to meet the order's increments during the period of this informal rulemaking. The interim limits which must be adhered to prior to the attainment of the last milestone include the following requirements:

1. Procedures for changing black liquor spray nozzle diameters and/or shutdown of the affected recovery boiler(s) when specified minimum primary precipitator voltages are not maintained.

2. South Carolina has established minimum pressure differentials for lime kiln scrubbers nos. 1, 2, 3, and 4.

3. Minimum header pressures have been determined by South Carolina for the recirculator lines on scrubbers for kilns 1 and 2.

4. The mass feed rate for lime kiln number 4 will remain between 650 and 750 TPD of $CaCO_3$ for the duration of the Order.

5. Whenever the pressure differential across any of the kiln scrubbers drops below the minimum level, the line mud feed to said kiln will cease.

These interim limits will remain in effect until attainment of the final milestone has been demonstrated.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before becoming effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection. EPA has tentatively determined that the order satisfies these requirements.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the SIP. Compliance with the proposed order will not exempt the company from

complying with applicable requirements contained in any subsequent revisions to the SIP which are approved by EPA.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601.)

Dated: January 18, 1979.

JOHN A. LITTLE,
Acting Regional Administrator, Region IV.

[FR Doc. 79-3295 Filed 1-30-79; 8:45 am]

[4110-86-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control

[42 CFR Part 71]

IMPORTATION OF DOGS AND CATS

Decision To Develop Regulations

AGENCY: Center for Disease Control, PHS, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: The proposed revision will modify requirements for importation of dogs and cats into the United States, eliminate the inspection requirements for wild dogs (dogs other than domestic dogs, *Canis familiaris*) and wild cats (cats other than domestic cats, *Felis domesticus*), and eliminate vaccination requirements for wild dogs. Rabies vaccination requirements for domestic dogs will be modified to reflect changes in available vaccines and to provide a more expeditious system for immunizing dogs when necessary.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph F. Giordano, Director, Quarantine Division, Bureau of Epidemiology, Center for Disease Control, PHS, HEW, Atlanta, Georgia 30333, telephone (404) 329-3674, or FTS: 236-3674.

Dated: December 21, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

[FR Doc. 79-3305 Filed 1-30-79; 8:45 am]

[4110-86-M]

[42 CFR Part 71]

DISINSECTING OF AIRCRAFT

Decision To Develop Regulations

AGENCY: Center for Disease Control, PHS, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: The existing regulation will be revised to eliminate the requirement for routine disinsecting of aircraft on certain international flights landing at airports under the control of the United States. The revision will require disinsecting of aircraft only if it arrives from an area that is infected with insect-borne communicable diseases and is suspected of harboring insects of public health importance, and if the Director of the Center for Disease Control considers the disinsecting to be necessary. The revision will also require that insecticide formulations used in disinsecting aircraft be recommended by the World Health Organization, registered by the United States Environmental Protection Agency, and used in the manner described on the label.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph F. Giordano, Director, Quarantine Division, Bureau of Epidemiology, Center for Disease Control, PHS, HEW, Atlanta, Georgia 30333, telephone (404) 329-3674, or FTS: 236-3674.

Dated: November 14, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

[FR Doc. 79-3304 Filed 1-30-79; 8:45 am]

[4110-92-M]

Office of Human Development Services

[45 CFR Chapter XIII]

OLDER AMERICANS PROGRAM

Grants to Indian Tribes for Community Programs and Multipurpose Senior Centers

AGENCY: Office of Human Development Services, DHEW.

ACTION: Notice of decision to regulate.

SUMMARY: The Administration on Aging (AoA) in the Office of Human Development Services proposes regulations with a 60 day public comment period for a new grant program for Indian tribes. The purpose of this new program is to ensure that social and nutritional services are provided to Indians, age 60 and older, that are comparable to those received by the rest of the general older population in the United States. A secondary purpose of the program is to establish multipurpose senior centers that can also be used as extended care facilities, community center facilities or to provide nutritional services, child care services, and other social services. The Administration on Aging is operating under a continuing resolution in Fiscal Year 1979 in which no new programs may be funded therefore it is not anticipated that this program will begin in this fiscal year.

FOR FURTHER INFORMATION CONTACT:

Mr. Fred Luhmann, Division of State and Community Programs, Administration on Aging, Room 4649, HEW North Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

Dated: January 24, 1979.

ARABELLA MARTINEZ,
Assistant Secretary for Human Development Services.

[FR Doc. 79-3307 Filed 1-30-79; 8:45 am]

[4110-92-M]

[45 CFR Parts 1320, 1321, 1324, 1326]

OLDER AMERICANS PROGRAM

Grants for State and Community Programs on Aging

AGENCY: Office of Human Development Services, DHEW.

ACTION: Notice of Decision to Recodify.

SUMMARY: The Administration on Aging (AoA) proposes to develop regulations for State and Community Programs on Aging. The basis for this proposed action is the passage of the Comprehensive Older Americans Act Amendments of 1978. These amendments consolidate under one title of the Act three programs: social services, nutrition services, and multipurpose senior centers. These programs were authorized before under three separate titles, III, V, and VII. The Administration on Aging will also revise, or clarify as necessary, the current regulatory provisions which have continued applicability.

FOR FURTHER INFORMATION CONTACT:

Mr. Fred Luhmann, Division of State and Community Programs, Administration on Aging, Room 4649, HEW North Building, 330 Independence Avenue, SW., Washington, D.C. 20201, (202) 472-3057.

Dated: January 24, 1979.

ARABELLA MARTINEZ,
Assistant Secretary for Human Development Services.

[FR Doc. 79-3308 Filed 1-30-79; 8:45 am]

[4110-39-M]

National Institute of Education

[45 CFR Part 1495]

LEGAL AND GOVERNMENTAL STUDIES RESEARCH GRANTS PROGRAM

Decision To Develop Regulations.

AGENCY: National Institute of Education, Department of Health, Education, and Welfare.

ACTION: Notice of decision to develop interim final rules.

SUMMARY: Interim final regulations are to be drafted providing for a research grants program on legal and governmental studies in education that expands previous work done in law and education in light of the Institute's recent reorganization. Approval of interim final rules will be sought on the basis that this program is part of a package of Agency programs which are being considered for consolidation into a new, single comprehensive research grants program regulation which will be offered for public comment. The interim final rules will: a. define a research program so as to: 1) produce systematic knowledge about how legislative, judicial, and administrative policies are developed and implemented at Federal and State levels; and 2) use the increased understanding of the governance process in education to provide a basis for improvements in the capacity of Federal, State, and local participants in the system to carry out their responsibilities; b. specify project and applicant eligibility, type of awards available, review procedures, and evaluation criteria; and c. govern the selection of applicants for funding.

FOR FURTHER INFORMATION CONTACT:

Dr. Donald W. Burnes, Legal and Governmental Studies Team, Law and Public Management, EPO, NIE, 1200 19th Street, NW., Washington, D.C. 20208, (202) 254-6070.

(Catalog of Federal Domestic Assistance No. 13.950, Educational Research and Development.)

Dated: January 9, 1979.

MICHAEL TIMPANE,
Acting Director, National Institute of Education.

[FR Doc. 79-3306 Filed 1-30-79; 8:45 am]

[4910-22-M]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[BMCS Docket No. MC-83; Notice No. 79-1]

[49 CFR Part 393]

FEDERAL MOTOR CARRIER SAFETY REGULATIONS

Air Brake System on Commercial Motor Vehicles—NHTSA Standard No. 121

AGENCY: Federal Highway Administration, DOT.

ACTION: Termination of proposed rulemaking.

SUMMARY: The Federal Highway Administration issues this document to terminate the rulemaking action regarding a revision of the Federal Motor Carrier Safety Regulations to require that any antilock system installed on the drive axle of truck tractors to comply with Federal Motor Vehicle Safety Standard 121 be kept operative by motor carriers engaged in interstate or foreign commerce, in order to enhance highway safety.

FOR FURTHER INFORMATION CONTACT:

Mr. William R. Fiste, Jr., Chief, Regulations Division, Bureau of Motor Carrier Safety, 202/426-0033; or Mrs. Kathleen S. Markham, Office of the Chief Counsel, 202/426-0346, Federal Highway Administration, Department of Transporation, Washington, D.C. 20590. Office hours are 7:45 a.m. to 4:15 p.m. ET Monday through Friday.

SUPPLEMENTARY INFORMATION: On March 8, 1978, the Bureau of Motor Carrier Safety (BMCS) issued a notice of proposed rulemaking (43 FR 9626, March 9, 1978) proposing to amend the Federal Motor Carrier Safety Regulations by adding 49 CFR 393.40(d) to require that any antilock system installed on the drive axle of truck tractors to comply with Federal Motor Vehicle Safety Standard No. 121, 49 CFR 571.121, be maintained in operable condition by motor carriers engaged in interstate of foreign commerce. The National Highway Traffic Safety Administration (NHTSA) also issued a notice of proposed rulemaking regarding the antilock device on this date. Subsequently, on April 17, 1978, the United States Court of Appeals for the Ninth Circuit held that until such time as the NHTSA develops evidence that the new braking systems required by the FMVS Standard 121, do not create the possibility of greater danger to the public, those parts of the Standard requiring heavier axles and the antilock device should be suspended. "PACCAR, Inc. v. National Highway Traffic Safety Administration and Department of Transportation," 573 F.2d 632 (9th Cir. 1978). The court held "that more probative and convincing data evidencing the reliability and safety of vehicles that are equipped with antilock and in use must be available before the agency (NHTSA) can enforce a standard requiring its installation." The United States Supreme Court denied certiorari. In accordance with the court's decision, NHTSA cannot at this time enforce the standard requiring the installation of the antilock device; therefore, BMCS cannot require that antilock systems installed on the drive axles of truck tractors to comply with this standard be maintained in operable condition.

In view of the foregoing, BMCS Docket No. MC-83; Notice No. 78-7 is hereby terminated.

The termination of this proposed rulemaking is issued under the authority of 49 U.S.C. 304 and 1655; 49 CFR 1.48 and 301.60.

Issued on: January 16, 1979.

KARL S. BOWERS,
Administrator, Federal Highway Administration.

[FR Doc. 79-3228 Filed 1-30-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1126]

[Ex Parte No. 293 (Sub-No. 3)]

SUBMISSION OF COST DATA TO JUSTIFY REIMBURSEMENT FOR DIRECTED SERVICE

Implementation of Regional Rail Reorganization Act of 1973—Submission of Cost Data To Justify Reimbursement

AGENCY: Interstate Commerce Commission.

ACTION: Adoption of Proposed Rulemaking.

SUMMARY: The Commission is adopting the proposed revisions to 49 CFR Part 1126, published August 17, 1978. See 43 FR 36455. These regulations concern service directed by the Commission under 49 U.S.C. 11125 (formerly 49 U.S.C. 1(16)(b)). The revisions establish a three-stage funding procedure for payment of the costs incurred by the directed carrier. One suggested change in the proposed procedure has been adopted. It requires that the Commission certify to the Treasury Department the amount of the initial and interim payments to be made to the directed carrier within 30 days of the carrier's request.

At the same time, the Commission is revising the regulations at Part 1126 to reflect the recodification of the Interstate Commerce Act, in Pub. L. No. 95-473, and the Commission's new Uniform System of Accounts, 49 CFR 1201.

DATE: These revisions will be effective January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Marvin G. Bober, 202-275-7564.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 11125 (formerly 49 U.S.C. 1(16)(b)), the Commission has authority to direct a rail carrier to perform essential transportation services which another rail carrier is no longer able to perform, for a period of 60 days (or an extended period of no more than 240 days).

The authority to order directed service is to be used as an interim emergency measure to prevent severe transportation and economic dislocations resulting from the cessation of services. The Commission is required to reimburse the directed carrier for any deficits incurred in the performance of the directed services. Furthermore, the Commission may not direct operations that would substantially impair the ability of the directed carrier to serve adequately its own patrons or to meet its outstanding common carrier obligations.

Both the statute and the existing regulations contemplate payment of all deficits after completion of the directed service period. When the Commission adopted its regulations, it was presumed that the directed carrier would be able to borrow the necessary operating funds, allowing its claim to reimbursement to be assigned to the lending institution. See *Regional Rail Reorg. Act—Submission of Cost Data*, 348 I.C.C. 251, 276 (1975).

However, present circumstances indicate that earlier payment may be necessary to ensure the provision of adequate service. Class I railroads are facing bankruptcy and experiencing cash shortages. The Commission must select as a directed carrier one which has, or can borrow, sufficient cash to meet start-up costs. The carrier must also be able to absorb temporarily any operating losses incurred. There may be instances in which no carrier with sufficient financial resources is available. Financial institutions may be reluctant to supply funds.

To effectuate the statutory program and ensure that directed service will be available when needed, we are revising our regulations to provide for payments to meet a directed carrier's cash requirements.

A three-stage funding procedure is established. First, a directed carrier will receive an immediate payment to cover start-up costs. Second, on the basis of periodic carrier reports on operations and cash position, additional monies will be paid out to remedy any serious cash flow problems. Finally, on completion of the directed service, a final accounting will be made. The Commission will pay any amount determined still owing to the directed carrier. On the other hand, if the directed carrier has received more than it is entitled to, the difference will be payable to the Commission 30 days after determination of the amount.

The procedures are designed to be flexible and not to impose any great burden on the directed carrier. By using these procedures, the directed service will not impair the carrier's own services or its ability to meet its obligations.

The sole comment in response to our notice of the proposed rules was by the Association of American Railroads (AAR). AAR supports the procedure and suggests that we impose time limits on our processing of the initial and interim funding requests. We recognize that directed service is an emergency request and intend to facilitate the service through this funding procedure as expeditiously as possible. The proposed thirty-day time limit meets the spirit of the funding procedure; therefore we have incorporated it into the final regulations.

Revised 49 CFR Part 1126 is reprinted below.

Dated: January 9, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Christian, Commissioners Brown, Stafford, Gresham, and Clapp.

H. G. Homme, Jr.,
Secretary.

APPENDIX

PART 1126—SUBMISSION OF COST DATA TO JUSTIFY REIMBURSEMENT FOR DIRECTED SERVICE

Sec.
1126.1 Scope of rules in this part.
1126.2 Cost form and certification.
1126.3 Optional Cash Funding Procedures.

Authority: Sec. 601(e), Pub. L. 93-236, 87 Stat. 1021 (49 U.S.C. 11125).

§ 1126.1 Scope of rules in this part.

The rules in this part govern the procedures for the submission of costs and revenues to be followed by carriers subject to the jurisdiction of the Interstate Commerce Commission under Subchapter I of chapter 105, Subtitle IV, Title 49, U.S. Code, which are directed by the Commission to perform service over the lines of other carriers under the provisions of 49 U.S.C. 11125 (formerly 49 U.S.C. 1(16)(b)). The Commission's report in *Regional Rail Reorg. Act—Submission of Cost Data*, 348 I.C.C. 251 (1975), should be used by directed carriers for guidance in the preparation of the cost form. The report and its appendix set forth the Commission's policy as to the costs and revenues, incurred in or attributable to the conduct of directed operations, are allowable for inclusion in the cost form. Only such allowable costs and revenues will be considered by the Commission in its computation of payments due to the directed carrier under the provisions of section 11125.

§ 1126.2 Cost form and certification.

The expenses and revenues incurred in the conduct of directed service shall be recorded in accordance with the cost form and instructions below:

INSTRUCTIONS TO COST FORM

1. Enter in column (7) the expenses directly assignable to the directed traffic moved. This includes wages, rentals and other expenses paid or incurred by the applicant and chargeable only to the directed traffic.

2. Enter in column (8) the portion of common expenses allocable to the directed traffic. Common expenses are those expenses paid or incurred for the movement of the directed traffic which are common or jointly incurred for the movement of other traffic. All expenses should be assigned directly wherever possible. Expenses not directly assignable should be apportioned on the basis of the factor suggested in column (10) or if necessary, on the basis of a more readily available and equitable factor, if such use is justified to the Commission. The relationship of the carriers' own revenues and the directed traffic revenues is an acceptance apportionment factor in cases where there are no other available apportionment factors.

3. Enter in column (9) the total of columns (7) and (8).

4. The cost of rehabilitation of the line necessary to permit operation should be shown in the way and structures accounts. Expenditures for substantial improvements shall require authorization by the Commission.

5. Expenses included in lines 53, 54, 55, 131, 140, 159, 169, 176, 183, 190, 249, and 262 should be identified on a separate sheet.

[3410-02-C]

COST FORM

Sheet 1 of 15

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols. (2)-(5), (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols. (7)+(8) (9)	Suggested Apportionment Factors (10)
	Operating Expenses									
	Way and Structures									
1	Administration - Track	11-13-02	21-13-02	41-13-02	61-13-02		xxx	xxx	xxx	xxx
2	Roadway Maint. - Running	11-11-10	21-11-10	39/40/41-11-10	61-11-10		xxx	xxx	xxx	xxx
3	Roadway Maint. - Switching	11-12-10	21-12-10	39/40/41-12-10	61-12-10		xxx	xxx	xxx	xxx
4	Road Property Damaged - Running	11-11-48	21-11-48	39/40/41-11-48	61-11-48		xxx	xxx	xxx	xxx
5	Road Property Damaged - Switching	11-12-48	21-12-48	39/40/41-12-48	61-12-48		xxx	xxx	xxx	xxx
6	Ties - Running	xxx	21-11-13	xxx	xxx		xxx	xxx	xxx	xxx
7	Ties - Switching	xxx	21-12-13	xxx	xxx		xxx	xxx	xxx	xxx
8	Rails - Running	xxx	21-11-14	xxx	xxx		xxx	xxx	xxx	xxx
9	Rails - Switching	xxx	21-12-14	xxx	xxx		xxx	xxx	xxx	xxx
10	Other Track Material-Running	xxx	21-11-15	xxx	xxx		xxx	xxx	xxx	xxx
11	Other Track Material-Switching	xxx	21-12-15	xxx	xxx		xxx	xxx	xxx	xxx
12	Ballast - Running	xxx	21-11-16	xxx	xxx		xxx	xxx	xxx	xxx
13	Ballast - Switching	xxx	21-12-16	xxx	xxx		xxx	xxx	xxx	xxx
14	Track Laying & Surfacing - Running	11-11-17	21-11-17	39/40/41-11-17	61-11-17		xxx	xxx	xxx	xxx
15	Track Laying & Surfacing - Switching	11-12-17	21-12-17	39/40/41-12-17	61-12-17		xxx	xxx	xxx	xxx
16	Total - Ls. 1 thru 15									Equated Track Miles
17	Administration - Signals	11-13-04	21-13-04	41-13-04	61-13-04		xxx	xxx	xxx	xxx
18	Station and Office Bldgs.	11-13-23	21-13-23	39/40/41-13-23	61-13-23		xxx	xxx	xxx	xxx
19	Motor Veh. Loading & Distribution Facilities	11-13-33	21-13-33	39/40/41-13-33	61-13-33		xxx	xxx	xxx	xxx
20	Facilities for Other Specialized Ser. Opns.	11-13-35	21-13-35	39/40/41-13-35	61-13-35		xxx	xxx	xxx	xxx
21	Signals & Interlockers - Running	11-11-19	21-11-19	39/40/41-11-19	61-11-19		xxx	xxx	xxx	xxx

Sheet 2 of 15

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols. (2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols. (7)+(8) (9)	Suggested Apportionment Factors (10)
22	Signals and Interlockers - Switching	11-12-19	21-12-19	39/40/41-12-19	61-12-19		xxx	xxx	xxx	xxx
23	Total - Ls. 17 thru 22									Carloads Handled
24	Administration - Communications	11-13-05	21-13-05	41-13-05	61-13-05		xxx	xxx	xxx	xxx
25	Loco. Serv. Facilities	11-13-27	21-13-27	39/40/41-13-27	61-13-27		xxx	xxx	xxx	xxx
26	Communication Systems	11-13-20	21-13-20	39/40/41-13-20	61-13-20		xxx	xxx	xxx	xxx
27	Total - Ls. 24 thru 26									Revenue Tons
28	Shop Bldgs. - Locomotives	11-13-24	21-13-24	39/40/41-13-24	61-13-24		xxx	xxx	xxx	xxx
29	Shop Bldgs. - Freight Cars	11-13-25	21-13-25	39/40/41-13-25	61-13-25		xxx	xxx	xxx	xxx
30	Shop Bldgs. - Other Equip.	11-13-26	21-13-26	39/40/41-13-26	61-13-26		xxx	xxx	xxx	xxx
31	Road Property Damaged - Other	11-13-48	21-13-48	39/40/41-13-48	61-13-48		xxx	xxx	xxx	xxx
32	Total - Ls. 28 thru 31									Total Repair Expenses
33	Misc. Bldgs. & Structures	11-13-28	21-13-28	39/40/41-13-28	61-13-28		xxx	xxx	xxx	xxx
34	Other Marine Terminals	11-13-32	21-13-32	39/40/41-13-32	61-13-32		xxx	xxx	xxx	xxx
35	Coal Terminals	11-13-29	21-13-29	39/40/41-13-29	61-13-29		xxx	xxx	xxx	xxx
36	Ore Terminals	11-13-30	21-13-30	39/40/41-13-30	61-13-30		xxx	xxx	xxx	xxx
37	Total - Ls. 33 thru 36									Miles of Rd. Trailers Handled, Loaded & Empty
38	TOFC/COFC Terminals	11-13-31	21-13-31	39/40/41-13-31	61-13-31					
39	Administration - Bridges & Bldgs.	11-13-03	21-13-03	41-13-03	61-13-03		xxx	xxx	xxx	xxx
40	Tunnels & Subways - Running	11-11-11	21-11-11	39/40/41-11-11	61-11-11		xxx	xxx	xxx	xxx

Sheet 3 of 15

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Suggested Apportionment Factors (10)
41	Tunnels & Subways - Switching	11-12-11	21-12-11	39/40/41-12-11	61-12-11		xxx	xxx	xxx	xxx
42	Bridges & Culverts - Running	11-11-12	21-11-12	39/40/41-11-12	61-11-12		xxx	xxx	xxx	xxx
43	Bridges & Culverts - Switching	11-12-12	21-12-12	39/40/41-12-12	61-12-12		xxx	xxx	xxx	xxx
44	Total - Ls. 39 thru 43									Equated Track Miles
45	Sum of Ls. 16,23,27,32,37, 38, and 44									xxx
46	Administration - Other	11-13-06	21-13-06	41-13-06	61-13-06		xxx	xxx	xxx	xxx
47	Fringe Benefits - Running	xxx	xxx	xxx	12-11-00		xxx	xxx	xxx	xxx
48	Fringe Benefits - Switching	xxx	xxx	xxx	12-12-00		xxx	xxx	xxx	xxx
49	Fringe Benefits - Other	xxx	xxx	xxx	12-13-00		xxx	xxx	xxx	xxx
50	Casualties & Insurances - Running	xxx	xxx	xxx	52/53 - 11-00		xxx	xxx	xxx	xxx
51	Casualties & Insurances - Switching	xxx	xxx	xxx	52/53 - 12-00		xxx	xxx	xxx	xxx
52	Casualties & Insurances - Other	xxx	xxx	xxx	52/53 - 13-00		xxx	xxx	xxx	xxx
53	Other - Running	11-11-99	21-11-99	41-11-99	61-11-99		xxx	xxx	xxx	xxx
54	Other - Switching	11-12-99	21-12-99	41-12-99	61-12-99		xxx	xxx	xxx	xxx
55	Other - Other	11-13-99	21-13-99	41-13-99	61-13-99		xxx	xxx	xxx	xxx
56	Total - Ls. 46 thru 55									Line 45
57	Depreciation - Running	xxx	xxx	xxx	62-11-00		xxx	xxx	xxx	xxx
58	Depreciation - Switching	xxx	xxx	xxx	62-12-00		xxx	xxx	xxx	xxx
59	Depreciation - Other	xxx	xxx	xxx	62-13-00		xxx	xxx	xxx	xxx
60	Roadway Machines	11-13-36	21-13-36	39/40/41-13-36	61-13-36		xxx	xxx	xxx	xxx
61	Highway Grade Crossings-Running	11-11-22	21-11-22	39/40/41-11-22	61-11-22		xxx	xxx	xxx	xxx
62	Highway Grade Crossings - Switching	11-12-22	21-12-22	39/40/41-12-22	61-12-22		xxx	xxx	xxx	xxx
63	Total - Ls. 57 thru 62									Miles of Road

Sheet 4 of 15

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Suggested Apportionment Factors (10)
64	Electric Power Systems	11-13-21	21-13-21	39/40/41-13-21	61-13-21					Electric Locomotive Unit Miles on Line 96, 105, & 116
65	Joint Facility - Debit - Running	xxx	xxx	37-11-00	xxx		xxx	xxx	xxx	xxx
66	Joint Facility - Debit - Switching	xxx	xxx	37-12-00	xxx		xxx	xxx	xxx	xxx
67	Joint Facility - Debit - Other	xxx	xxx	37-13-00	xxx		xxx	xxx	xxx	xxx
68	Joint Facility - (Credit) - Running	xxx	xxx	38-11-00	xxx		xxx	xxx	xxx	xxx
69	Joint Facility - (Credit) - Switching	xxx	xxx	38-12-00	xxx		xxx	xxx	xxx	xxx
70	Joint Facility - (Credit) - Other	xxx	xxx	38-13-00	xxx		xxx	xxx	xxx	xxx
71	Total - Ls. 65 thru 70									Miles of Track
72	Small Tools & Supplies	11-13-37	21-13-37	39/40/41-13-37	61-13-37		xxx	xxx	xxx	xxx
73	Snow Removal	11-13-38	21-13-38	39/40/41-13-38	61-13-38		xxx	xxx	xxx	xxx
74	Lease Rentals - Debit - Running	xxx	xxx	31-11-00	xxx		xxx	xxx	xxx	xxx
75	Lease Rentals - Debit - Switching	xxx	xxx	31-12-00	xxx		xxx	xxx	xxx	xxx
76	Lease Rentals - Debit - Other	xxx	xxx	31-13-00	xxx		xxx	xxx	xxx	xxx
77	Lease Rentals - (Credit) - Running	xxx	xxx	32-11-00	xxx		xxx	xxx	xxx	xxx
78	Lease Rentals - (Credit) - Switching	xxx	xxx	32-12-00	xxx		xxx	xxx	xxx	xxx
79	Lease Rentals - (Credit) - Other	xxx	xxx	32-13-00	xxx		xxx	xxx	xxx	xxx

Sheet 5 of 15

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Suggested Apportionment Factors (10)
80	Joint Facility Rents - Debit - Running	xxx	xxx	33-11-00	xxx		xxx	xxx	xxx	xxx
81	Joint Facility Rents - Debit - Switching	xxx	xxx	33-12-00	xxx		xxx	xxx	xxx	xxx
82	Joint Facility Rents - Debit - Other	xxx	xxx	33-13-00	xxx		xxx	xxx	xxx	xxx
83	Joint Facility Rents -(Credit)- Running	xxx	xxx	34-11-00	xxx		xxx	xxx	xxx	xxx
84	Joint Facility Rents -(Credit)- Switching	xxx	xxx	34-12-00	xxx		xxx	xxx	xxx	xxx
85	Joint Facility Rents -(Credit)- Other	xxx	xxx	34-13-00	xxx		xxx	xxx	xxx	xxx
86	Other Rents - Debit - Running	xxx	xxx	35-11-00	xxx		xxx	xxx	xxx	xxx
87	Other Rents - Debit - Switching	xxx	xxx	35-12-00	xxx		xxx	xxx	xxx	xxx
88	Other Rents - Debit - Other	xxx	xxx	35-13-00	xxx		xxx	xxx	xxx	xxx
89	Other Rents -(Credit) - Running	xxx	xxx	36-11-00	xxx		xxx	xxx	xxx	xxx
90	Other Rents -(Credit) - Switching	xxx	xxx	36-12-00	xxx		xxx	xxx	xxx	xxx
91	Other Rents -(Credit) - Other	xxx	xxx	36-13-00	xxx		xxx	xxx	xxx	xxx
92	Total - Ls. 72 thru 91							xxx		Direct
93	TOTAL - Way & Structures - Sum of Ls. 16, 23, 27, 32, 37, 38, 44, 56, 63, 64, 71, and 92						xxx	xxx		xxx

Sheet 6 of 15

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Suggested Apportionment Factors (10)
	Equipment									
	Locomotives									
94	Lease Rentals - Debit	xxx	xxx	31-21-00	xxx		xxx	xxx	xxx	xxx
95	Other Rents - Debit	xxx	xxx	35-21-00	xxx		xxx	xxx	xxx	xxx
96	Total - Ls. 94 and 95									Locomotive Unit Miles
97	Repair & Maintenance	11-21-41	21-21-41	39/41-21-41	61-21-41		xxx	xxx	xxx	xxx
98	Repairs Billed to Others- (Credit)	xxx	xxx	40-21-41	xxx		xxx	xxx	xxx	xxx
99	Equipment Damaged	11-21-48	21-21-48	39/41-21-48	61-21-48		xxx	xxx	xxx	xxx
100	Repairs Billed to Others- (Credit)	xxx	xxx	40-21-48	xxx		xxx	xxx	xxx	xxx
101	Joint Facility Rents - Debit	xxx	xxx	37-21-00	xxx		xxx	xxx	xxx	xxx
102	Joint Facility Rents - (Credit)	xxx	xxx	34-21-00	xxx		xxx	xxx	xxx	xxx
103	Lease Rents - (Credit)	xxx	xxx	32-21-00	xxx		xxx	xxx	xxx	xxx
104	Other Rents - (Credit)	xxx	xxx	36-21-00	xxx		xxx	xxx	xxx	xxx
105	Total - Ls. 97 thru 104									Gross Ton-Miles
	Freight Cars									
106	Repair & Maintenance	11-22-42	21-22-42	39/41-22-42	61-22-42		xxx	xxx	xxx	xxx
107	Repairs Billed to Others - (Credit)	xxx	xxx	40-22-42	xxx		xxx	xxx	xxx	xxx
108	Equipment Damaged	11-22-48	21-22-48	39/41-22-48	61-22-48		xxx	xxx	xxx	xxx
109	Repairs Billed to Others - (Credit)	xxx	xxx	40-22-48	xxx		xxx	xxx	xxx	xxx
110	Lease Rentals - Debit	xxx	xxx	31-22-00	xxx		xxx	xxx	xxx	xxx
111	Lease Rentals - (Credit)	xxx	xxx	32-22-00	xxx		xxx	xxx	xxx	xxx
112	Joint Facility Rents - Debit	xxx	xxx	33-22-00	xxx		xxx	xxx	xxx	xxx
113	Joint Facility Rents -(Credit)	xxx	xxx	34-22-00	xxx		xxx	xxx	xxx	xxx
114	Other Rents - Debit	xxx	xxx	35-22-00	xxx		xxx	xxx	xxx	xxx
115	Other Rents - (Credit)	xxx	xxx	36-22-00	xxx		xxx	xxx	xxx	xxx
116	Total - Ls. 106 thru 115									Freight-Train Car Miles; Cars- loaded & empty

Sheet 7 of 15

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Suggested Apportionment Factors (10)
	Other Equipment									
117	Repair & Maint. - Trucks, Trailers, & Containers - Revenue Service	11-23-43	21-23-43	39/41-23-43	61-23-43		xxx	xxx	xxx	xxx
118	Repairs Billed to Others - (Credit)	xxx	xxx	40-23-43	xxx		xxx	xxx	xxx	xxx
119	Total - Ls. 117 and 118									Veh.-Miles - Loaded & Empty
120	Floating Equip. - Revenue Service	11-23-44	21-23-44	39/41-23-44	61-23-44		xxx	xxx	xxx	xxx
121	Repairs Billed to Others - (Credit)	xxx	xxx	40-23-44	xxx		xxx	xxx	xxx	xxx
122	Total - Ls. 120 and 121									No. of Carloads Handled
123	Administration	11-21-01	21-21-01	41-21-01	61-21-01		xxx	xxx	xxx	xxx
124	Machinery Repair	11-21-40	21-21-40	39/41-21-40	61-21-40		xxx	xxx	xxx	xxx
125	Repairs Billed to Others - (Credit)	xxx	xxx	40-21-40	xxx		xxx	xxx	xxx	xxx
126	Fringe Benefits	xxx	xxx	xxx	12-21-00		xxx	xxx	xxx	xxx
127	Other Casualties & Insurance	xxx	xxx	xxx	52/53-21-00		xxx	xxx	xxx	xxx
128	Joint Facility - Debit	xxx	xxx	37-21-00	xxx		xxx	xxx	xxx	xxx
129	Joint Facility -(Credit)	xxx	xxx	38-21-00	xxx		xxx	xxx	xxx	xxx
130	Depreciation	xxx	xxx	xxx	62-21-00		xxx	xxx	xxx	xxx
131	Other	11-21-99	21-21-99	41-21-99	61-21-99		xxx	xxx	xxx	xxx
132	Administration	11-22-01	21-22-01	41-22-01	61-22-01		xxx	xxx	xxx	xxx
133	Machinery Repair	11-22-40	21-22-40	39/41-22-40	61-22-40		xxx	xxx	xxx	xxx
134	Repairs Billed to Others - (Credit)	xxx	xxx	40-22-40	xxx		xxx	xxx	xxx	xxx
135	Fringe Benefits	xxx	xxx	xxx	12-22-00		xxx	xxx	xxx	xxx
136	Other - Casualties & Insurance	xxx	xxx	xxx	52/53-22-00		xxx	xxx	xxx	xxx

Sheet 8 of 15

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Suggested Apportionment Factors (10)
137	Joint Facility - Debit	xxx	xxx	37-22-00	xxx		xxx	xxx	xxx	xxx
138	Joint Facility -(Credit)	xxx	xxx	38-22-00	xxx		xxx	xxx	xxx	xxx
139	Depreciation	xxx	xxx	xxx	62-22-00		xxx	xxx	xxx	xxx
140	Other	11-22-99	21-22-99	41-22-99	61-22-99		xxx	xxx	xxx	xxx
141	Administration	11-23-01	21-23-01	41-23-01	61-23-01		xxx	xxx	xxx	xxx
142	Pass. & Other Rev. Equip.	11-23-45	21-23-45	39/41-23-45	61-23-45		xxx	xxx	xxx	xxx
143	Repairs Billed to Others - (Credit)	xxx	xxx	40-23-45	xxx		xxx	xxx	xxx	xxx
144	Repair & Maint. - Machinery	11-23-40	21-23-40	39/41-23-40	61-23-40		xxx	xxx	xxx	xxx
145	Repairs Billed to Others - (Credit)	xxx	xxx	40-23-40	xxx		xxx	xxx	xxx	xxx
146	Repair & Maint. - Computers & Data Processing Systems	11-23-46	21-23-46	39/41-23-46	61-23-46		xxx	xxx	xxx	xxx
147	Repairs Billed to Others - (Credit)	xxx	xxx	40-23-46	xxx		xxx	xxx	xxx	xxx
148	Repair & Maint. - Work & Other Non-Rev. Equip.	11-23-47	21-23-47	39/41-23-47	61-23-47		xxx	xxx	xxx	xxx
149	Repairs Billed to Others - (Credit)	xxx	xxx	40-23-47	xxx		xxx	xxx	xxx	xxx
150	Equipment Damaged	11-23-48	21-23-48	39/41-23-48	61-23-48		xxx	xxx	xxx	xxx
151	Repairs Billed to Others - (Credit)	xxx	xxx	40-23-48	xxx		xxx	xxx	xxx	xxx
152	Fringe Benefits	xxx	xxx	xxx	12-23-00		xxx	xxx	xxx	xxx
153	Other - Casualties & Insurance	xxx	xxx	xxx	52/53-23-00		xxx	xxx	xxx	xxx
154	Joint Facility Rents - Debit	xxx	xxx	33-23-00	xxx		xxx	xxx	xxx	xxx
155	Joint Facility Rents -(Credit)	xxx	xxx	34-23-00	xxx		xxx	xxx	xxx	xxx
156	Joint Facility - Debit	xxx	xxx	37-23-00	xxx		xxx	xxx	xxx	xxx
157	Joint Facility -(Credit)	xxx	xxx	38-23-00	xxx		xxx	xxx	xxx	xxx
158	Depreciation	xxx	xxx	xxx	62-23-00		xxx	xxx	xxx	xxx
159	Other	11-23-99	21-23-99	41-23-99	61-23-99		xxx	xxx	xxx	xxx
160	Total - Ls. 123 thru 159									Total Repair Expenses

Sheet 9 of 15

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Suggested Apportionment Factors (10)
161	Lease Rentals - Debit	xxx	xxx	31-23-00	xxx					Assign where Applicable
162	Lease Rentals - (Credit)	xxx	xxx	32-23-00	xxx					Assign where Applicable
163	Other Rents - Debit	xxx	xxx	35-23-00	xxx					Assign where Applicable
164	Other Rents - (Credit)	xxx	xxx	36-23-00	xxx					Assign where Applicable
165	Miscellaneous Rents	xxx	xxx	543	xxx					Assign where Applicable
166	Total Equipment - Sum of Ls. 96, 105, 116, 119, 122, 160, 161-165						xxx	xxx		xxx

Sheet 10 of 15

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Suggested Apportionment Factors (10)
	Transportation									
	Train Operations									
167	Administration	11-31-01	21-31-01	41-31-01	61-31-01		xxx	xxx	xxx	xxx
168	Fringe Benefits	xxx	xxx	xxx	12-31-00		xxx	xxx	xxx	xxx
169	Other	11-31-99	21-31-99	41-31-99	61-31-99		xxx	xxx	xxx	xxx
170	Other Casualties & Insurance	xxx	xxx	xxx	52/53-31-00		xxx	xxx	xxx	xxx
171	Dispatching Trains	11-31-58	21-31-58	41-31-58	61-31-58		xxx	xxx	xxx	xxx
172	Total - Ls. 167 thru 171									Train-Miles
	Administrative Support Opns.									
173	Administration	11-35-01	21-35-01	41-35-01	61-35-01		xxx	xxx	xxx	xxx
174	Fringe Benefits	xxx	xxx	xxx	12-35-00		xxx	xxx	xxx	xxx
175	Casualties & Insurance	xxx	xxx	xxx	52/53-35-00		xxx	xxx	xxx	xxx
176	Other	11-35-99	21-35-99	41-35-99	61-35-99		xxx	xxx	xxx	xxx
177	Employees Performing Clerical & Acctng. Functions	11-35-76	21-35-76	41-35-76	61-35-76		xxx	xxx	xxx	xxx
178	Communication Systems Oper.	11-35-77	21-35-77	41-35-77	61-35-77		xxx	xxx	xxx	xxx
179	Total - Ls. 173 thru 178									Revenue Tons
	Yard Operations									
180	Administration	11-32-01	21-32-01	41-32-01	61-32-01		xxx	xxx	xxx	xxx
181	Fringe Benefits	xxx	xxx	xxx	12-32-00		xxx	xxx	xxx	xxx
182	Other Casualties & Insurance	xxx	xxx	xxx	52/53-32-00		xxx	xxx	xxx	xxx
183	Other	11-32-99	21-32-99	41-32-99	61-32-99		xxx	xxx	xxx	xxx
184	Oper. Switches, Signals, Retarders & Humps	xxx	21-32-59	41-32-59	61-32-59		xxx	xxx	xxx	xxx
185	Switch Crews	xxx	21-32-64	41-32-64	61-32-64		xxx	xxx	xxx	xxx
186	Controlling Operations	xxx	21-32-65	41-32-65	61-32-65		xxx	xxx	xxx	xxx
187	Yard & Terminal Clerical	xxx	21-32-66	41-32-66	61-32-66		xxx	xxx	xxx	xxx
188	Administration-Special Service	11-34-01	21-34-01	41-34-01	61-34-01		xxx	xxx	xxx	xxx
189	Fringe Benefits - Special Service	xxx	xxx	xxx	12-34-00		xxx	xxx	xxx	xxx
190	Other - Special Service	11-34-99	21-34-99	41-34-99	61-34-99		xxx	xxx	xxx	xxx
191	Casualties & Insurance - Special Service	xxx	xxx	xxx	52/53-34-00		xxx	xxx	xxx	xxx
192	Total - Ls. 180 thru 191									Yd. Switching Loco. unit-miles

Sheet 11 of 15

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Suggested Apportionment Factors (10)
193	Operating Signals & Interlockers	11-31-59	21-31-59	41-31-59	61-31-59		xxx	xxx	xxx	xxx
194	Highway Crossing, Protection	11-31-61	21-31-61	41-31-61	61-31-61		xxx	xxx	xxx	xxx
195	Operating Drawbridges	11-31-60	21-31-60	41-31-60	61-31-60		xxx	xxx	xxx	xxx
196	Clearing Wrecks	11-31-63	21-31-63	41-31-63	61-31-63		xxx	xxx	xxx	xxx
197	Clearing Wrecks	11-32-63	21-32-63	41-32-63	61-32-63		xxx	xxx	xxx	xxx
198	Frt. Lost or Damaged - Solely Related	xxx	xxx	xxx	51-31-00		xxx	xxx	xxx	xxx
199	Frt. Lost or Damaged - Solely Related	xxx	xxx	xxx	51-32-00		xxx	xxx	xxx	xxx
200	Frt. Lost or Damaged - All Other	xxx	xxx	xxx	51-33-00		xxx	xxx	xxx	xxx
201	Frt. Lost or Damaged - Solely Related	xxx	xxx	xxx	51-34-00		xxx	xxx	xxx	xxx
202	Loss & Damage, Claims Processing	11-35-78	21-35-78	41-35-78	61-35-78		xxx	xxx	xxx	xxx
203	Total - Ls. 193 thru 202									Train-Miles
204	Loading, Unloading & Local Marine	11-34-74	21-34-74	41-34-74	61-34-74		xxx	xxx	xxx	xxx
205	P&D, Marine Line-Haul & Rail Substitute Service	11-34-73	21-34-73	41-34-73	61-34-73		xxx	xxx	xxx	xxx
206	Total - Ls. 204 and 205									Trailers handled-Loaded & Empty
207	Controlling Operations	11-32-65	xxx	xxx	xxx		xxx	xxx	xxx	xxx
208	Yd. & Terminal Clerical	11-32-66	xxx	xxx	xxx		xxx	xxx	xxx	xxx
209	Switch Crews	11-32-64	xxx	xxx	xxx		xxx	xxx	xxx	xxx
210	Operating Switches, Signals, Retarders & Humps	11-32-59	xxx	xxx	xxx		xxx	xxx	xxx	xxx
211	Locomotive Fuel	11-32-67	21-32-67	41-32-67	61-32-67		xxx	xxx	xxx	xxx
212	Electric Power Purchased/ Produced for Motive Power	11-32-68	21-32-68	41-32-68	61-32-68		xxx	xxx	xxx	xxx
213	Servicing Locomotives	11-32-69	21-32-69	41-32-69	61-32-69		xxx	xxx	xxx	xxx
214	Joint Facility - Debit	xxx	xxx	37-32-00	xxx		xxx	xxx	xxx	xxx
215	Joint Facility - (Credit)	xxx	xxx	38-32-00	xxx		xxx	xxx	xxx	xxx
216	Total - Ls. 207 thru 215									Yd. Switching Loco. Unit-Miles

Sheet 12 of 15

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Suggested Apportionment Factors (10)
217	Engine Crews	11-31-56	xxx	xxx	xxx		xxx	xxx	xxx	xxx
218	Train Crews	11-31-57	xxx	xxx	xxx		xxx	xxx	xxx	xxx
219	Total - Ls. 217 and 218									Accts. 11-31-56 & 11-31-57 Direct Assignment
220	Locomotive Fuel	11-31-67	21-31-67	41-31-67	61-31-67		xxx	xxx	xxx	xxx
221	Electric Power Purchased/ Produced for Motive Power	11-31-68	21-31-68	41-31-68	61-31-68		xxx	xxx	xxx	xxx
222	Servicing Locomotives	11-31-69	21-31-69	41-31-69	61-31-69		xxx	xxx	xxx	xxx
223	Joint Facility - Debit	xxx	xxx	37-31-00	xxx		xxx	xxx	xxx	xxx
224	Joint Facility - (Credit)	xxx	xxx	38-31-00	xxx		xxx	xxx	xxx	xxx
225	Joint Facility - Debit	xxx	xxx	37-34-00	xxx		xxx	xxx	xxx	xxx
226	Joint Facility - (Credit)	xxx	xxx	38-34-00	xxx		xxx	xxx	xxx	xxx
227	Joint Facility - Debit	xxx	xxx	37-35-00	xxx		xxx	xxx	xxx	xxx
228	Joint Facility - (Credit)	xxx	xxx	38-35-00	xxx		xxx	xxx	xxx	xxx
229	Total - Ls. 220 thru 228									Loco. unit-miles incl. train switching
230	Engine Crews	xxx	21-31-56	41-31-56	61-31-56		xxx	xxx	xxx	xxx
231	Train Crews	xxx	21-31-57	41-31-57	61-31-57		xxx	xxx	xxx	xxx
232	Train Inspection & Lubrication	11-31-62	21-31-62	41-31-62	61-31-62		xxx	xxx	xxx	xxx
233	Cleaning Car Interiors	11-33-70	21-33-70	41-33-70	xxx		xxx	xxx	xxx	xxx
234	Adjusting & Transferring Loads	11-33-71	21-33-71	41-33-71	xxx		xxx	xxx	xxx	xxx
235	Car Loading Devices & Grain Doors	11-33-72	21-33-72	41-33-72	xxx		xxx	xxx	xxx	xxx
236	Protective Services	11-34-75	21-34-75	41-34-75	61-34-75		xxx	xxx	xxx	xxx
237	Fringe Benefits	xxx	xxx	xxx	12-33-00		xxx	xxx	xxx	xxx
238	Total - Ls. 230-237									Frt. Train Car-Miles Loaded & Empty incl. Caboose
239	TOTAL TRANSPORTATION - Sum of Ls. 172, 179, 192, 203, 206, 216, 219, 229, & 238						xxx	xxx		xxx

For *, see Sheet No. 15.

Sheet 13 of 15

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols. (2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols. (7)+(8) (9)	Suggested Apportionment Factors (10)
	General and Administrative									
240	Officers-General Superintendence	11-61-01	21-61-01	41-61-01	61-61-01		xxx	xxx	xxx	xxx
241	Acctg., Auditing & Finance	11-61-86	21-61-86	41-61-86	61-61-86		xxx	xxx	xxx	xxx
242	Management Services & Data Processing	11-61-87	21-61-87	41-61-87	61-61-87		xxx	xxx	xxx	xxx
243	Industrial Development	11-61-90	21-61-90	41-61-90	61-61-90		xxx	xxx	xxx	xxx
244	Personnel & Labor Relations	11-61-91	21-61-91	41-61-91	61-61-91		xxx	xxx	xxx	xxx
245	Legal & Secretarial	11-61-92	21-61-92	41-61-92	61-61-92		xxx	xxx	xxx	xxx
246	Research & Development	11-61-94	21-61-94	41-61-94	61-61-94		xxx	xxx	xxx	xxx
247	Casualties & Insurance	xxx	xxx	xxx	52/53-61-00		xxx	xxx	xxx	xxx
248	Fringe Benefits	xxx	xxx	xxx	12-61-00		xxx	xxx	xxx	xxx
249	Other	11-61-99	21-61-99	41-61-99	61-61-99		xxx	xxx	xxx	xxx
250	Joint Facility - Debit	xxx	xxx	37-61-00	xxx		xxx	xxx	xxx	xxx
251	Joint Facility - (Credit)	xxx	xxx	38-61-00	xxx		xxx	xxx	xxx	xxx
252	Write down of Uncollectible Accounts	xxx	xxx	xxx	63-61-00		xxx	xxx	xxx	xxx
253	Total - Ls. 240 thru 252									Apportion on the basis of total expenses, Ls. 93,166, & 239
254	Marketing	11-61-88	21-61-88	41-61-88	61-61-88		xxx	xxx	xxx	xxx
255	Sales	11-61-89	21-61-89	41-61-89	61-61-89		xxx	xxx	xxx	xxx
256	Public Relations & Advertising	11-61-93	21-61-93	41-61-93	61-61-93		xxx	xxx	xxx	xxx
257	Total - Ls. 254 thru 256									Line 253
258	Total General & Administrative, Ls. 253 and 257						xxx	xxx		xxx
259	TOTAL EXPENSES - Ls. 93, 166, 239, and 258						xxx	xxx		xxx
260	Property Taxes	xxx	xxx	xxx	64-61-00					Miles of Road Direct
261	State Income Taxes	xxx	xxx	xxx	556			xxx		

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Suggested Apportionment Factors (10)
262	Other Taxes Except on Corporate Income or Payrolls	xxx	xxx	xxx	65-61-00					Miles of Road
263	TOTAL TAXES - Ls. 260,261,262	xxx	xxx	xxx			xxx	xxx		xxx
264	Miscellaneous Income Charges	xxx	xxx	xxx	551			xxx		Direct
265	TOTAL - Expenses, Rents & Taxes Sum of Ls. 259, 263, and 264						xxx	xxx		xxx
	Revenues									
266	Freight (Account 101)	xxx	xxx	xxx	xxx		xxx	xxx		Actual
267	All Other	xxx	xxx	xxx	xxx		xxx	xxx		Actual
268	Total Revenues - Ls. 266 and 267	xxx	xxx	xxx	xxx		xxx	xxx		xxx
269	Local/State Subsidies	xxx	xxx	xxx	xxx		xxx	xxx		Actual
270	TOTAL INCOME - Ls. 268 & 269	xxx	xxx	xxx	xxx		xxx	xxx		xxx
271	TOTAL EXPENSES OVER INCOME - L. 265 less 270	xxx	xxx	xxx	xxx		xxx	xxx		xxx
	Computation of Reimbursement									
272	Allowance for profit, L. 268 multiplied by .06 1/	xxx	xxx	xxx	xxx		xxx	xxx		xxx
273	Working Capital 2/	xxx	xxx	xxx	xxx		xxx	xxx		xxx
274	Section-1126.3 Funding Received	xxx	xxx	xxx	xxx		xxx	xxx		xxx
275	Total deficiency plus working capital minus S. 1126.3 Funding Received - L. 271 plus L. 273 minus L. 274	xxx	xxx	xxx	xxx		xxx	xxx		xxx
276	Amount borrowed 3/	xxx	xxx	xxx	xxx		xxx	xxx		xxx
277	Interest allowed 4/	xxx	xxx	xxx	xxx		xxx	xxx		xxx
278	Total expenses plus profit plus interest - Ls. 265, 272 and 277	xxx	xxx	xxx	xxx		xxx	xxx		xxx
279	Reimbursement including an allowance for profit less S. 1126.3 funding received - L. 278 minus L. 270 minus L. 274 5/	xxx	xxx	xxx	xxx		xxx	xxx		xxx

FOOTNOTES

* Assign engine and train crew expenses direct to carrier's own traffic and directed traffic. Apportion common expenses on the basis of direct assignments to Accounts 11-31-56 and 11-31-57.

1/ Profit is based on 6% of total revenues (line 268). A profit from actual operations above 6% of total revenues may be retained by the directed carrier and no amount for profit will be paid by the Federal Government. Should a profit of less than 6% be earned, the difference between 6% and that % will be paid.

2/ Total expenses in line 265 divided by the total days of the directed operation. Multiply these expenses by a factor of 15 (days) to represent the lag between cash receipts and cash payments.

3/ The amount borrowed should not exceed the permissible limits established in the Ex Parte No. 293 (Sub No. 3) report, unless specifically approved by the Commission.

4/ Apply the average prime rate (per annum) in effect at New York City to line 275, or the prime rate (per annum) in effect at New York City on the date of the loan agreement to line 276, whichever is greater. However, the interest allowed on amounts actually borrowed shall not exceed the amount of interest charged on the loan, if less than the applicable prime rate.

5/ If amount on Line 279 is less than zero, any amount up to the funded amount will be due and payable to the Commission within 30 days. If not paid within the 30-day period the amount due will begin to accrue interest at the average prime rate (per annum) in effect at New York City.

NOTE: If directed service is passenger service use passenger account numbers anywhere applicable. For accounts 11-25-45, 21-25-45, 39/40/41-25-45, 61-25-45, 11-25-48, 21-25-48, 39/40/41-25-48, 61-25-48, 32-25-00, 35-25-00, 31-25-00, and 35-25-00, include in Maintenance of Equipment total and apportion common expenses on the basis of Passenger Train Car-Miles. For accounts 11-41-01, 21-41-01, 41-41-01, 61-41-01, 11-41-57, 21-41-57, 41-41-57, 61-41-57, 11-45-76, 21-45-76, 41-45-76, 61-45-76, 11-41-99, 21-41-99, 41-41-99, and 61-41-99, include in Transportation total and apportion common expenses on the basis of Passenger Train Car-Miles. Include account 102 and all other passenger related revenues with total revenues.

ATTENTION

Knowing and willful misstatements or omissions of material facts constitute federal criminal violations punishable by up to five years imprisonment and fines of up to $10,000 for each offense. (See 18 U.S.C. 1001, 1003, 287.)

Each person by whom this document is signed certifies that the representations appearing herein and in the appendices attached hereto (including any accompanying schedules and statements) are, to the best of his knowledge and belief, true, correct, and complete, based upon all the information required to be included therein, of which he has any knowledge.

Dated this ——— day of ————, 19——

.....
(Signature of Accounting Officer)

By ————————————

.....
(Title

§ 1126.3 Optional Cash Funding Procedures.

(a) The directed carrier may elect to obtain cash funding from the Commission following the procedure set forth below. The funding procedure is separated into three phases. The first is designed to meet the directed carrier's immediate requirements to institute service. The second is an interim accounting and adjustment under which any serious cash flow problems will be remedied: The third phase is the final accounting after completion of the service and computation of the total account reimbursable.

All reports filed should refer to the appropriate ICC account numbers. The records of the directed carrier relating to the directed service will be subject to continuing audit by the Commission.

(b) *Initial Funding.* (1) The initial funding is intended to cover the immediate deficit to be incurred through cash expenditures that must be made before compensating revenues can be generated. Permissible costs which might require lead funding include:

(i) Payroll costs necessary for assignment of crews;

(ii) Immediate maintenance of way or line repairs necessary to make a line operational or in compliance with safety standards;

(iii) Fuel and supplies;

(iv) Immediate rental or maintenance costs for equipment to be used (other than rental payments to the defaulting carrier);

(v) That portion of overhead allocable to developing the initial operation plan; and

(vi) Any other immediate cash requirements.

(2) To enable the Commission to determine initial cash requirements, the directed carrier is required to submit the following items.

(i) A brief description of its initial operating plan for the directed service, outlining the frequency and schedule of service planned, the personnel and equipment to be utilized, the crew change and interchange points to be observed, any immediate maintenance and repair work required, and its fuel and supply needs.

(ii) A statement of its immediate cash requirements, with any supporting evidence deemed necessary.

(iii) A statement of the forecasted costs and revenues attributable to the directed service for the 60 day period, with appropriate explanatory notes.

These are to be submitted as soon as possible, but no later than 15 days after issuance of the directed service order. After the Commission has determined the initial cash requirements (and within 30 days after the directed carrier's submission), it will certify to the Treasury Department that this amount is immediately payable.

(c) *Interim Accounting.* The interim accounting procedure consists of a report filed by the directed carrier at the end of each 30 day period following institution of the directed service. In addition, the carrier may file a report whenever it is experiencing severe cash flow difficulties and desires additional interim funding. The interim reports must contain:

(1) A statement of any revisions to the operating plan.

(2) An unaudited cash flow statement for the period since its last report, and an explanation of any requests for additional cash.

(3) An unaudited statement of costs and revenues attributable to the directed service since its institution, and a statement of the forecasted costs and revenues for the remainder of the directed service period.

Within 30 days after receipt of an interim financing request with supporting data, the Commission will certify to the Treasury Department the amount to be paid the directed carrier.

(d) *Final Accounting.* (1) The final accounting report, to be filed within 180 days after completion of the directed service, should conform to the requirements of Section 1126.2 of this section. Any monies paid under the optional cash funding procedures must be deducted from the amount to be reimbursed (line 279). Also, the base for computation of allowable interest (line 277) must be reduced by the amount paid.

(2) After auditing the claim, the Commission will determine the allowable reimbursement. It will certify to the Treasury Department that the directed carrier be paid that amount by which the allowable reimbursement exceeds the amount paid. Should the amount paid exceed the allowable reimbursement, the difference will be due and payable by the directed carrier to the Commission within 30 days. If not paid within the 30-day period, the amount due will then begin to accrue interest at the prevailing prime rate.

[FR Doc. 79-3182 Filed 1-30-79; 8:45 am]

notices

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.

[6110-01-M]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

COMMITTEE ON RULEMAKING AND PUBLIC INFORMATION

Notice of Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of four meetings of the Committee on Rulemaking and Public Information of the Administrative Conference of the United States, to be held in the Library of the Conference, 2120 L Street, NW., Suite 500, Washington, D.C. These meetings will be held at 10:30 a.m. on the following days: February 16, 1979; March 16, 1979; March 23, 1979, and April 20, 1979.

The purpose of these meetings is to discuss and take action on various portions of the draft report and recommendations evaluating the Federal Trade Commission's Magnuson-Moss trade regulation rulemakings.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least two days in advance of each meeting. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meetings; any member of the public may file a written statement with the Committee before, during or after the meetings.

For further information concerning these meetings, contact Stephen L. Babcock (202-254-7020). Minutes of the meetings will be available on request.

RICHARD K. BERG,
Executive Secretary.

JANUARY 24, 1979.

[FR Doc. 79-3183 Filed 1-30-79; 8:45 am]

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

OFFICIAL AGENCY TERMINATION

Termination of Designation of the Corpus Christi Grain Exchange, Corpus Christi, Tex.

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice and Request for Applications and Comments.

SUMMARY: This notice announces the termination of the designation, effective midnight, November 19, 1978, of the Corpus Christi Grain Exchange (Exchange), Corpus Christi, Texas, as an official agency to perform grain inspection under the U.S. Grain Standards Act, as amended. The Federal Grain Inspection Service is requesting comments from the grain trade and other interested parties regarding the need for designation of a replacement agency to perform official inspection in the area currently being serviced by the Exchange. In addition, interested persons are invited to make application for designation to operate as an official agency at Corpus Christi, Texas.

DATES: Termination effective midnight, November 19, 1978. Applications/comments received by April 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: Pub. L. 94-582 was enacted in 1976 to amend the United States Grain Standards Act, (7 U.S.C. 71 *et seq.*) (hereinafter the "Act"). Section 27 of the Act (7 U.S.C. 74 note) provides that any interior inspection agency providing service on November 20, 1976, the date on which the amended Act became effective, could continue to do so without a designation under the Act until the expiration of a period of time as determined by the Administrator, but not to exceed 2 years after the Act's effective date.

The Corpus Christi Grain Exchange (Exchange), Corpus Christi, Texas, was advised on November 15, 1977, that conflicts of interest, as defined by Section 11(b) of the Act (7 U.S.C. 87(b)), existed in their agency. The Exchange submitted no proposal to effect a satisfactory resolution to these conflicts of interest and therefore was ineligible for designation as an official agency.

Because the Exchange was not eligible for designation under the terms of the amended Act, their current designation terminated midnight, November 19, 1978, in accordance with Section 27 of the Act (7 U.S.C. 74 note).

The Administrator of the Federal Grain Inspection Service (FGIS) is authorized, under the provisions of the Act, to provide official inspection service at locations where it is determined official inspection is needed (7 U.S.C. 79(f)(1)). There have been no applications for the Exchange to perform official inspection services since October 1977, and the FGIS requests comments from the grain trade and other interested parties with respect to the need for an official agency to provide official grain inspection services under the Act in the area formerly serviced by the Exchange, excluding the export port locations which are serviced by FGIS. All comments should be submitted in writing and mailed to the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, not later than April 2, 1979.

Subject to a final determination by the Administrator as to the need for official grain inspection service in this area, interested persons are hereby given opportunity to apply for designation to operate as an official agency at Corpus Christi, Texas, at other than export port locations pursuant to the requirements in Section 7(f)(1)(A) of the amended Act (7 U.S.C. 79(f)(1)(A)) and § 26.96 of the regulations (7 CFR 26.96). Persons wishing to apply for designation to operate as an official agency for the Corpus Christi area should contact the Office of the Director, Compliance Division, at the above mentioned address, for the appropriate forms and mail their application to the Director's Office not later than April 2, 1979.

Official inspection service on domestic grain has been and will be provided by the FGIS in the area previously serviced by the Exchange, from November 20, 1978, until such time as the necessity of a replacement agency is determined. Persons desiring official inspection services during this period should contact Mr. Larry Nafzinger, Field Office Supervisor, United States Department of Agriculture, Federal Grain Inspection Service, 1109½ Railroad Avenue, Portland, Texas, (512) 643-6587.

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79)f)(2)) provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

In making a final determination as to the need for a replacement agency in the Corpus Christi, Texas, area and the designation of an official agency, if deemed necessary, consideration will be given to all comments filed, any application submitted, and to all other information available to the Administrator. All comments and applications submitted pursuant to this notice will be made available for public inspection at the above Office of the Director during regular business hours (7 CFR 1.27(b)).

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 13, Pub. L. 94-582, 90 Stat. 2880 (7 U.S.C. 87); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note); 7 CFR 26.96)

Done in Washington, D.C., on January 25, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-3202 Filed 1-30-79; 8:45 am]

[3410-05-M]

Office of the Secretary

PUEBLO OF ACOMA INDIAN TRIBE IN NEW MEXICO

Feed Grain Donations

Pursuant to the authority set forth in Section 407 of the Agricultural Act of 1949 as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Pueblo of Acoma Indian Tribe in New Mexico has been materially increased and become acute because of severe and prolonged drought creating a serious shortage of livestock feeds. This reservation is designated for Indian use and is utilized by members of the Indian tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of this tribe to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestockmen who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 31, 1979 or to such other time as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C., on January 26, 1979.

BOB BERGLAND,
Secretary.

[FR Doc. 79-3208 Filed 1-30-79; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Order 79-1-160; Dockets 34573, 30670, 33173]

ANCHORAGE-LONDON SERVICE CASE, ET AL.

Order Instituting Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 24th day of January, 1979.

In the matter application of Western Air Lines, Inc. and Northwest Airlines, Inc., for new certificate authority.

The Air Services Agreement between the United States and the United Kingdom (Bermuda II) provides for the designation of a U.S. air carrier to operate over an Anchorage-London route. No U.S. carrier has yet been designated to serve this route and only one may be chosen.

Existing service in the market is limited and predominantly foreign-flag. British Airways offers the only direct service, and that is limited to four nonstop flights per week. Connecting flights from Anchorage to London are offered five times a week on foreign-flag carriers via Copenhagen or Amsterdam, and daily on U.S. carriers via Seattle.[1]

We have received applications from Western Air Lines (Docket 30670) and Northwest Airlines (Docket 33173) for certificate authority to perform nonstop service between Anchorage and London.[2] Each applicant has also filed a petition for issuance of an order to show cause why its application should not be granted. In addition, Northwest filed a motion requesting that its application be consolidated with that of Western for contemporaneous consideration.[3]

Western states that it is prepared to begin service in late 1978 or early 1979 and plans initially to offer three nonstop round trips per week with Boeing 707 aircraft. Western further states that each flight will also serve Honolulu, and that its fares from both Honolulu and Anchorage to London will be substantially below existing levels. It projects that it will carry nearly 33,000 passengers over the Anchorage-London segment and will earn a net operating profit of approximately $1,288,000.

Northwest also proposes to provide three round trips weekly in the Anchorage-London market with B-747 aircraft, and would serve Tokyo on each flight beyond Anchorage. Northwest also proposes to offer greatly reduced fares between Anchorage and London, and anticipates that it will carry more than 52,000 passengers between Tokyo and London and more than 11,000 passengers between Anchorage and London during its first year of operations. It forecasts and operating profit of $7.7 million.

Both Western and Northwest have filed answers opposing grant of the other carrier's petition to show cause. Each suggest that its proposal is superior and that the Board should act affirmatively on its petition and deny that of the other carrier. The State of Alaska, the Alaska Transportation Commission and the City Council of the City and County of Honolulu filed answers in support of Western's application. The British Airports Authority filed an answer to Western's application stating that any new service from Anchorage to London should be required to use Gatwick rather than Heathrow Airport.

We have decided to institute the *Anchorage-London Service Case,* Docket 34573, to consider the need for certificated U.S.-flag service between Anchorage and London and which, if any, U.S. carrier should be selected to meet this need. We will deny both applicants' petitions to show cause, but we will consolidate their certificate applications for Anchorage-London authority into Docket 34573.[4]

As is our usual policy in cases where carrier selection is at issue, we will take into account the offer of or failure to offer lower prices in determining whether the public convenience and necessity require the award of certificate authority, and, if so, which carrier should be selected.[5] We there-

[1] Japan Air Lines also provides service in the market, but is limited to the carriage of stopover traffic. Source: *Official Airline Guide,* Worldwide Edition, November 1978.

[2] Northwest's application also contains a request to serve Glasgow/Prestwick in addition to London as a terminal point. Its petition to show cause, however, does not address that point.

[3] Western's certificate application was filed on March 28, 1977, and its show-cause petition on July 14, 1978. Northwest's application, petition, and motion were filed on August 8, 1978.

[4] We will also consolidate into Docket 34573, that portion of Northwest's application to serve Glasgow-Prestwick as an addl tional terminal point. Anchorage-Glasgow-Prestwick authority, like Anchorage-London authority, can only be ganted to one U.S. air carrier, although the same U.S. carrier does not have to be chosen for both routes.

[5] Relying on statements in Order 78-7-128, instituting the *Florida Service Case,* Western suggests that it is no longer the Board's policy to give heavy decisional weight to

Footnotes continued on next page

fore expect this proceeding to include an examination of the need for and feasibility of various price/quality options in addition to traditional service benefits. We also want to register our continuing concern with competitive performance in international markets where there are limitations on our ability to designate new competitors. In limited designation situations, we are devising regulatory approaches to create competitive incentives as close as possible to those that exist where our designation powers are not limited. We expect the parties and the judge to explore what those approaches may be. (Examples might include temporary certification, experimental certification, see section 401(d((8) of the Act, as amended; price or service conditions; back-up awards, and other possibilities.) We are especially anxious to come up with fair and effective ways to maximize the continuing incentives of the chosen carrier to perform efficiently and offer the optimal combination of price and service options to consumers. We also want to explore ways to replace a chosen carrier which does not perform in that manner. Those parties not familiar with the Board's practice should be aware that we desire to reduce the delay and costs of the evidentiary burden associated with traditional carrier selection cases. We invite parties to explore with the judge ways to reduce the quantity of required exhibit material, eliminate duplication and excessive detail, standardize methodology, and focus on significant facts and assumptions. Resolution of these matters will, of course, remain with the administrative law judge.

Applications, motions to consolidate, and petitions for reconsideration of this order shall be filed within 20 days of the date of service of this order, and responsive answers shall be filed within 10 days thereafter.

Accordingly,

1. We institute the *Anchorage-London Service Case*, Docket 34573, and set it for hearing before an administrative law judge of the Board at a time and place to be designated after any petitions for reconsideration have been acted upon by the Board;

2. This proceeding shall consider whether the public convenience and necessity require certification of a U.S. air carrier to engage in foreign air transportation of persons, property, and mail, on a subsidy-ineligible basis, between Anchorage, Alaska, and London, England, and between Anchorage, Alaska, and Glasgow-Prestwick, Scotland and if so, which carrier should be authorized to provide the service on each of the routes; and what, if any, terms, conditions, or limitations should be placed on the operation of the carrier;

3. We consolidate the certificate applications of Western in Docket 30670 and Northwest in Docket 33173 into this proceeding;

4. We grant the August 8, 1978, motion of Northwest requesting consolidation of its application with that of Western;

5. We deny the show cause petitions of Western and Northwest;

6. We make the following persons parties to this proceeding: Western Air Lines, Inc.; Northwest Airlines Inc.; the State of Alaska; the Alaska Transportation Commission; and the City Council of the City and County of Honolulu;

7. Applications, motions to consolidate conforming to the scope of this proceeding and petitions for reconsideration of this order shall be filed no later than February 14, 1979, and answers shall be filed no later than February 26, 1979; and

8. All applicants that have not done so, shall file environmental evaluations within 20 days of the date of service of this order.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[6]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-3291 Filed 1-30-79; 8:45 am]

[6320-01-M]

[Docket 32828; Order 79-1-149]

NORTH CENTRAL AIRLINES, INC.

Statement of Tentative Findings and Conclusions and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 24th day of January, 1979.

On June 8, 1978, North Central Airlines, Inc. filed an application to amend its certificate for Route 86-F to authorize permissive nonstop service between Milwaukee, Wisconsin and Toronto, Canada. North Central also filed a petition requesting the Board process its application by show cause procedures.

In support of its application and petition, North Central alleges that under the United States-Canada Air Transport Agreement, Milwaukee and Detroit are coterminal points on U.S. Route B.7 to Toronto;[1] that since 1967, North Central has been the U.S. carrier designated to provide service between Detroit and Toronto;[2] that designation of North Central to provide Milwaukee-Toronto service derives naturally and logically from the earlier designation because under the terms of the Agreement only one carrier can be designated by the U.S. to serve the Milwaukee/Detroit-Toronto route unless Canada has given its prior approval for the designation of an additional carrier; and that under these circumstances, North Central must be the carrier designated to provide service between Milwaukee and Toronto.

North Central proposes one daily nonstop round trip between Milwaukee and Toronto in addition to its current four one-stop round trips. North Central will also provide one daily Minneapolis/St. Paul-Toronto one-stop round trip via Milwaukee.[3]

No answers to the application and petition have been filed.

We have decided to issue an order to show cause why North Central's certificate for Route 86-F should not be amended as requested. The U.S.-Canada bilateral provides that only one U.S. carrier can be designated for Milwaukee-Toronto service unless Canada has given prior approval for additional designation. Since North Central currently provides the only service on U.S. Route B.7, and no party has objected to its petition, we see no reason why the carrier should not be given nonstop authority between Milwaukee and Toronto. The new authority would be placed in Category II of the list of North Central's subsidy ineligible points.

Therefore, we tentatively find and conclude that such an amendment of the certificate of public convenience and necessity of North Central is in the public interest, and that an oral evidentiary hearing is not required.[4] We also tentatively find that North

---

Footnotes continued from last page

low-fare proposals. Western's reliance is misplaced. In that case, we were considering possible grant of permissive authority to *all* fit, willing, and able applicants. Consequently, the offer of or failure to offer low prices would not be of significant decisional importance. However, in cases where carrier selection is still at issue, such as this one, our policy remains one of according substantial weight to pricing proposals.

[6] All Members concurred.

[1] United States-Canada Air Transport Agreement, January 17, 1966, as amended.

U.S. Route B.7 reads: Milwaukee/Detroit-Toronto.

[2] *Detroit/Erie-Toronto Route Case* (Docket 16928), 46 CAB 308 (1967). North Central currently provides five daily (with certain weekend exceptions) Detroit-Toronto nonstop round trips, four of which continue on to Milwaukee (Dec. 1, 1978 OAG).

[3] North Central currently provides three and a half daily two-stop round trips between the Twin Cities and Toronto (OAG, Dec. 1, 1978).

[4] Based upon our review of the environmental evaluation submitted by North Central with its petition, the amendment of the certificate will not be a "major Federal action significantly affecting the quality of the human environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969. In addition, since the proposed service by North Central will not result in the near-term consumption of 10 million gallons of fuel, our action here will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975 (EPCA).

Central is a citizen of the United States and is fit, willing and able properly to perform the air transportation authorized by the proposed certificate amendment and to conform to the provisions of the Act and the Board's rules, regulations and requirements.

All interested persons will be given 20 days from the date of service of this order to show cause why the tentative findings and conclusions set forth here should not be made final. Answers to objections shall be filed not later than 10 days thereafter. We expect such persons to direct their objections, if any, to specific issues and to support such objections with detailed analysis. If an oral evidentiary hearing is requested, the objector should state in detail why such a hearing is necessary and what relevant and material facts he would establish through such a hearing which cannot be established in written pleadings. Vague, general or unsupported objections will not be entertained.

Accordingly,

1. We direct all interested persons to show cause why the Board should not (1) make final its tentative findings and conclusions stated here, and (2) subject to the disapproval of the President, issue an amended certificate of public convenience and necessity to North Central in the specimen form attached; [5]

2. We direct interested persons having objections to the issuance of an order making final the Board's tentative findings and conclusions, or to the issuance of the attached specimen certificate to file with the Board not later than February 15, 1979, and serve on the persons named in paragraph 5 below a statement of objections, together with a summary of testimony, statictical data, and any evidence expected to be relied upon to support the statement of objection. Answers to objections shall be due not later than February 26, 1979;

3. We will give full consideration to timely filed and properly supported objections before taking further action, except that we may proceed to enter an order in accordance with the tentative findings and conclusions stated here if we determine that there are no factual issues presented that warrant the holding of an oral evidentiary hearing; [6]

4. In the event no objections are filed, all further procedural steps will be deemed waived, and the Secretary shall enter an order which (1) shall make final the tentative findings and conclusions stated here, and (2) subject to the disapproval of the President pursuant to section 801(a) of the Act, shall issue an amended certificate to the applicant in the specimen form attached; and

5. We shall serve this order on North Central Airlines, Inc., the Ambassador of Canada in Washington, D.C., and the United States Departments of State and Transportation.

We shall publish this order in the FEDERAL REGISTER and shall transmit a copy to the President of the United States.

By the Civil Aeronautics Board. [7]

PHYLLIS T. KAYLOR,
Secretary.

[SPECIMEN CERTIFICATE]

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(as amended)

for Route 86-F

NORTH CENTRAL AIRLINES, INC.

is authorized, subject to the provisions of Title IV of the Federal Aviation Act of 1958, as amended, and the Board's orders, rules, and regulations, to engage in foreign air transportation of persons, property, and mail, as follows:

1. Between the terminal point Duluth, Minnesota-Superior, Wisconsin, and the terminal point Thunder Bay, Canada.

2. Between the terminal point Detroit, Michigan, and the terminal point Toronto, Canada.

3. Between the coterminal points Duluth/Superior, Minnesota, and Milwaukee, Wisconsin, and the terminal point Winnipeg, Canada.

4. Between the terminal point Milwaukee Wisconsin, and the terminal point Toronto, Canada.

The service authorized is subject to the following terms, conditions and limitations:

(1) The holder shall conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements, and to any other orders issued by the Board for the purpose of requiring compliance with such treaties and agreements.

(2) The holder shall render service between the points named in segments 1 and 2, except as temporary suspensions of service may be authorized by the Board. The authority to serve segments 3 and 4 is permissive.

(3) The holder may continue to serve regularly any point named through the airport last regularly used to serve that point before the effective date of this certificate. Upon compliance with such procedures as the Board may prescribe, the holder may, in addition, regularly serve a point named here through any convenient airport.

(4) The exercise of the authority granted shall be subject to the holder's first obtaining required operating rights from the Canadian government.

(5) The holder's authority to engage in the foreign air transportation of mail in the operations listed in Appendix A, Categories I and II, of Order ——, is limited to carriage on a nonsubsidy basis, *i.e.*, on a service mail rate to be paid entirely by the Postmaster General; the authority listed in these categories shall, for purposes of profit sharing, be treated separately. The authority to operate over the segments listed in Category II is conditioned upon compliance with the interim accounting procedures for profit sharing adopted in Docket 28800.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board.

The holder acknowledges and agrees that it is entitled to receive only service mail pay for the mail service rendered or to be rendered solely in connection with operations specified in paragraph (5), and that it is not authorized to request or receive any compensation for mail service rendered, or to be rendered, in excess of the amount payable by the Postmaster General.

This certificate shall become effective on ——: *Provided, however,* that the continuing effectiveness of the authority granted here shall be conditioned upon the timely payment by the holder of such license fees as may be prescribed by the Board.

The Civil Aeronautics Board has directed its Secretary to execute this certificate, and affix the Board's seal, on the ——.

———,
Secretary.

[FR Doc. 79-3289 Filed 1-30-79; 8:45 am]

---

[5] In order to give North Central maximum flexibility in scheduling its services, we would make the authority permissive.

[6] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

[7] All Members concurred.

[6320-01-M]

[Docket 34436; Order 79-1-158]

U.S.-MIDEAST AND FAR EAST FARE INCREASED: PAN AMERICAN WORLD AIRWAYS, INC.

Order of Suspension and Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 11th day of January, 1979.

By tariffs filed September 26, 1978, and which became effective on November 10, 1978, Pan American World Airways, Inc. (Pan American), increased its passenger fares in its U.S. Mideast and U.S.-Far East (via the North Atlantic) markets.[1] First-class fares were increased approximately seven percent and normal economy fares were increased by about two to three percent. Most promotional fares took increases ranging between three and seven percent. The carrier stated the increases are to bring fares on these routes more into line with winter fare increases filed for its U.S.-Europe routes;[2] to provide needed additional revenue; and to move the fare structure in the direction favored by the Board through reducing the gap between normal and promotional fares.

---

[1] Air Tariffs Corporation, Agent, Tariff C.A.B. No. 71.

[2] Pan American's U.S.-Europe normal economy fare increases were suspended by Order 78-10-61, October 5, 1978.

We find the increases in all normal economy fares and certain first-class fares, all of which were inadvertently allowed to become effective, may be unlawful, and so we will suspend them pending investigation. We will take no action against the revisions to the remaining first-class fares or to the promotional fares, which we will permit to remain in effect.

We have previously suspended proposed increases in transatlantic normal economy fares by Orders 78-9-38, August 23, 1978, 78-10-61, October 5, 1978, 78-10-143, October 20, 1978, and 78-11-93, November 9, 1978.

We have also suspended increased in U.S.-Iran normal economy fares, as well as first-class fares, proposed by Iran Air in Order 78-12-58, November 28, 1978. In those orders, we discussed our reasons for the suspensions at great length. The factors that led to our decisions—chiefly, the virtual absence of price competition in normal economy fares in those markets, the fact that these fares contain generous allowances for facilities unrelated to direct, point-to-point service (e.g., stopover and circuity privileges), and the lack of alternative "on-demand" fares—all apply equally to Pan American's mideast and Far East markets, and we incorporate our earlier findings here. There has been no change in market conditions or the carrier's pricing strategy, and Pan American has not proposed on-demand alternatives as we have suggested to all carriers in the past. Consequently, we will suspend the effective increases in its normal economy fares in these two areas.

Certain countries, where first-class fares are increased, have ordered application of a weight-based[1] baggage system in transportation affecting United States points. They are Czechoslovakia, Hungary, Iran, Pakistan, the U.S.S.R., and Yugoslavia. In our Iran Air order, we suspended that carrier's first-class fare increases because it applies the weight system which ties excess-baggage charges to the first-class fare. Hence, the higher fares would have produced increases in excess-baggage charges already found unlawfully high by the Board.[3] For the same reasons we will suspend Pan American's increased first-class fares from these six countries to the United States.

Accordingly, under the Federal Aviation Act of 1958, as amended, particularly sections 102, 204(a), 403, 801 and 1002(j)(2) thereof:

1. We shall institute an investigation to determine whether the fares and provisions set forth in the Appendix hereof, and rules and regulations, or practices affecting such fares and provisions, are or will be discriminatory, unduly preferential, unduly prejudicial or otherwise unlawful, and if we find them to be unlawful, to act appropriately to prevent the use of such fares, provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board, we hereby suspend the tariff provisions specified in the attached Appendix and defer their use from January 25, 1979, to and including January 24, 1980, unless otherwise ordered by the Board, and shall permit no changes to be made therein during the period of suspension except by order or special permission of the Board;

3. We shall submit this order to the President,[4] and it shall become effective on January 25, 1979; and

4. We shall file copies of this order in the aforesaid tariffs and serve them upon Pan American World Airways, Inc.

We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[5]

PHYLLIS T. KAYLOR,
Secretary.

APPENDIX

TRANSATLANTIC PASSENGER FARES TARIFF NO. A-1, C.A.B. NO. 71, ISSUED BY AIR TARIFFS CORPORATION, AGENT

1. All Basic Normal Economy Class Fares (YL) in U.S. Dollars and ECU's between New York, New York, on the one hand, and the following points, on the other, on pages shown in connection therewith:

Abadan and Aden on 10th Revised Page 533 and 11th Revised Page 534;
Auckland, Baghdad, Bahrain, Bangkok and Basra on 10th Revised Page 534 and 11th and 12th Revised Pages 535;
Bombay on 6th Revised Page 535 and 11th and 12th Revised Pages 536;
Calcutta and Colombo on 7th Revised Page 537 and 10th and 11th Revised Pages 538;
Dacca, Delhi, Dhahran, Doha and Dubai on 7th Revised Page 538;
Dacca on 10th and 11th Revised Pages 538;
Delhi, Dhahran, Doha and Dubai on 10th and 11th Revised Pages 538-A;
Ho Chi Minh City on 8th and 9th Revised Pages 538-C;
Hong Kong, Isfahan and Jakarta on 5th Revised Page 538-B and 8th and 9th Revised Pages 538-C;
Jeddah, Kabul, Kandahar and Karachi on 5th, 8th and 9th Revised Pages 538-C;
Kathmandu on 5th Revised Page 538-C and 8th Revised Page 538-D;
Kuala Lumpur and Kuwait on 5th, 8th and 9th Revised Pages 538-D;
Madras on 5th, 6th, 8th and 9th Revised Pages 538-E;
Manila on 5th, 8th and 9th Revised Pages 538-F;
Noumea and Okinawa on 6th, 11th and 12th Revised Pages 539;
Peking, Phnom Henh, Rangoon and Rawalpindi on 8th, 9th, 10th, 11th and 12th Revised Pages 540;
Shiraz and Shanghai on 7th, 8th, 9th, 10th and 11th Revised Pages 542; and
Taipei, Teheran and Tokyo on 3rd and 4th Revised Pages 542-A.

2. All basic Normal Economy Class Fares (YL) in U.S. Dollars from New York, New York, on the one hand, to the following points, on the other, on pages shown in connection therewith:

Brisbane on 6th Revised Page 536 and 10th and 11th Revised Pages 537;
Darwin on 7th Revised Page 538;
Darwin on 10th and 11th Revised Pages 538-A;
Melbourne on 5th, 8th and 9th Revised Pages 538-F;
Singapore on 7th, 8th, 9th, 10th and 11th Revised Pages 542; and
Sydney on 3rd and 4th Revised Pages 542-A.

3. All First Class Fares in FCU's to Boston and New York from the following points on the pages shown in connection therewith:

Budapest on 12th Revised Page 528-A;
Belgrade and Bratislava on 6th Revised Page 535 and 11th and 12th Revised Pages 536;
Brno and Budapest on 6th Revised Page 536 and 10th and 11th Revised Pages 537;
Dubrovnik on 7th Revised Page 538 and 10th and 11th Revised Pages 538-A;
Isfahan on 5th Revised Page 538-B and 8th and 9th Revised Page 538-C;
Karachi on 5th, 8th and 9th Revised Page 538-C;
Kiev on 5th Revised Page 538-C and 8th and 9th Revised Pages 538-D;
Leningrad on 5th, 8th and 9th Revised Pages 538-D;
Ljubljana on 5th Revised Page 538-D and 6th Revised Page 538-E;
Moscow on 5th, 8th and 9th Revised Pages 538-F;
Prague and Rawalpindi on 8th, 9th, 10th, 11th and 12th Revised Pages 540;
Shiraz and Split on 7th, 8th, 9th, 10th and 11th Revised Pages 542;
Titograd on 3rd and 4th Revised Pages 542-A; and
Zagreb on 9th, 10th, 11th, 12th and 13th Revised Pages 543.

[FR Doc. 79-3290 Filed 1-30-79; 8:45 am]

[6320-01-M]

[Order 79-1-67, Docket 34073, etc.]

UNITED AIR LINES, INC., ET AL.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 11th day of January, 1979. Ap-

[1] *Baggage Allowance Tariff Rules in Overseas and Foreign Air Transportation*, Order 76-3-81, March 12, 1976, where the Board concluded that space, not weight, is the principal factor determining the value of baggage services; weight may not be the sole determinant of the amount of baggage a passenger may carry without additional charge; and an excess-baggage charge assessed at the rate of one percent of the first-class fare per kilogram is unjust and unreasonable and in violation of section 404(a) of the Federal Aviation Act of 1958. See also Orders 78-4-80, April 14, 1978; 78-1-68, January 17, 1978; 77-4-97, April 20, 1977; 77-3-36, March 7, 1977; and 76-5-26, May 10, 1976.

[4] We submitted this order to the President on January 15, 1979.

[5] All Members concurred.

plicants of United Air Lines, Inc., American Airlines, Inc., Southern Airways, Inc., Allegheny Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Ozark Air Lines, Inc., Delta Air Lines, Inc., Piedmont Aviation, Inc., Ozark Air Lines, Inc., for certificate authority, Dockets 34073, 32801, 33628, 32917, 34105, 32864, 33892, 33596, 33742, 33679, 33888, 34112, 34113, 33932, 33999, 29622, 34169, 34192, 34221.

INTRODUCTION

This order will deal with two series of pleadings—those concerning applications for Memphis-Houston authority and those relating to applications for Memphis-Norfolk, Denver, Las Vegas, San Diego, San Francisco/Oakland/San Jose, Seattle authority. We have decided to consolidate all pending applications that propose to increase service in these Memphis markets and dispose of them by show cause procedures.

MEMPHIS-NORFOLK, ET AL.

On June 2, 1978, United Air Lines filed an applications to amend its certificate of public convenience and necessity to allow it to provide improved service to Memphis, Tennessee (Docket 32801). It proposed service between Memphis and Norfolk-Virginia Beach-Portsmouth-Chesapeake / Denver / Las Vegas / San Diego / San Francisco / Oakland / San Jose and Seattle-Tacoma. On the same date, it filed a motion for expedited treatment of its application, and submitted its service proposals.[1] In its motion, it emphasized the importance of quickly increasing the operating flexibility at Memphis in order to make Memphis a major transportation hub and draw some of the traffic from the congested Atlanta area. It is convinced that the initiation of these new routes will provide the public with lower fares, better schedules and more direct routings, and it expects to earn a profit of $401,000 in its first year of operation.

On June 13, 1978, Southern Airways filed an application for authority between Memphis and Denver/Las Vegas/San Francisco/Oakland/San Jose and San Diego, and moved to consolidate its application with United's. (Docket 32864) Concurrently, if filed an answer in support of United's request for expedited treatment.

On June 27, 1978, Continental Air Lines filed an answer urging us to include the Memphis-Houston and Memphis-Kansas City markets in any consideration of United's application.[2] On the same date, American Airlines applied for Memphis-San Francisco/Oakland/San Jose authority and moved to consolidate it application with Untied's (Docket 32917).

On October 2, 1978, Allegheny Airlines filed an application for Memphis-Norfolk-Denver/Las Vegas/San Diego/San Francisco/Seattle authority and also moved to consolidate with United's application (Docket 33596).

On December 5, 1978, Delta Air Lines filed a motion to consolidate its application in Docket 29622 for Memphis-Denver authority with United's, and requested exemption authority for that market in Docket 34169. On December 15, 1978, Braniff filed an answer in opposition to Delta's exemption request.

On November 17, 1978, United applied for exemption authority in the markets for which it applied in Docket 32801 (Docket 34073). United's exemption request received support from the City and Chamber of Commerce of Memphis and the Raleigh/Durham Airport Authority.

On November 17, 1978, Continental applied for Memphis-Denver authority and sought consolidation of its application with United's (Docket 34112). It concurrently filed for exemption authority for that market (Docket 34113).[3]

On November 27, 1978, American applied for exemption authority in the Memphis-San Francisco market (Docket 34105).

American, Southern and Continental filed answers stating that they had no objection to the consideration of United's exemption request, provided that their own applications in these markets, found in Dockets 34105 (Memphis-San Francisco, only), 32864 and 34113, respectively, are simultaneously considered.

On December 12, 1978, Ozark applied for Memphis-Norfolk/Denver/Las Vegas/San Diego/San Francisco/Seattle/Tacoma nonstop authority in Docket 34221 and requested consolidation of its application with United's.

We received no answers from any of the incumbents in the markets at issue to any of the pleadings filed.

MEMPHIS-HOUSTON

On October 6, 1978, American filed an application for an amendment to its certificate of public convenience and necessity to allow it to provide nonstop service between Memphis and Houston, (Docket 33628), accompanied by a motion for hearing.

In its motion, American states that the growth of Memphis and Houston in population and in economic status demands additional air service; that the best avenue to improve service is competition; and that it is prepared to bring effective competition to the Memphis-Houston market. It proposes to provide eight daily nonstop flights at convenient hours, which will permit numerous on-line connecting opportunities, and provide low-fare benefits with its Super Saver fares. It expects to generate an operating profit of $2,995,000.

On October 13, 1978, Braniff Airways filed an application for nonstop authority in the identical market, as well as a motion to consolidate its application with that of American (Docket 33679). We also received applications and motions to consolidate from Allegheny Airlines on October 23, 1978 (Docket 33742), Continental on October 31, 1978, (Docket 33888)[4] Southern on October 31, 1978 (Docket 33892), Ozark Air Lines on November 13, 1978 (Docket 33999), and Piedmont Aviation on December 7, 1978 (Docket 34192).

An incumbent in the market, Delta Air Lines, filed an answer in opposition to American's hearing request on November 6, 1978.[5]

On November 6, 1978, we also received a motion from Continental to consolidate its application for Houston-St. Louis-Chicago authority (Docket 33932).[6]

TENTATIVE FINDINGS AND CONCLUSIONS

We tentatively conclude, on the basis of the tentative findings below, that it is consistent with the public convenience and necessity to award multiple authority on a Category II subsidy-ineligible basis in the Memphis-Norfolk/Denver-Las Vegas/San Diego/San Francisco/Oakland/San Jose/Seattle/Houston markets and to grant the applications of United, Southern, American, Allegheny, Braniff, Continental, Ozark, Delta, Piedmont, and any other fit, willing and able applicant whose fitness, willingness and ability can be established by

[1] United's motion received support from the civic parties of Denver, Raleigh/Durham, Memphis, Charlotte, Las Vegas-Seattle, and Richmond. Petitions for leave to intervene were filed by the Denver civic parties and the Commonwealth of Virginia.

[2] Continental subsequently applied for Memphis-Houston authority on October 31, 1978 (Docket 33888). No carriers have applied for Memphis-Kansas City authority, and for that reason, we are denying Continental's request to consolidate that market into the present case.

[3] Continental included its traffic and financial information in its motion to consolidate. Its environmental data was filed in its exemption request.

[4] On November 3, 1978, Continental amended its motion to consolidate by including its service proposals to enable us to process its application along with that of American if we decide to use show cause procedures.

[5] In its answer, Delta stated that American's motion for hearing should be denied because: (1) the Memphis-Houston market is well-served; (2) we have more pressing matters at hand; and (3) since in another proceeding (Docket 33502) American opposed Braniff's motion for hearing on the above two grounds, we should be consistent and deny both hearing requests.

[6] In support of its motion, Continental emphasizes the advantage to us and to the public of conducting broadly-scoped, linear route proceedings.

officially noticeable data.[7] Further, we tentatively conclude that no oral evidentiary hearing is needed here since there are no material determinative issues of fact requiring such a hearing for their resolution.

Under the Airline Deregulation Act of 1978, we must approve an application for certificate authority unless we find, by a preponderance of the evidence, that approval would not be consistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). The new Act creates a presumption that the grant of all applications is consistent with the public convenience and necessity. It places on any opponents of these applications the burden of proving them inconsistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). To given such opponents a reasonable opportunity to meet an admittedly heavy burden of proof, it is our view that applicants must indicate what type of service they would provide if they served the markets at issue. This doesn't mean that an applicant must show that it will provide service if it receives authority, but rather what the nature of its service would be if it decided to serve. We will give all existing and further applicants 15 days from the date of service of this order to supply data,[8] in order to give interested persons sufficient information on the nature of the applicant's proposal to assess consistency with the public convenience and necessity. Our tentative findings concerning all applicants that have not filed illustrative service proposals are contingent on such filings.

Our tentative conclusions comport with the letter and spirit of the Airline Deregulation Act of 1978, particularly the declaration of policy set forth in Section 101 which instructs us to rely, to the maximum extent possible, on competitive forces, including potential competition.[9] See our general conclusions about the benefits of multiple authority in *Improved Authority to Wichita Case, et al.*, Order 78-12-106, December 14, 1978. Accordingly, we conclude that it is desirable to award the additional authority sought by the applicants, whether or not services are in fact operated. The existence of additional operating rights in markets now being served by incumbent carriers or authorized to be served will best effect the statute's policy objective of placing maximum reliance on the decisions of the marketplace. This will occur because newly authorized carriers may actually enter the market in order to satisfy unmet demand, both in terms of price and service, or because incumbents will be encouraged by the realistic threat of entry to meet that demand. Because demand is dynamic in character and therefore constantly changing, the most effective means to assure that competitive forces will operate quickly and efficiently is to award multiple operating authority to carriers that are fit, willing and able to provide service.

Notwithstanding the foregoing tentative conclusions in support of multiple permissive authority in this proceeding, we wish to make clear that we in no way desire to deter objections that might be asserted under the 1978 Act by air carriers, civic interests or other interested persons. The new statute contains a completely revised declaration of policy in section 102, as well as numerous additional and modified substantive provisions. Some of these statutory changes relate to considerations not expressly covered in the preceding statute. For example, while diversion from existing carriers will not be given decisive weight in rejecting applications for new authority except upon an extraordinary showing of financial jeopardy on the part of one or more existing air carriers, with the consequent loss of air service which cannot be immediately replaced, other provisions suggest that the Congress desires us to take into account other factors. These include, but are not limited to, satellite airport questions, the degree of concentration within the industry and safety. Any party in this proceeding may explain in full why the authority that we propose to grant should not issue. Such explanations should apply specifically to the applications in issue, and should be sufficiently detailed to overcome the statutory presumption of favorable treatment that the Act bestows on applications.

Upon review of the environmental evaluations submitted by American, Continental and United in their applications, to which no answers have been filed, we find that our decision to award them authority does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, or a major regulatory action under the Energy Policy and Conservation Act of 1975. We reserve judgment on the environmental consequences of other applications, pending submission of environmental data.

We have tentatively decided not to hyphenate San Francisco, Oakland and San Jose. If any carrier does not use its Oakland-Memphis or San Jose-Memphis authority, another carrier can obtain that authority under section 401(d)(5) of the Act as long as Oakland and San Jose are listed as separate points on the first carrier's certificate (*See* Order 78-11-41). We find this approach more consistent with the Act's declaration of policy which calls on us to encourage air service at major urban areas through secondary or satellite airports.[10]

We have also decided that it is not consistent with the public interest to grant the exemption requests of United, Delta, Continental, and American. Although the Airline Deregulation Act of 1978 has liberalized the criteria for granting exemptions, certification remains the morm under the Act. We have been shown no deficiencies of service of other reasons for granting the exemptions here and for giving United, Delta, Continental, and American a head-start over the other carriers to whom we propose to grant authority.[11] Moreover, the fact that we

---

[7] Officially noticeable data consist of that information filed with us under section 302.24(m) of our Rules of Practice. Applicants whose fitness cannot be so established must make a showing of fitness, as well as dealing with any questions under sections 408 and 409 of the Act. Should such applications be filed, we will then consider how to deal with them.

On the basis of officially noticeable data, we find that United, American, Southern, Allegheny, Braniff, Continental, Ozark, Delta and Piedmont are citizens of the United States and are fit, willing and able to perform the air services proposed and to conform to the provisions of the Act and our rules, regulations and requirements.

[8] They should submit an illustrative schedule of service in the markets at issue, which shows all points that they might choose to serve, the type and capacity of the equipment they would likely use and the elapsed trip time of flights in block hours over the segments. For the markets at issue only, they should also provide an environmental evaluation as required by Part 312 of our Regulations, and an estimate of the gallons of fuel to be consumed in the first year of operations in the markets if they instituted the proposed service as well as a statement on the availability of the required fuel.

[9] Section 102(a) specifies as being in the public interest, among other things:

"The placement of maximum reliance on competitive market forces and on actual and potential competition (A) to provide the needed air transportation system, and (B) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital" and "The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation service."

[10] We will give United 15 days to file any revisions to its illustrative service proposal for the Bay Area.

[11] The 1977 interline and connecting O&D for Memphis-Norfolk was 18,230, served by three round-trip single-plane flights per day; for Memphis-Denver 95,030 with seven round-trip single-plane flights per day (including one nonstop); for Memphis-Las Vegas 9,770 with two round-trip single-plane flights each day; for San Diego 16,490 served by one round-trip single-plane flight and substantial connecting flights; for San Francisco/Oakland/San Jose 44,520 with

Footnotes continued on next page

have decided to deal with the applications expeditiously through show cause procedures further supports our decision to deny the requested exemptions.

We will give interested persons 30 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers will be due within 10 days thereafter. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections. We remind objectors that under the 1978 Act they have the burden of proving why the awards proposed here will not be consistent with the public convenience and necessity.

Accordingly, 1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and amending the certificates of public convenience and necessity of American Airlines for Route 4, Southern Airways for Route 98, Allegheny Airlines for Route 97, Continental Air Lines for Route 29, Braniff Airways for Route 9, Ozark Air Lines for Route 107, and Piedmont Aviation for Route 87 so as to authorize the carriers to engage in nonstop operations between Memphis, on the one hand, and Houston, on the other; amending the certificate of public convenience and necessity of United Air Lines for Route 51 so as to authorize it to engage in nonstop operation between Memphis, on the one hand, and Norfolk-Virginia Beach-Portsmouth-Chesapeake, Denver, Las Vegas, San Diego, San Francisco, Oakland, San Jose, and Seattle-Tacoma, on the other; amending the certificate of Southern Airways for Route 98 so as to permit it to engage in nonstop operations between Memphis, on the one hand, and Denver, Las Vegas, San Diego and San Franciso, Oakland, and San Jose, on the other; amending the certificate of Allegheny Airlines for Route 97 so as to permit it to engage in nonstop operations between Memphis, on the one hand, and Norfolk-Virginia Beach-Portsmouth-Chesapeake, Denver, Las Vegas, San Diego, San Francisco, and Seattle, on the other; amending the certificates of Continental for Route 29 and Delta for Route 24 so as to permit them to engage in nonstop operations between Memphis, on the one hand, and Denver, on the other; amending the certificate of public convenience and necessity of Ozark Air Line for Route 107 so as to authorize it to engage in nonstop operations between Memphis, on the one hand, and Norfolk, Denver, Las Vagas, San Diego, San Francisco, and Seattle-Tacoma, on the other; and amending, to grant any of the authority in issue, the certificates of any other fit, willing and able applicants, the fitness of which can be established by officially noticeable material;

2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth here, to file with us and serve upon all persons listed in paragraph 12, no later than February 23, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections; answers shall be due no later than March 5, 1979;

3. If timely and properly supported objections are filed, we will accord full consideration to the matters and issues raised by the objections before we take further action;[12]

4. In the event no objections are filed, we will deem all further procedural steps to have been waived and we may proceed to enter an order in accordance with the tentative findings and conclusions set forth here;

5. We grant the motions of Braniff, Allegheny, Continental, Southern, Ozark, and Piedmont to consolidate their applications in Docket 33679, 33742, 33888, 33892, 33999, and 34192, respectively, with American's application in Docket 33628;

6. We deny the motion of Continental to consolidate its application in Docket 33932 with American's application in Docket 33628;

7. We grant the motions of Southern, American, Allegheny, Continental Delta, and Ozark to consolidate their applications in Dockets 32864, 32917, 33596, 34112, 29622, and 34221 respectively, with United's application in Docket 32801;

8. We grant the motions of Continental to consolidate the Memphis-Houston market with our consideration of the Memphis-Norfolk, *et al.* markets; to the extent that Continental requested the inclusion of the Memphis-Kansas City market, its motion is denied;

9. We grant the petitions of the Denver, Norfolk, and Commonwealth of Virginia parties for leave to intervene in Docket 32801;

10. We deny the exemption requests of United in Docket 34073, Continental in Docket 34113, Delta in Docket 34169, and American in Docket 34105;

11. We direct Southern, American, Allegheny, Braniff, Ozark, Delta, Piedmont and any other applicant for the authority in issue here to file the data set forth in footnote 8 no later than Februdry 8, 1979; and

12. We will serve a copy of this order upon all persons named in the service lists of Docket 32801 and 33628.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[13]
Secretary.

[FR Doc. 79-3288 Filed 1-30-79; 8:45 am]

Footnotes continued from last page
four round-trip single-plane flights each day; and Seattle-Tacoma, 9,760 with no single-plane service but numerous connecting flights.

[12] Since provision is made for the filing of objections to this order, we will not entertain petitions for reconsideration.

[13] All Members concurred.

[3510-13-M]

DEPARTMENT OF COMMERCE

National Bureau of Standards

FEDERAL STANDARD COBOL (FIPS PUB 21-1)

Proposed Interpretation

Under the provisions of Pub. L. 89-306 and Executive Order 11717, the Secretary of Commerce is authorized to establish uniform Federal ADP Standards. Interpretation number 5 to Federal Standard COBOL (FIPS PUB 21-1) is being recommended for Federal use. It pertains to the ACCEPT statement and the RECEIVE statement.

This proposed interpretation is in accordance with the Interpretation Procedures for Federal Standard COBOL as contained in Federal Information Processing Standards Publication (FIPS PUB) 29, dated June 30, 1974. The proposed interpretation, if adopted, will serve as an additional specification to Federal Standard COBOL, which is an adoption of the voluntary industry standard that has been developed by the American National Standards Institute.

The proposed interpretation contains a definition of the problem, discussion of the issues, recommended interpretation, supporting justification for the proposed interpretation, necessary clarifications to Federal Standard COBOL to effect the resolution, and the effective date of the interpretation.

Prior to approval of the proposed interpretation by the National Bureau of Standards, it is essential to assure that proper consideration is given to the needs and views of manufacturers, the public and State and Local governments. The purpose of this notice is to solicit such views.

Interested parties may submit comments to the Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, not later than May 1, 1979.

Dated: January 26, 1979

THOMAS A. DILLON,
Acting Director.

FEDERAL STANDARD COBOL

INTERPRETATION NO. 5—THE ACCEPT AND RECEIVE STATEMENTS

Definition of the problem

When an ACCEPT statement or a RECEIVE statement is specified such that there is interaction with a keyboard device, is it permissible for leading spaces to be deleted from the data being accepted or the message being received? Can the operating system (or interface between the keyboard device and executing program) delete leading spaces so that the program expecting the data or message would encounter a nonspace character as the first chracter of the data or message? Arbitrary deletion of these characters may change the meaning of the input data.

Issues

Given the environment where a COBOL program is interacting with a keyboard device through the use of an ACCEPT statement or a RECEIVE statement, it is necessary to determine the extent to which an implementation is permitted to transform the data transmitted from the keyboard device before the data is stored in a receiving item in the COBOL program. In particular, the question must be answered whether or not an allowable transformation of data permits the deletion of transmitted leading space characters.

Recommended interpretation

The interpretation applies to American National Standard COBOL, X3.23-1974 as it has been adopted as Federal Standard COBOL, FIPS PUB 21-1. The interpretation is that it is not permissible for an implementation to cause any data characters, except control characters in the case of the RECEIVE statement, to be deleted in the process of storing data characters into a receiving data item during the execution of an ACCEPT statement or a RECEIVE statement.

Supporting justification

References

(a) The following references to American National Standard COBOL, X3.23-1974, pertain to the issues involved in this interpretation:

(1) Page II-53, Paragraph 5.4.4(1) states:

The ACCEPT statement causes the transfer of data from the hardware device. This data replaces the contents of the data item named by the identifier.

(2) Page II-53, Paragraph 5.4.4.(4) of the ACCEPT statement states, in part:

* * * the transferred data is stored aligned to the left in the receiving data item * * *. If the size of the transferred data exceeds the size of the receiving data item * * * only the leftmost characters of the transferred data are stored in the receiving data item * * *. The remaining characters of the transferred data which do not fit into the receiving data item are ignored.

(3) Page XIII-17, Paragraph 3.4.4(2) states, in part:

The message * * * is transferred to the receiving character positions of the area referenced by identifier-1 aligned to the left without space fill.

(4) Page XIII-18, Paragraph 3.4.4.(7)c states, in part:

If a message size is greater than the area referenced by identifier-1, the message fills the area referenced by identifier-1 left to right starting with the leftmost character of the message * * * the remainder of the message can be transferred to the area referenced by identifier-1 with subsequent RECEIVE statements * * *.

(5) Page XIV-42, Paragraph 3.8, states as one of the primary functions of the Message Control System:

To perform device-dependent tasks, such as character translation and insertion of control characters * * *.

(b) The following references to American National Dictionary for Information Processing, X3/TR-1-77, also pertain to issues involved in this interpretation. Although the specific definitions cited are not included in American National Standard COBOL, X3.23-1974, the definitions are generally accepted within the data processing community and are therefore considered applicable to the terms as used in the COBOL specifications.

(1) Page 41, definition of DATA cross-references Alphanumeric Data.

(2) Page 8, definition of Alphanumeric Data, states:

Data represented by letters and digits, perhaps with special characters and the space character.

(3) Page 95, definition of Message, states, in part:

* * * an ordered series of characters intended to convey information.

(4) Page 25, definition of Character cross-references Alphanumeric Character Set.

(5) Page 8, definition of Alphanumeric Character Set, states:

A character set that contains both letters and digits and may contain control characters, special characters, and the space character.

Discussion

(a) The execution of an ACCEPT statement according to reference (a)(1) causes the transfer of data to the specified receiving data item. Data is defined to include space characters according to references (b)(1) and (b)(2). Therefore, any space character that is a part of the transfer of data from the hardware device, regardless of relative position within the data, becomes a part of the data to be stored in the receiving data item in the COBOL program. Nowhere in the COBOL specifications is an exception made that would allow for the deletion of any particular data character during the execution of an ACCEPT statement.

(b) The description of the functions for the Message Control System according to reference (a)(5) makes it clear that the Message Control System may perform character translation and insertion/deletion of control characters, during the process of transferring a message from/to a data item in the COBOL program. A space character is not a control character according to references (b)(3), (b)(4) and (b)(5).

(c) References (a)(2), (a)(3) and (a)(4) all indicate that the data/message is in effect stored aligned to the left in the receiving area. The only mention of deletion of data has to do with the case when the receiving item is smaller than the data/message. The rightmost characters which are beyond the size of the receiving data item are ignored in the case of the ACCEPT statement. For a RECEIVE statement, the rightmost characters that cannot be contained in the data item can be obtained by subsequent RECEIVE statements.

Clarification to Federal standard COBOL

None.

Effective date of interpretation

The effective data of this interpretation shall be 30 days after the date the approved interpretation is published in the FEDERAL REGISTER.

[FR Doc. 79-3222 Filed 1-30-79; 8:45 am]

[3510-04-M]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Notice of Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents & Trademarks, Washington, DC 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copes of the patent applications can be purchased from the National Technical Information Service (NTIS), Springfield Virginia 22161 for $4.00 ($8.00 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to the public to aviod premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent application 773,361: Ultrahigh Strength Steels having Improved Fracture Toughness; filed Mar. 1, 1977.

Patent application 773,362: Process for Ductilizing Tungsten and Tungsten Base Composites; filed Mar. 1, 1977.
Patent application 796,626: Focal-Surface Detector for Heavy Ions; filed May 13, 1977.
Patent application 821,868: Energy-Efficient Regenerative Liquid Desiccant Drying Process; filed Aug. 4, 1977.
Patent application 821,869: Stirring Paddle; filed Aug. 4, 1977.
Patent application 824,192: Core Coil Assembly for Use in Superconducting Magnets and Method for Assembling the Same; filed Aug. 12, 1977.
Patent application 824,572: Method and Apparatus for Controlled Condensation Isotope Separation; filed Aug. 10, 1977.
Patent application 830,972: Spatial Filter System as an Optical Relay Line; filed Sept. 6, 1977.
Patent application 830,973: Gaseous Insulators for High Voltage Electrical Equipment; filed Sept. 6, 1977.
Patent application 831,194: Preparation of High Purity Phosphorus and Compounds Thereof Particularly Radiophosphorus Compounds; filed Sept. 7, 1977.
Patent application 831,302: Up-and-Down-Chopper Circuit; filed Sept. 7, 1977.
Patent application 832,488: Sticky Foam; filed Sept. 12, 1977.
Patent application 832,489: Microwave Accelerator E-Beam Pumped Laser; filed Sept. 12, 1977.
Patent application 832,490: Electromagnetic Method for Locating Underground Anomalies; filed Sept. 12, 1977.
Patent application 833,118: Inertial Energy Storage Device; filed Sept. 14, 1977.
Patent application 833,119: Isotopic CF sub 4 Laser; filed Sept. 14, 1977.
Patent application 837,250: Combination Free Electron and Gaseous Laser; filed Sept. 27, 1977.
Patent application 838,011: High Efficiency Laser Amplifier; filed Sept. 29, 1977.
Patent application 838,273: Method for Preparing a Thick Film Conductor; filed Sept. 30, 1977.
Patent application 838,274: Method for Maximizing Shale Oil Recovery from an Underground Formation; filed Sept. 30, 1977.
Patent 4,039,378: Pu—Zr Alloy High-Temperature Activation-Measurement Foil; filed Oct. 26, 1976, patented Aug. 2, 1977. Not available NTIS.
Patent 4,044,457: Method of Fabricating Composite Superconducting Wire; filed Apr. 1, 1976; patented Aug. 30, 1977. Not available NTIS.
Patent 4,047,094: MHD Generator with Improved Network Coupling Electrodes to a Load; filed July 22, 1976; patented Sept. 6, 1977. Not available NTIS.
Patent 4,049,431: High Strength Ferritic Alloy; filed Sept. 30, 1976, patented Sept. 20 1977. Not available NTIS.
Patent 4,049,432: High Strength Ferritic Alloy-D53; filed Sept. 30, 1976; patented Sept. 20, 1977. Not available NTIS.
Patent 4,052,885: Portable Device and Method for Determining Permeability Characteristics of Earth Formations; filed Aug. 24, 1976; patented Oct. 11, 1977. Not available NTIS.
Patent 4,052,976: Non-Tracking Solar Concentrator with a High Concentration Ratio; filed June 30, 1976; patented Oct. 11, 1977. Not available NTIS.
Patent 4,057,462: Radio Frequency Sustained Ion Energy; filed Feb. 26, 1975; patented Nov. 18, 1977. Not available NTIS.
Patent 4,063,005: Cathode for Molten Salt Batteries; filed Oct. 22, 1976; patented Dec. 13, 1977. Not available NTIS.
Patent 4,064,003: Rupture Disc; filed Mar. 29, 1976; patented Dec. 20, 1977. Not available NTIS.
Patent 4,065,602: Wick-and-Pool Electrodes for Electrochemical Cell; filed Mar. 24, 1977; patented Dec. 27, 1977. Not available NTIS.
Patent 4,065,853: Portable Punch and Die Jig; filed Jan. 27, 1977; patented Jan. 3, 1978. Not available NTIS.
Patent 4,066,496: Cryogenic Expansion Joint for Large Superconducting Magnet Structures; filed June 24, 1976; patented Jan. 3, 1978. Not available NTIS.
Patent 4,067,308: Spin Ejector; filed Nov. 2, 1976; patented Jan. 10, 1978. Not available NTIS.
Patent 4,067,702: Isotope Separation by Selective Charge Conversion and Field Deflection; filed July 22, 1976; patented Jan. 10, 1978. Not available NTIS.
Patent 4,069,457: High-Energy Accelerator for Beams of Heavy Ions; filed Feb. 17, 1977; patented Jan. 17, 1978. Not available NTIS.
Patent 4,072,084: Graphite Fiber Reinforced Structure for Supporting Machine Tools; filed Dec. 17, 1976; patented Feb. 7, 1978. Not available NTIS.
Patent 4,073,680: Toroidal Band Limiter for a Plasma Containment Device; filed June 26, 1975; patented Feb. 14, 1978. Not available NTIS.
Patent 4,074,848: Method of Sealing; filed Jan. 27, 1977; patented Feb. 21, 1978. Not available NTIS.
Patent 4,075,312: Process for Recovering Evolved Hydrogen Enriched with at Least One Heavy Hydrogen Isotope; filed June 6, 1977; patented Feb. 21, 1978. Not available NTIS.
Patent 4,077,017: Ultraviolet Radiation Induced Discharge Laser; filed Apr. 4, 1977; patented Feb. 28, 1978. Not available NTIS.
Patent 4,077,838: Pyrolytic Carbon-Coated Nuclear Fuel; filed July 28, 1976; patented Mar. 7, 1978. Not available NTIS.
Patent 4,078,544: Corrugated Cover Plate for Flat Plate Collector; filed Apr. 26, 1976; patented Mar. 14, 1978. Not available NTIS.
Patent 4,078,904: Process for Forming Hydrogen and Other Fuels Utilizing Magma; filed Sep. 28, 1976; patented Mar. 14, 1978. Not available NTIS.
Patent 4,078,907: Separation and Purification of Xenon; filed Feb. 18, 1970; patented Mar. 14, 1978. Not available NTIS.
Patent 4,078,968: Sealed Heat Access Area Enclosure; filed July 28, 1976; patented Mar. 14, 1978. Not available NTIS.
Patent 4,078,969: Core Disruptive Accident Margin Seal; filed Aug. 13, 1976; patented Mar. 14, 1978. Not available NTIS.
Patent 4,079,303: Charging System and Method for Multicell Storage Batteries; filed July 28, 1976; patented Mar. 14, 1978. Not available NTIS.
Patent 4,080,227: Pyrotechnic Filled Molding Powder; filed June 6, 1977; patented Mar. 21, 1978. Not available NTIS.
Patent 4,080,250: Method of Locating a Leaking Fuel Element in a Fast Breeder Power Reactor; filed Nov. 20, 1973; patented Mar. 21, 1978. Not available NTIS.
Patent 4,080,254: Plug-to-Plug Gas Transfer System; filed Apr. 28, 1978; patented Mar. 21, 1978. Not available NTIS.
Patent 4,080,255: Horizontal Baffle for Nuclear Reactors; filed Aug. 31, 1976; patented Mar. 21, 1978. Not available NTIS.
Patent 4,080,273: Method for Photochemical Reduction of Uranyl Nitrate by Tri-N-Butyl Phosphate and Application of This Method to Nuclear Fuel Processing; filed Sept. 7, 1976; patented Mar. 21, 1978. Not available NTIS.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, CDOE 302, Arlington, Va. 22217.

Patent application 832,264: Optic Scattering Acoustic Transducer; filed Sept. 12, 1977.
Patent application 913,935: Self Adjusting Tandem Seal; filed June 8, 1978.
Patent application 918,256: Spin Rate Timing System; filed June 23, 1978.
Patent application 932,838: Variable Segmented Ramp Voltage Synthesizer; filed Aug. 11, 1978.
Patent application 933,017: Ohmic Contacts for Group III-V N-Type Semiconductors Using Epitaxial Germanium Films; filed Aug. 11, 1978.
Patent application 934,659: Green Flare Compositions; filed Aug. 17, 1978.
Patent application 935,423: Simultaneous Yellow Smoke and Yellow Flame Composition; filed Aug. 21, 1978.
Patent application 937,310: Phased-Array Maintenance-Monitoring System; filed Aug. 25, 1978.

[FR Doc. 79-3184 Filed 1-30-79; 8:45 am]

[3810-70-M]

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DEFENSE SCIENCE BOARD TASK FORCE ON EMP HARDENING OF AIRCRAFT

Advisory Committee Meeting

The Defense Science Board Task Force on EMP Hardening of Aircraft will meet in closed session 22-23 February 1979 at the Pentagon, Room 1E801, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research & Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

The Task Force will review hardening of U.S. aircraft against EMP and related subjects and will provide recommendations for appropriate actions.

In accordance with 5 U.S.C. App. I, § 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1976), and

that accordingly, this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, DoD/WHS.

JANUARY 26, 1979.

[FR Doc 79-3200 Filed 1-30-79; 8:45 am]

[3810-70-M]

DEFENSE SCIENCE BOARD TASK FORCE ON NAVAL SURFACE SHIP VULNERABILITY

Advisory Committee Meeting

The Defense Science Board Task Force on Naval Surface Ship Vulnerability will meet in closed session on 24 February 1979 in Washington, D.C.

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 to the Department of Defense.

A meeting of the Task Force on Naval Surface Ship Vulnerability has been scheduled for 24 February 1979 to review, evaluate, and summarize the vulnerability of naval surface ships with consideration of their effectiveness in carrying out future naval missions.

In accordance with 5 U.S.C. App. I § 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, DoD/WHS.

JANUARY 26, 1979.

[FR Doc 79-3201 Filed 1-30-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Bonneville Power Administration

SOUTHWEST OREGON AREA SERVICE DRAFT FACILITY PLANNING SUPPLEMENT TO FINAL ENVIRONMENTAL STATEMENT

Public Meetings

The Bonneville Power Administration (BPA) hereby gives notice of five public meetings to be held to discuss and solicit comments for the Southwest Oregon Area Service Draft Facility Planning Supplement. This environmental statement supplements BPA's Final Fiscal Year 1979 Proposed Program EIS (DOE/EIS-0005) and was prepared pursuant to DOE's implementation of the National Environmental Policy Act of 1969. This supplemental statement assesses the anticipated impacts associated with the construction of two transmission facilities: (1) a 500-kV line from Idaho Power Company's Brownlee Substation in Idaho to BPA's Slatt Substation near Arlington, Oregon, and (2) a 500-kV line from Buckley, Oregon, to Malin, Oregon.

The meeting will be held as follows:

March 5, 1979, Hermiston High School, Hermiston, Oregon, 7:30 p.m.
March 6, 1979, Union County Court House, LaGrande, Oregon, 7:30 p.m.
March 7, 1979, Oregon State Extension Service Building, 3328 Bandenberg Road, Klamath Falls, Oregon 7:30 p.m.
March 8, 1979, Deschutes County Court House Annex, Bend, Oregon, 7:30 p.m.

In addition to the nonconstruction alternative, with its lack of environmental impacts, three other routing alternatives, energy conservation, and load management were identified. The impacts at this planning stage are generalized pertaining to the normally expected effects of constructing this amount of transmission line in the study area being evaluated. More explicit impacts will be detailed when line locations have been decided upon.

All interested parties are urged to attend. All comments are welcomed in order to fully assist the agency in evaluating the environmental factors pertinent to this particular aspect of BPA's Fiscal Year 1979 Program. Comments received will be considered in the preparation of the Southwest Oregon Area Service Final Facility Planning Supplement.

For those who cannot attend the meetings, written comments will be accepted until the close of comment date, March 12, 1979. Copies of the environmental statement, as well as additional or clarifying information, may be obtained by writing or calling the Environmental Manager's Office, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208, 503-234-3361, extension 5137.

Dated at Portland, Oregon, this 24th day of January, 1979.

STERLING MUNRO,
Administrator.

[FR Doc. 79-3247 Filed 1-30-79; 8:45 am]

[6450-01-M]

Economic Regulatory Administration

POWERPLANT AND INDUSTRIAL FUEL USE ACT

Availability of Proposed Guidelines for Preparation of Environmental Reports

AGENCY: Department of Energy.

ACTION: Notice of Availability of Proposed Guidelines for the Preparation of Environmental Reports.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces the availability of proposed guidelines for environmental reports (ER). The ER must be completed by those applicants requesting a permanent exemption for a new powerplant or installation, or a permanent exemption for an existing powerplant or installation relating to cogeneration, scheduled equipment outages, state or local requirements, or intermediate load powerplants. The ER will comprise the Environmental Impacts Chapter of the Fuels Decision Report, and will serve as the starting point for preparation of DOE environmental analyses, environmental assessments, or environmental impact statements.

The proposed guidelines will be revised following the close of the public comment period. The revised guidelines will be placed on file in the ERA Public Document Room. The guidelines may be updated from time to time as DOE deems appropriate. Accordingly, applicants are advised to secure the most current set of guidelines from ERA.

Dates: Written comments by March 26, 1979.

ADDRESS: Written comments to: Office of Public Hearing Management, Department of Energy, Docket Number ERA-R-78-019A, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Steven A. Frank, Division of Coal Utilization, Department of Energy, Room 7202, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254-6246

Janine Landow-Esser, Office of General Counsel, Room 8217, 20 Massachusetts Avenue, N.W., Washington, D.C. 20461, (202) 376-4266

Robert Stern, Division of NEPA Affairs/Environment, Department of Energy, Room 7119, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633-8755

SUPPLEMENTARY INFORMATION: Interested parties are invited to submit written comments with respect to these guidelines to the Office of Public Hearing Management, Docket Number ERA-R-78-019A, Department of Energy, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461. All comments should be received by DOE no later than March 26, 1979, in order to ensure consideration.

Issued in Washington, D.C., on January 25, 1979.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

GUIDELINES FOR PREPARATION OF APPLICANT'S ENVIRONMENTAL REPORT

INTRODUCTION

These guidelines prescribe the organization and content of applicants' environmental reports. The environmental reports will comprise the Environmental Impacts Chapter of the Fuels Decision Report. Environmental reports must be submitted by powerplants and major fuel burning installations at the time an application is filed for any exemption other than those specifically excluded from the provisions of the National Environmental Policy Act by Sec. 763 of the FUA.

New electric powerplants applying for permanent exemptions must prepare the environmental report with respect to the proposed site of such powerplant and reasonable alternative sites.

The environmental reports will be used to assist DOE in its analysis of major Federal actions significantly affecting the quality of the human environment, and will serve as an initial analysis for preparation of DOE environmental assessments and environmental impact statements.

It is the general policy of DOE to expect applicants to consult with appropriate Federal, regional, state and local entities during preparation of the environmental report. In addition, DOE expects the applicant to conduct any studies which are necessary to determine the impact of the proposed and alternative actions.

In order to expedite the processing of exemption applications, DOE recommends that the applicant utilize the environmental report format provided in these guidelines. Applicants are, however, encouraged to consult with DOE (ERA) prior to preparation and filing of the environmental report in order to tailor the report to particular circumstances.

These guidelines are intended to provide an insight into the rationale and scope of environmental reports. They may be updated at any time, without public notification, in the FEDERAL REGISTER or elsewhere. Accordingly, prior to preparation of an environmental report applicants are advised to contact ERA in order to secure the most currrent set of guidelines.

Any information requested by these guidelines which has been included in previous parts of the Fuels Decision Report may be referenced by citing the page and section number in which it appears.

I. DESCRIPTION OF THE EXISTING OR PROPOSED FACILITY

A. SITE LOCATION AND SURROUNDINGS

1. Name and location of the plant

Begin with an introductory paragraph giving the name of the applicant and the location of the (proposed) facility. Location should be specified in terms of proximity to the nearest town(s) and the major cities of the county and state in which the (proposed) facility is situated; also, state the air quality control region (AQCR) in which the facility is located. A small map should be provided showing where the facility is located in the state, and what roads, railroad facilities, and/or bodies of water provide access to it.

2. Description of the facility

The total amount of land the facility occupies or proposed facility will occupy should be identified; characterize the type and topography of the land. The various components which comprise or will comprise the plant should be detailed. This includes ponds, lagoons, canals, etc. to be constructed as well as structures to be erected. Quantify how much of the existing (proposed) land area of the facility is (will be) developed and how much will remain undeveloped. Indicate which modes of transportation serve (will serve) the site, and describe the current condition of the transportation facilities. To help the DOE visualize the facility configuration, include a schematic diagram of the (proposed) facility.

B. OPERATIONS

1. Description of the facility's current or proposed operations

In this subsection, briefly describe how many megawatts (Mw) or Btu/hour of electricity the utility produces or will produce, or what products are or will be manufactured by the MFBI. For utilities, describe how many powerplants (boiler units) make up or will make up the generating station, and give their respective generating capacities. Specify whether each unit is a peak, intermediate, or baseload unit. MFBI's should provide the number of boilers that are or will be located at the plant, the size of each, and how many pounds of steam per hour each generates, or will generate. Cite the dates for planned retirement of any units.

State the age, design specifications, and operating capacities for the unit(s) for which the exemption is being filed. For utilities and MFBIs, reference the page of the Fuels Decision Report (FDR) or appropriate form which gives the design data for each unit.

2. Fuel capability

All applicants should reference the page of the FDR or appropriate form which lists what fuels or combination of fuels are capable of being fired in the existing or proposed boiler unit(s) as a primary energy source.

In addition, indicate how much fuel (the number of days supply) can be stored on site, the amount of land required, and where it is or will be stored. In addition, specify what type(s) of fuel handling equipment the facility has or plans to acquire.

3. Pollution abatement systems and equipment

a. AIR—Existing facilities must describe any air pollution control equipment in place, and identify what type of equipment serves each stack, i.e., electrostatic precipitators, baghouses, and scrubbers. Name the manufacturer, the size, and design and operational efficiency for each piece of equipment. In addition, state when the equipment was installed, whether it is currently being used, and the projected useful life for compliance with existing regulations. Also, provide a record of "down time", both for control equipment and monitoring equipment. Indicate the location of the monitoring equipment from the stack(s). If the facility has not yet been constructed, describe the air pollution control equipment which will be installed.

b. WATER—Existing or proposed waste water pollution control systems should be enumerated in the following manner: Name the bodies of water from which all processing water is drawn, state the volume of water drawn from the body of water and how it is brought into the facility. For example, is it brought into the facility via a water supply canal? In the description discuss pretreatment and treatment methods of water used by the facility. Indicate if the cooling water system and other powerplant or boiler processes operate on a once-through system or a recirculating system. Specify how liquid wastes from the various process areas are treated. Describe the volume and condition of discharged water, i.e., outline the discharge procedure for waste effluents. Name all bodies of water which are affected. A schematic diagram may be included for brevity.

Applicants with existing facilities must specify the types of fuels and effluents covered in the existing (or proposed National Pollutant Discharge Elimination System (NPDES) permit. Applicants with new facilities must state the types of fuels and effluents which must be covered by an NPDES permit. State whether application has been made for that permit.

c. Solid waste

The location of existing or proposed solid waste disposal facilities should be named. The type of soil and lining at the (proposed) disposal site should be described as well as the site's distance and relationship to nearby surface water or underground aquifers. Give the kind and amount of solid waste which is or will be generated and how it is or will be handled at the facility. If the disposal site is not within the confines of the facility's site, the way in which solid waste is or will be transported and the distance from the facility should be described. Copies of permits, applications, approvals or proposals for solid waste disposal should be included.

II. DESCRIPTION OF THE EXISTING ENVIRONMENT

Provide an overall description of existing conditions or resources which might be affected directly or indirectly by the facility's construction and/or operation; include a discussion of such pertinent topics as:

A. AIR RESOURCES

1. Applicable air pollution standards and classifications

This subsection should begin with a description of the existing ambient air quality within the facility's AQCR and within twenty-five miles of the proposed or existing facility. It should be described in terms of existing and proposed applicable Federal, state, and local standards and regulations. Indicate the air quality control region (AQCR) in which the station is or will be located, and whether or not the AQCR (or the portion in which the facility is located) is an attainment or non-attainment area for each criteria pollutant. Give the location of EPA monitors relative to the plant. The applicable regulations of the State Implementation Plan (SIP) should be cited. Indicate where the data was obtained.

The following two charts should be completed to show which national primary and

secondary abient air quality standards (NAAQS) are now being violated in the AQCR (place asterisks next to standards which are being violated).

NATIONAL PRIMARY AMBIENT AIR QUALITY STANDARDS

	SO	TSP	CO	NO	Photochemical oxidants
Three-hour standard					
24 hour standard					
Annual standard					
Visibility					

NATIONAL SECONDARY AMBIENT AIR QUALITY STANDARDS

	SO	TSP	CO	NO	Photochemical oxidants
Three-hour standard					
24 hour standard					
Annual standard					
Visibility					

In addition, give the EPA Prevention of Significant Deterioration (PSD) classifications (class I, II, or III) or applicable state requirement with regard to sulfur dioxide and particulates for the AQCR in which the facility is or will be located. Indentify PSD classifications or applicable state requirements of areas likely to be affected by emissions from the facility; or identify nonattainment areas likely to be affected by emissions.

2. Climate

Continue with a brief description (1 or 2 paragraphs) of the existing climate. Specify the temperature range in the winter and summer, and indicate the annual mean temperature. Indicate which season receives the most precipitation, state the monthly average precipitation, the periods of peak and minimum rainfall, and the average humidity. Predominant wind characteristics should be given, stating which direction the winds come from and what direction they take (i.e. the winds are from the east through southerly directions) and the frequency with which they occur. Statements should be supported with a wind rose diagram. The annual wind speed range should be identified. Incidence of storms, such as tornadoes and hurricanes, should be cited. Indicate the frequency of temperature inversions, stagnations, fog, smog or icing. Specify where the information was obtained. Cite the location of monitoring stations.

Discuss terrain features that influence the climate.

B. WATER RESOURCES

1. General description

This subsection should name the predominant water body or bodies (fresh, brackish or saline) in the facility area and their locations relative to the plant. Indicate the current uses of each of body of water (recreation, public water supply, etc.). If the body of water into which the facility discharges is used by other industrial facilities, list them and give their locations relative to the facility applicant.

Described the receiving water body's flow in terms of what body of water it flows into. Indicate the volume and speed of the current. The average flow of water receiving the plant's effluents should be stated in cubic feet per second (cfs); the minimum and peak flow rates should be given. The amount of water that flows or will flow through the facility and the volume the facility consumes or will consume, should be specified in millions of gallons per day (MGD).

2. Applicable water pollution standards and classifications

In one to three paragraphs (1) indicate the state or EPA classification for the bodies of water which are serving as intake and discharge—i.e., water quality limited, effluent limited or other; (2) state applicable water pollution control regulations, (3) indicate whether the facility is or would be located on a designated floodplain or wetland. (Consult 10 CFR Part 1022 for floodplain/wetland identification guidance.)

Give the location and numbers of the nearest EPA/state water quality reading stations above and below the (proposed) facility. Existing facility applicants must include a chart which shows allowable effluent discharge limitations according to the NPDES permit, and readings from the state or Federal monitors for each parameter over the past five years. All applicants must indicate the current ambient background concentrations, as registered by the monitoring stations, of the following pollutants:

a. Dissolved Oxygen (mg/l)
b. BOD
c. Hi COD
d. pH
e. T-ALK
f. Oil/Grease
g. Hardiness
h. P04
i. Cl
j. S04
k. p
l. Dissolved Solids
m. Suspended Solids
n. NH3
o. N0
p. Phenol
q. Fe
r. As
s. Other Trace Metals

Any violations of local, state, or Federal water quality standards which are or may be caused by the facility (including state recreation and fishing standards, and Federal Marine Water Aquatic Life Standards) must be noted.

3. Aquatic ecology

In several paragraphs, identify the most prevalent benthic organisms in each relevant body of water and specify which, if any, are important constitutents of the food chain. Enumerate the types of plankton and fish commonly found in the body of water serving the facility. The presence of aquatic vegetation such as algae, vascular plants and weeds must be described in a separate paragraph.

Any rare or endangered species (see 50 CFR Part 17) found in the facility's vicinity or in the vicinity of any related off-site, areas such as the solid waste disposal site, should be noted along with species of particular commerial or sport value. Indicate the effects of construction and operation of the facility on these species. If impacts are unknown, state the activity being conducted or planned to determine them. Also indicate mitigative measures that are underway or planned.

C. LAND RESOURCES

1. Terrestrial ecology

Terrestrial ecology should be described in several paragraphs. State the types of flora present at the facility site, at all relevant off-facility sites, and in the surrounding areas. Enumerate the fauna that are prevalent, noting any migrant and resident species and their habitats. Specify whether each specie is rare or endangered or whether it is of particular commercial or sport value. Describe the dominant plant and wildlife communities as well as any unique ecosystems or communities. Indicate the effects of construction and operation of the facility on these species.

2. Topography, physiography, and geology

Provide a description of the topographic, physiographic, and geologic features within the (proposed) facility site and surrounding area, and any relevant off-facility sites.

In the description, delineate the generalized regional stratigraphy for the area around the (proposed) facility. The depth from the surface of layers of sand, clay, etc., should be given. Any geologic faults should be noted, giving their relative location and depth. State the probability of occurrence of geologic hazards in the area, such as earthquakes, and slides subsidence, or erosion.

Soil at the site should be briefly described (1 paragraph) in terms of its components—i.e. sand, clay, etc., and the degree of its permeability and drainage. Note whether the U.S. Department of Agriculture has classified the soil type as prime and unique farmland.

3. Groundwater

Sources of groundwater should be listed by name and location relative to the facility or relevant off-site areas. Identify the location of ground water recharge areas at the facility and at relevant (proposed) off-site areas. Indicate their present water quality uses and any restrictions which may be placed on them (for instance, designation as sole source aquifer pursuant to the Safe Drinking Water Act.) State their depth below ground level. Trace the flow characteristics.

4. Current land use

Describe current land uses. Indicate zoning requirements for the county in which the (proposed) facility and relevant off-site areas are located and that of neighboring counties. Briefly describe whether the (proposed) facility and other relevant sites are in an agricultural, residential or industrial corridor. Identify what percentage of the county in which the facility and other revelant sites are located is in industrial, residential, commercial, recreation, wildlife or other usage. Delineate the type of area which surrounds the facility and other relevant sites developed for the plant's current operations or are projected for development. Give some indication of the uses of adjacent properties.

5. Transportation

The transportation system giving access to the facility and other relevant sites should be described in one or two paragraphs. Major modes of transportation which are used presently by the facility to bring fuel and other raw materials into the plant site (or will be used for the proposed facility) should be listed. The frequency and volume of each shipment should be stated also. Identify the roads which lead into the facility, and cite the major highways nearby which connect the area in which the (proposed) facility is located to other areas. In a sentence or two, describe the existing condition, utilization rate and capacity of the major roads. Name any railroads which lead into the (proposed) facility property and indicate whether or not they are used under current or projected operations. State the current level of traffic on all relevant railroads. If there are any docking facilities, describe what size boat they accommodate, whether they are currently in use or projected for use, and the frequency of use. Describe the level of current non-facility traffic on the relevant water bodies. Include in the discussion transportation systems to any relevant off-site facility areas.

6. Noise

Describe the noise levels of the (proposed) facility in relation to EPA's noise standards. If levels at the facility exceed EPA standards, specify what is being done to bring the facility into compliance.

7. Socio-cultural resources

Identify any historical, archeological, or scenic sites listed on the National Register of Historic Places and/or any other scenic or natural resources within a twenty-five mile radius of the facility.

8. Socio-economic resources

Discuss employment levels at the (proposed) facility.

IV. ENVIRONMENTAL IMPACT ASSUMING ALTERNATE FUEL

Discuss each topic required with respect to each fuel scenario and each reasonable technology variation for those scenarios.

A. AIR RESOURCES

1. Comparative air quality impacts

This subsection is structured to indicate the air quality impact of burning oil, gas, coal, and other alternate fuels and mixtures at the (proposed) facility. Prepare the following chart to show the quantity of pollutants emitted to the atmosphere under each scenario. State the pollution control assumptions underlying each estimate.

SOURCE CHARACTERISTICS FOR [NAME OF] BOILER [1]

	100% oil	100% gas	Current fuel	100% coal	100% fuel alternate	Other proposed mixture
Parameter (a)(b)						
Peak Emission Rates (1h)						
TSP						
NO						
CO						
HC						
S02						
Oxidents						
Stack Height (m)						
Stack Diameter (m)						
Effluent Exit Termperature (C)						
Effluent Exit Velocity (m/s)						
Volume Flow Rate (m3/s)						

[1] If any fuel scenario is considered by the applicant to be unreasonable or technically infeasible, the applicant should consult with ERA regarding a waiver of this portion of the Environmental Report requirement.

(a) Based on boiler operation at maximum firing rate of million Btu/hr. State what average firing rate would be.

(b) State which EPA model was used to calculate the emissions. Specify the assumptions used in the model. Indicate which person at EPA instructed you to use the model (give name, address, and phone number of the person). Calculate emissions assuming compliance with the best available control technology (BACT), prevention of significant deterioration (PSD) regulations, and lowest achievable emissions rates (LAER), as appropriate.

The next series of charts should compare ground-level concentrations of criteria pollutants under each fuel scenario listed and its effect on current ambient air quality (AAQ). Six separate charts should be prepared for each of the following scenarios: 100% oil, 100% gas, current fuel mix, 100% coal, 100% alternate fuel, and the other proposed mixture(s). A seventh chart should be prepared to compare the background plus facility impact for all fuels considered.

PREDICTED MAXIMUM GROUND LEVEL CONCENTRATIONS

Pollutant	Average period	Facility impact	Maximum impact distance (KM)	Direction from facility	Current background	Background plus facility impact
TSP	Annual					
	24-hr					
	3-hr					
SO	Annual					
	24-hr					
	3-hr					
NO	Annual					
CO	Annual					
HC	Annual					

Note projected emissions which will cause violations of applicable Federal and state primary and secondary standards in the AQCR under each fuel scenario fuel. For violations occurring under current operations on existing fuels, indicate what is being done to bring the facility into compliance. If known, specify violations of existing standards presently occurring in the AQCR in which the facility is or will be located and

whether the applicant owns the other non-compliance source(s). State the distance of the source(s) causing the violations from the facility applicant and what, if anything, is being done to bring emissions into compliance.

2. EPA classification: Prevention of significant deterioration or nonattainment area

EPA has divided the country into nonattainment areas and prevention of significant deterioration (PSD) areas. Applicants located in nonattainment areas are subject to the Clean Air Act's offset policy provisions and to lowest achievable emissions rate (LAER). The non-attainment policy requires a new source locating in a nonattainment area to obtain or purchase offsets to the point where its emissions are more than offset by existing sources. Also, any other stationary sources owned by the applicant which are situated in nonattainment areas must be in compliance with SIP's and NSPS, where applicable.

Applicants located in areas designated as non-attainment by the EPA should give the status of compliance with LAER, permit applications, and attempts to obtain offsets, pursuant to EPA's offset policy requirements.

Applicants located in PSD (attainment) areas are subject to EPA's PSD regulations and visibility requirements. Facilities are required to install best available control technology (BACT). The Clean Air Act's offset policy applies for PSD areas only if the source's emissions will cause violations of national ambient air quality standards (NAAQS). If this is the case, the new source's emissions must be offset so that air quality standards are attained. Applicants located in attainment (PSD) areas must specify the status of compliance with EPA's PSD regulations, attempts to purchase offsets where required, and any other permit applications, where appropriate. Existing facilities must indicate if they are in compliance with the SIP, and if other state and local permits are required. All applicants must identify the impacts of emissions on PSD and non-attachment areas within fifty kilometer (Km) radius of the facility, or at a lesser distance if the concentration will be less than what is specified in the PSD regulations 40 CFR 51.24(b)(19)(c), 43 FR 26380, 26384 (June 19, 1978.)

If, however, the facility's emissions will effect a Class I area which is more than fifty km from the facility, this impact must be considered 40 CFR 51.24(q)(3), 43 FR at 26387.

B. WATER RESOURCES

1. Surface water

This portion of the analysis should address surface water impacts.

Existing facilities must refer to the present NPDES permit and indicate how it would have to be modified if the facility received or was denied an exemption from burning coal, or alternate fuels, or constructing coal capability. New facilities must indicate the status of the NPDES permit application and if it includes provisions for coal or other alternate fuel burning. Describe the water intake and discharge facilities and processes which are or would be necessary for operation assuming each fuel scenario discussed in the air quality section. Indicate the amount of water consumed and discharged under each fuel scenario.

In several paragraphs, describe pretreatment and post-treatment of water for all fuel scenarios. Specify how liquid process wastes are or will be treated and how the waste generated differs under each fuel scenario. List all sources of liquid waste under each fuel scenario. State the flow rate of the receiving water in cubic feet per second (cfs). Using EPA approved models,[1] prepare a summary chart on the projected change in ambient water quality of the receiving water body as a consequence of construction or operation under each fuel scenario. Compare existing and projected water quality in terms of applicable local, state and Federal water quality standards for the following parameters listed in Section II, B.2 above. Indicate potential violations under each fuel scenario. Describe accident prevention and control measures for each fuel scenario. If construction or operation of the facility is on or proposed to occur on floodplains or wetlands, discuss all practicable alternatives to construction/operation in the floodplain or wetland, all mitigating measures available, and all necessary permits for such construction/operation.

2. Aquatic ecology

Discuss the impacts of construction and operation under each fuel scenario on aquatic ecology in terms of effects on the unique habitats or feeding grounds. Evaluate the impacts of dredging and increased sedimentation, due to construction, on habitats and species. In several paragraphs, assess the impacts on the aquatic environment of changes in water quality due to construction and/or operation under each fuel scenario—be specific in naming parameters and species affected. Documentation should be submitted to substantiate the analyses. Identify any rare or endangered species located in the aquatic environment, and note the impacts on them of construction and/or operation under each fuel scenario.

C. LAND RESOURCES

1. Groundwater

The ground water analysis should compare construction and operational impacts on groundwater under each fuel scenario. Discuss these impacts in relation to compliance with applicable local, state and Federal standards and regulations, including those under the Safe Drinking Water Act.

2. Construction impacts

Indicate required construction activities and land requirements for operation under each fuel scenario.

Specifically, indicate how the land is used now and how many acres of land would be required for facilities such as the coal pile, coal handling equipment, access roads and solid waste facilities. Specify how much land will be cleared and altered all together under each fuel scenario.

3. Regional land use

Describe how operation and construction under each fuel scenario system will affect the regional land use patterns.

Identify effects of activity related to transport, processing, storage, and combustion of each fuel considered on current land use. Indicate whether the construction or operation of any fuel scenario system will conflict with existing or proposed regional land use plans or regulations. If so, cite the plan or regulation and explain the conflict.

4. Fuel transportation

Note any changes in existing transportation requirements that will be incurred as a result of construction or operation under each fuel scenario. Indicate whether or not any projected increases will be beyond the capacity of the system. Provide documentation.

5. Solid waste disposal

Specify the amount of solid waste which will be produced annually under each fuel scenario. Indicate location of (proposed) solid waste disposal sites, and state how the waste would be transported. If the solid waste is going to be disposed of on site, describe how it is going to be handled—i.e. sluiced wet or dry to a pond, etc. Describe how the facility's solid waste disposal practices will comply with the state's and EPA's solid waste regulations, including those promulgated pursuant to the Resources Conservation and Recovery Act of 1976 and the Safe Drinking Water Act.

6. Terrestrial ecology

State known or anticipated effects of construction and operation under each fuel scenario on local flora and fauna. Indicate whether clearing the land for construction and operational activities will cause loss of habitat to rare or endangered species, or species of economic value. Identify impacts on such species. Compare estimated short and long term concentrations of SO2, NO2, and particulates, presented in the preceding sections, with the threshold concentrations for damage to vegetation or animal life indigenous to the surrounding area. In the bibliography include references to sources upon which this discussion is based.

7. Socio-cultural resources

The impacts of construction and operation under each fuel scenario on socio-cultural resources should be described, indicating whether the pollutants or other results of fuel burning (e.g., truck noise and traffic) would significantly affect known historical, archaeological, or cultural resources in the area, or scenic and natural resources.

8. Socio-economic resources

Discuss plant employment levels during construction and operation under each fuel scenario. Utilities should estimate the incremental cost to consumers of construction and operation under each fuel scenario. Also, the impacts on public services during construction and operation under each fuel scenario (sewage treatment plants, municipal water supply, housing stock) must be addressed.

9. Noise

Compare the facility noise levels under each fuel scenario and discuss the impact of their levels on sensitive receptors.

V. DISCLOSURE OF REGULATORY ACTIONS REGARDING THE FACILITY

All applicants must list all state and Federal agencies which are involved in permitting or regulating construction or operation of the facility. State whether an environmental impact statement is being or will be prepared by any other Federal or state

[1] Specify the EPA model which was used, the assumptions underlying the model and the limitations of the model.

agency which may adequately reflect the facility's construction and operation under each fuel scenario.

VI. BIBLIOGRAPHY

List alphabetically all sources consulted in doing this analysis.

VII. APPENDICES

[FR Doc. 79-3221 Filed 1-30-79; 8:45 am]

[6450-01-M]

Federal Energy Regulatory Commission

[Docket No. CP 76-60]

ARKANSAS LOUISIANA GAS CO. V. McCULLOCH OIL CORP. OF TEXAS

Order Clarifying Prior Order, Rehearing

JANUARY 19, 1979.

On Dec. 20, 1978, McCulloch Oil Corporation of Texas (McCulloch) filed an application for rehearing of the order of November 27, 1978, in this proceeding. That order provded for a formal conference in an effort to obtain the parties' stipulations to relevant facts. This proceeding was initiated by the filing of a complaint by Arkansas Louisiana Gas Company (Arkla) against McCullock, alleging that McCulloch had made and was continuing to make sales to an intrastate pipeline company from reserves that had previously been committed by contract to Arkla. McCulloch answered the complaint denying it is in violation of the Natural Gas Act. Following a settlement between McCulloch and Arkla, Arkla filed a notice of withdrawal of its complaint.

In its application for rehearing, McCulloch requests that the Commission withdraw the portion of the November 27, 1978, order rejecting McCullock's argument that the proceeding before the Commission should be held in abeyance pending resolution of McCulloch's action in U.S. District Court in which it seeks a declaration that as a matter of contract law it is under no obligation to sell gas from the subject reserves to Arkla. McCulloch argues that the Commission's statement in its order that there is an issue of dedication in this proceeding is premature. McCulloch seems to argue that if it is successful in its district court contract action there may be no basis in fact for any dedication issue under the Natural Gas Act. To complete its argument, McCulloch states that where, as here, "insufficient evidence exists to determine the factual background of the case"—and this is so stated in the order of November 27, 1978—the Commission "must withhold any decision as to the issues in the case."

With respect to this latter point, the Commission notes that the November 27, 1978, order merely attempts to provide a mechanism by which the facts necessary for a Commission decision in this matter can be developed. Moreover, that order states that any issue of dedication arising under the Natural Gas Act is a question to be resolved in the first instance by the Commission, as opposed to the courts. However, to the extent that the November 27 order can be read as determining that there is presently a dedication issue in this case, it is hereby clarified to state that *if* such an issue is determined to exist in this proceeding it shall be a matter for Commission decision.

Further, to the extent that McCulloch prefers that there be no present express determination as to its argument that Commission proceedings be held in abeyance pending McCulloch's district court action, the November 27 order is hereby clarified to the extent necessary to make clear that the Commission shall reserve express determination of McCulloch's request for abeyance. The Commission notes in this regard that notwithstanding McCulloch's position on this issue, it does not object to the formal conference instituted by the November 27, 1978 order.

That proceeding has as its purpose the parties' stipulation to the facts necessary to the Commission's resolution of the matters before it, specifically Arkla's complaint and its request to withdraw that complaint. It is clear, in any event, that McCulloch is not harmed by the procedure implemented by the November 27 order.

Once the Commission has the report of the conference before it, it will decide what further action is appropriate in the circumstances. In this regard, the order of November 27, 1978, clearly withheld any determination of the facts or legal issues in this proceeding.

The Commission orders: The November 27, 1978 order in this docket is hereby clarified in a manner consistent with the discussion in this order.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3264 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No. CP79-135]

COLUMBIA GAS TRANSMISSION CORP.

Application

JANUARY 24, 1979.

Take notice that on December 27, 1978, Columbia Gas Transmission Corporation (Applicant), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP79-135 an application pursuant to Section 7(c) of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation for two years of up to 300 Mcf per day of natural gas for the account of Fruehauf Corporation (Fruehauf) from mutually agreeable points of receipt from FrueKel, Inc. (FrueKel), an energy subsidiary of Fruehauf, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Fruehauf's Omaha plant has a contract with Metropolitan Utilities District (MUD) to furnish natural gas requirements when the supply is available and by letter dated May 30, 1978, MUD advised Fruehauf that, for the 1978-79 heating season, curtailment would be estimated at 50 days with normal weather and could range to 65 days with extremely cold weather.

Applicant further states that on July 28, 1975, FrueKel and Appalachian Exploration, Inc. entered into an agreement to drill and operate natural gas wells and for the purchase of additional quantities of natural gas, all within Tuscarawas and Guernsey Counties, Ohio and that the gas to be transported hereunder would be produced from wells wholly-owned by FrueKel.

Applicant states that it has agreed to transport up to 300 Mcf of natural gas per day from the date delivery of gas commences. Applicant further states it would receive the volumes of gas to be transported for the account of Fruehauf into its Line O-1460 in Tuscarawas County, Ohio and Line FO-1618 in Guernsey County, Ohio and would deliver such volumes to Panhandle Eastern Pipe Line Company (Panhandle) by reducing Applicant's scheduled receipts from Panhandle at existing points of delivery in Ohio. Further, Panhandle would deliver such volumes to Northern Natural Gas Company (Northern) for delivery to MUD for ultimate delivery to Fruehauf's Omaha plant through existing distribution facilities, it is said.

It is asserted that the transportation authority requested herein is in the public interest in that it would prevent the economic imbalances that would result from a severe curtailment or shutdown of the Omaha facility.

It is further asserted that Applicant has available pipeline capacity, without the construction of additional facilities, to perform the transportation service, and Applicant has agreed to transport the gas subject to the limits of its pipeline capacity and to its service obligations to its CD, WS, SGES, G, and SGS customers.

Applicant states the transportation charge for all volumes delivered into its Line O-1460 would be its average system-wide unit storage and transmission costs exclusive of company-use and unaccounted-for gas, which is currently 23.05 cents per Mcf effective June 1, 1978; for all volumes delivered into its Line FO-1618, the transportation charge would be Applicant's cost exclusive of company-use and unaccounted-for-gas, which is currently 25.95 cents per MCF effective June 1, 1978. Applicant further states it would retain for company-use and unaccounted-for gas a percentage, as reflected in its rate filings, of the total volumes received for the account of Fruehauf, which percentage is currently 2.51 percent effective June 1, 1978.

It is asserted that Fruehauf and FrueKel have indicated that this gas is not and would not be available to the interstate market inasmuch as it was developed solely for Fruehauf's use.

Applicant states that the gas to be transported would replace volumes which Fruehauf is being curtailed in its "high priority" uses.

Any person desiring to be heard or to make any protests with reference to said application should on or before February 16, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3249 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No. CP73-288]

CONSOLIDATED GAS SUPPLY CORP.

Petition To Amend

JANUARY 24, 1979.

Take notice that on December 19, 1978, Consolidated Gas Supply Corporation (Petitioner), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP73-288 a petition to amend the order issued on May 9, 1974, in the instant docket pursuant to Section 7(c) of the Natural Gas Act to authorize Petitioner to defer construction of the facilities heretofore authorized, all as more fully set forth in the petition to amend on file with the Commission and open to the public inspection.[1]

Due to changing gas supply and requirement conditions on its system, Petitioner states that it will not need the storage capacity of the Lost Creek Storage Field in Lewis and Harrison Counties, West Virginia, authorized by the aforementioned order. Consequently, Petitioner requests that it be authorized to delay until December 31, 1984, the installation of 12,000 additional horsepower at the Lightburn compressor station and the drilling of four remaining new wells and to delay until December 31, 1979, the reconditioning of four wells.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 16, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3250 Filed 1-30-79; 8:45 am]

[6450-01-M]

CONSOLIDATED OIL & GAS, INC., AND EL PASO NATURAL GAS CO.

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

JANUARY 23, 1979.

On January 8, 1979, the Federal Energy Regulatory Commission received notice from the New Mexico Oil Conservation Division of a determination pursuant to 18 CFR 274.104(a) and Section 103 of the Natural Gas Policy Act of 1978 applicable to:

API Well Number: 30-045-23005
Operator: Consolidated Oil & Gas, Inc.
Well Name: Jacquez Com No. 1-A
Field: Blanco Mesaverde
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 146 MMcf

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 15, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3274 Filed 1-30-79; 8:45 am]

[6450-01-M]

CONSOLIDATED OIL & GAS, INC., AND EL PASO NATURAL GAS CO.

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

JANUARY 23, 1979.

On January 8, 1979, the Federal Energy Regulatory Commission received notice from the New Mexico Oil Conservation Division of a determination pursuant to 18 CFR 274.104(a) and Section 103 of the Natural Gas Policy Act of 1978 applicable to:

API Well Number: 30-045-23006
Operator: Consolidated Oil & Gas, Inc.
Well Name: Chavez Com No. 1-A
Field: Blanco Mesaverde
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 292 MMcf

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977, it was transferred to the Commission. (10 CFR 1000.1)

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 15, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3271 Filed 1-30-79; 8:45 am]

[6450-01-M]

CONSOLIDATED OIL & GAS, INC., AND EL PASO NATURAL GAS CO.

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

JANUARY 23, 1979.

On January 8, 1979, the Federal Energy Regulatory Commission received notice from the New Mexico Oil Conservation Division of a determination pursuant to 18 CFR 274.104(a) and Section 103 of the Natural Gas Policy Act of 1978 applicable to:

API Well Number: 30-045-23008
Operator: Consolidated Oil & Gas, Inc.
Well Name: Montoya No. 1-A
Field: Blanco Mesaverde
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 128.0 MMcf

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 15, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3280 Filed 1-30-79; 8:45 am]

[6450-01-M]

CONSOLIDATED OIL & GAS, INC., AND EL PASO NATURAL GAS CO.

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

JANUARY 23, 1979.

On January 8, 1979, the Federal Energy Regulatory Commission received notice from the New Mexico Oil Conservation Division of a determination pursuant to 18 CFR 274.104(a) and Section 103 of the Natural Gas Policy Act of 1978 applicable to:

API Well Number: 30-045-23009
Operator: Consolidated Oil & Gas, Inc.
Well Name: Pan Am State No. 1-A
Field: Blanco Mesaverde
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 200.0 MMcf

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 15, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3281 Filed 1-30-79; 8:45 am]

[6450-01-M]

DOYLE HARTMAN AND EL PASO NATURAL GAS CO.

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

JANUARY 23, 1979.

On January 15, 1979, the Federal Energy Regulatory Commission received notice from the New Mexico Oil Conservation Division of a determination pursuant to 18 CFR 274.104(a) and Section 103 of the Natural Gas Policy Act of 1978 applicable to:

API Well Number: 30-025-26112
Operator: Doyle Hartman
Well Name: Justis State #2
Field: Langlie Mattix
County: Lea
Purchaser: El Paso Natural Gas Company
Volume: 137 MMcf

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 265.203 and 18 CFR 275.204, file a protest with the Commission on or before February 15, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3276 Filed 1-30-79; 8:45 am]

[6450-01-M]

TOM L. INGRAM AND EL PASO NATURAL GAS CO.

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

JANUARY 23, 1979.

On January 15, 1979, the Federal Energy Regulatory Commission received notice from the New Mexico Oil Conservation Division of a determination pursuant to 18 CFR 274.104(a) and Section 102 of the Natural Gas Policy Act of 1978 applicable to:

API Well Number: MC-00412
Operator: Tom L. Ingram
Well Name: Jubilee #1
Field: Wildcat—Pennsylvanian
County: Chaves
Purchaser: El Paso Natural Gas Company
Volume: 365 MMcf

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 15, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3275 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No. RP77-142]

JUAREZ GAS CO., S.A. V. DEL NORTE NATURAL GAS CO.

Complaint and Stipulation and Agreement

JANUARY 23, 1979.

Take notice that on September 30, 1977, Juarez Gas Company, S.A. (Juarez) Av. 16 de Septiembre and Bolivia Street, Ciudad Juarez, Chihuahua, Mexico, filed in Docket No. RP77-142 a complaint and motion for issuance of order to show cause

against Del Norte Natural Gas Company (Del Norte) for relief and to require Del Norte to show cause why it is not in violation of the Natural Gas Act, Executive Order No. 10485, and the Order and Permit issued by the Commission on March 4, 1968 in *Southern Union Gas Company, et al.,* Docket Nos. G-513, *et al.,* (39 FPC 223). On December 12, 1978, Juarez and Del Norte filed a stipulation and agreement in settlement of Juarez's claims against Del Norte. The complaint and the stipulation and agreement are on file with the Commission and open to public inspection. In its complaint, Juarez states that by order of March 4, 1968, in *Southern Union Gas Company.* (39 FPC 233), the Commission authorized Del Norte to lease and operate facilities within the city of El Paso, Texas necessary to receive gas from El Paso Natural Gas Company (El Paso), transport such gas to the international boundary, and export the gas (up to 4,131,000 Mcf per year and 27, 584 Mcf Per day) to Juarez and Gas Natural de Juarez, S.A. (Gas Natural).

Juarez says that the order of March 4, 1968, approved a settlement agreement which included a contract between Del Norte and Juarez. The contract authorized Del Norte to receive from Juarez 4.99 cents per Mcf as compensation for transporting the gas from El Paso's facilities to the international border, it is stated. It is further stated that this distance is less than one mile. Juarez states that it is billed on the basis of gas purportedly measured at the Del Norte meter at the international border, rather than on the basis of volumes purchased by Del Norte from El Paso.

Juarez alleges that during the years 1972 through 1976, Del Norte has received from El Paso, on the one hand, and billed Juarez and Gas Natural, on the other, the following volumes of natural gas:

Year	Gas received from El Paso (Mcf)	Del Norte meters (Mcf)	Differences
1972	2,606,268	2,719,557	+113,289
1973	3,565,777	3,770,477	+204,700
1974	3,443,480	3,526,592	+83,112
1975	3,533,031	3,713,297	+180,266
1976	3,822,654	3,876,030	+53,376

Juarez alleged that it had complained to Del Norte regarding the validity of sales volumes and the Btu content of gas it was billed, and had requested Del Norte to make available to Juarez the applicable invoices from El Paso to Del Norte, but that such requests had not been granted.

Juarez, requested that the Commission issue an order to show cause to permit Juarez to establish the following:

That Del Norte has intentionally violated the Natural Gas Act, Executive Order No. 10485, and the Commission's order of March 4, 1968; that Juarez is entitled to substantial refunds for overcharges with interest; and that henceforth, the volumes and Btu content of the gas sold by Del Norte to Juarez be measured at the meters at the El Paso facilities, provided that Juarez be billed for the lesser of the volumes measured at the El Paso meter and the volumes measured at the Del Norte meters near the international boundary.

On October 31, 1977, Del Norte filed its answer to Juarez's complaint. Del Norte stated that the contract between Del Norte and Juarez provides that errors not exceeding two percent in a meter reading are permissible within the meaning of the agreement. Del Norte agreed to make adjustments with interest as a result of any deviation in excess of the two percent tolerance.

A conference between Juarez and Del Norte was held in El Paso, Texas on November 13 and 14, 1978. Juarez and Del Norte filed a joint report on the conference on December 12, 1978. On that same day, Juarez and Del Norte also filed a "Stipulation and Agreement" in settlement of all claims outstanding as of December 12, 1978. Under the agreement, Del Norte would pay Juarez $15,000 without interest. In addition, effective with the first monthly billing period after January 1, 1979, Juarez would receive from Del Norte:

(a) with each Del Norte monthly invoice an exact copy of the applicable El Paso monthly gas volume statement for natural gas delivered to Del Norte through El Paso meter No. 30-009.

(b) each Del Norte billing statement would reflect the actual El Paso monthly gas volumes delivered to Del Norte through El Paso Meter No. 30-009 applicable for such billing period.

Juarez and Del Norte request that the Stipulation and Agreement be approved by the Commission.

Any person desiring to be heard or to make any protest with reference to said complaint and stipulation and agreement should on or before February 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act. 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 3, 5, 9 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this complaint and stipulation agreement, if no petition to intervene is filed within the time required herein. If a petition for leave to intervene is timely filed, or if the commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3251 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No. CP79-136]

KENTUCKY WEST VIRGINIA GAS CO.

Application

JANUARY 24, 1979.

Take notice that on December 26, 1978, Kentucky West Virginia Gas Company (Applicant), P.O. Box 1388, Second National Bank Building, Ashland, Kentucky 41101, filed in Docket No. CP79-136 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation and operation of minor facilities and to make deliveries of natural gas to its corporate parent, Equitable Gas Company (Equitable), for resale to 61 right-of-way grantors, all as more fully set forth in the appendix hereto and in the application which is on file with the Commission and open to public inspection.

Applicant asserts that it would, as consideration or part consideration for certain rights-of-way and leases granted in its operating area in eastern Kentucky, provide natural gas service for use by the 61 right-of-way grantors for priority one domestic uses in rural dwellings. It is estimated that the domestic usage by each of these right-of-way grantors would be approximately 250 Mcf of natural gas per year on the average, it is said.

Applicant states that the service sought to be rendered by it through Equitable to the 61 right-of-way grantors in eastern Kentucky primarily would be for priority one domestic needs and would be to the benefit of all the customers of Applicant since it

would permit and expedite the construction of facilities necessary for the obtaining and transporting of new supplies of natural gas through easement arrangements. Virtually all of the 61 right-of-way grantors proposed to served granted easements only in reliance upon obtaining service as part of the agreement, Applicant further states.

Applicant estimates the cost of each tap to be $152.00. It is indicated that the cost of facilities would be financed from cash on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 16, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

APPENDIX

RIGHT-OF-WAY GRANTORS

1. Ralph G. Thacker, Rt. 6, Box 5514, Pikeville, Kentucky 41501
2. Richard Wells and Gail Wells, Smilax, Kentucky 41764
3. Critie Stewart, et al., Skyline, Kentucky 41851
4. Coy Cornett, Skyline, Kentucky 41851
5. Dave Hall, et ux., Hindman, Kentucky 41822
6. Bessie Napier, et al., Hazard, Kentucky 41701
7. Claude Webb, Langley, Kentucky 41645; W. H. May, Langley, Kentucky 41645; Frasure's Catalog Agency (Ronald Frasure, Pres.), Prestonsburg, Kentucky 41653; Melvin Creech or Jean Creech, Bearville, Kentucky 41715
8. Inez S. Hammonds, widow and Patsy Hammonds, single Star Rt., Prestonsburg, Kentucky 41653; Rowland Gray, Emma Lou Gray, Charles E. Gray and Brenda Gray; Star Rt., Prestonsburg, Kentucky 41653.
9. Michael Hamilton and Joyce Hamilton, Grethel, Kentucky 41631
10. Sarah Hammonds, et al., Star Rt., Prestonsburg, Kentucky 41653; G. B. Lafferty, and Victoria Lafferty, Star Rt., Prestonsburg, Kentucky 41653
11. Molly Owens, Langley, Kentucky 41645
12. Ethel Corder, widow, Garrett, Kentucky 41630; Dave Conley & Gartha Conley, Garrett, Kentucky 41630; Andy Conley, Garrett, Kentucky 41630; Elza Bolen, Garrett, Kentucky 41630; Danny O'Quinn & Billie M. O'Quinn, Garrett, Kentucky 41630; Sally Shear, Garrett, Kentucky 41630; Homer Draughn, Garrett, Kentucky 41630; C. E. Allen, Garrett, Kentucky 41630; Josephine Webb, Garrett, Kentucky 41630
13. Eddie B. Lewis and Richard Lewis, J., Emma, Kentucky 41625
14. Verdie Callahan and Cooley Callahan, Slemp, Kentucky 41763; Harry Fred Hall and Carolyn Hall, Slemp, Kentucky 41763; Everette and Lilly Kelly, Slemp, Kentucky 41763; John L. Bush and Mary Bush, Slemp, Kentucky 41763
15. Bently Combs and Eva Combs, Carrie, Kentucky 41725
16. Bill Stacy and Elizabeth Stacy, Ary, Kentucky 41712; Arminda Hays, et ux., et al., Ary, Kentucky 41712
17. Ted Napier, et al., Darform, Kentucky 41701; Levi Terry, Talcom, Kentucky 41765; Dora Dobson (Tract 1), Hindman, Kentucky 41822; Marlous Napier, Talcom, Kentucky 41765; William H. Terry, Talcom, Kentucky 41765; Willard Ritchie, Talcom, Kentucky 41765; Essie Patrick, Talcom, Kentucky 41765; Dora Dobson (Tract 2), Hindman, Kentucky 41822; Marcus Sizemore, Talcom, Kentucky 41765; Sadie Terry, Talcom, Kentucky 41765; Bettie Sizemore, Talcom, Kentucky 41765; Goodloe Bros. Co., Inc. (Tract 8), 2000 Parkway Towers, Nashville, Tennessee 37207; Goodloe Bros. Co., Inc. (Tract 10), 2000 Parkway Towers, Nashville, Tennessee 37207
18. Curtis Hatfield, Watergap, Kentucky 41665
19. Ronald Frasure, Prestonsburg, Kentucky 41653
20. Ronald Frasure, Prestonsburg, Kentucky 41653
21. Ronald Frasure, Prestonsburg, Kentucky 41653
22. John Canada, Racoon, Kentucky 41557
23. John Coleman, Racoon, Kentucky 41557
24. Willie Ratliff, Elkhorn City, Kentucky 41522
25. Marcus Elloit, West Prestonsburg, Kentucky 41668; Bennie Rose, West Prestonsburg, Kentucky 41668; Nan Robinson, West Prestonsburg, Kentucky 41668
26. Calvin Thacker, Pikeville, Kentucky 41501
27. Dewey and Mildred M. Caudill, Rt. Box 25, Viper, Kentucky 41774; Denver Miniard, Slemp, Kentucky 41763
28. Hazel Tibbs, Pikeville, Kentucky 41501; Carmel Adkins, Pikeville, Kentucky 41501

[FR Doc. 79-3252 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No. CP79-146]

MICHIGAN WISCONSIN PIPE LINE CO.

Application

JANUARY 24, 1979.

Take notice that on January 9, 1979, Michigan Wisconsin Pipe Line Company (Applicant), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP79-146 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Northwest Pipeline Corporation (Northwest), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that to offset declining gas production from its traditional sources of supply in the Hugoton-Anadarko area of Oklahoma, Texas, and Kansas and offshore and onshore Louisiana, Applicant has embarked on extensive gas exploration and development program in the Rocky Mountains, particularly within the State of Wyoming. It is further stated that as a result of such program, gas reserves attributable to working interests of Applicant have been developed in an approximate 8,000 acre tract encompassing Sections 2-11 and Sections 15-17 Sweetwater County, Wyoming (the Lincoln Road Prospect). It is indicated that Applicant presently does not have any gathering or transmission facilities within the State of Wyoming. Applicant states that it has made transportation arrangements with Northwest in order to make the gas supplies available to its existing pipeline system. Northwest has extensive pipeline facilities in the Rocky Mountains including an existing gathering system connecting the Lincoln Road Prospect to its Big Piney transmission facilities, it is said. It is indicated that pursuant to a gas gathering and transportation agreement dated September 23, 1977, between the two companies, Northwest would gather and transport up to 10,000 Mcf of natural gas per day attributable to Applicant's working interest gas from the Lincoln Road Prospect to its mainline.

The application states that all gas transported by Northwest in its Big Piney transmission facilities is processed for the removal of liquid hydrocarbons at Northwest's Opal Gasoline Plant prior to being delivered to

Northwest's mainline system. Applicant states that pursuant to the gas gathering and transportation agreement, it would have the option, prior to the initial deliveries of the Lincoln Road Prospect gas, either (1) to furnish Northwest an amount of plant fuel and shrinkage attributable to the liquid products extracted from Applicant's gas and in turn Northwest would return 100 percent of the net revenues attributable to the liquid products extracted reduced by Northwest's actual cost of service incurred in such extraction operations; or (2) to sell to Northwest 5 percent of the volumes delivered by Applicant from the Lincoln Road Prospect to Northwest for transportation service. It is stated that the price to be paid by Northwest for such gas shall be the applicable national rate in effect at the time, or in the event of deregulation, the average price paid by others, including Northwest, under long-term contracts, for gas produced from the Lincoln Road Prospect. Applicant states that it has elected to sell to Northwest 5 percent of the volumes delivered by Applicant to Northwest.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 16, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3253 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No. RP76-91]

MONTANA-DAKOTA UTILITIES CO.

Tariff Filing (Revision in Curtailment Plan)

JANUARY 19, 1979.

On January 15, 1979, Montana-Dakota Utilities Co. ("MDU"), 400 North Fourth Street, Bismarck, North Dakota 58501, filed pursuant to Section 4 of the Natural Gas Act a new tariff sheet as part of its FERC Gas Tariff, First Revised Volume No. 1. MDU states that the new tariff sheet, entitled First Revised Sheet No. 56, increases from 4,000 to 7,500 the number of new residential and small commercial customers which MDU will be permitted to connect under its FERC curtailment plan, all as more fully set forth in MDU's filing which is on file with the Commission and open to public inspection.

In support of its filing, MDU urges that recent reserve additions, decreased usage per customer, declines in industrial markets, and the needs of potential homebuyers justify an increase from the level of new attachments which has been permitted for the past two calendar years to the newly proposed level of 7,500 per year. MDU states that it does not propose any other changes in its currently effective FERC curtailment plan.

The proposed effective date of the new tariff sheet is February 15, 1979. MDU requests that any suspension of the effective date be limited to one day.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before February 2, 1979. Protests will be considered by the Commission 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 as a party in any hearing therein must file a petition to intervene.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3265 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-19]

MOUNTAIN FUEL SUPPLY CO.

Order Accepting for Filing and Suspending and Setting for Hearing proposed Rate Increase, Subject to Condition

JANUARY 17, 1979

On December 18, 1979, Mountain Fuel Supply Company ("Mountain Fuel") tendered for filing a proposed rate increase in the transportation rate contained in its special Rate Schedule X-4. The increase would be from 4¢/mcf to 13.2¢/mcf at 14.73 psia. Rate Schedule X-4 is a Gas Purchase and Exchange Agreement between Mountain Fuel and Colorado Interstate Gas Company (CIG) providing for a sale price at the appropriate national rate, of a portion of the gas produced by Mountain Fuel from the Spearhead Ranch area of Wyoming. The rate change is based upon: (1) claimed increases in the investment costs, (2) reduced transportation volumes, and (3) a reduction in the estimated remaining life of the reservoir.

Mountain Fuel supported its $156,000 increase with only Statements L, M, & N even though the increase does not qualify under Section 154.63(b)(4) (Minor Rate Increase) of the Commission's Regulations. In as much as the increase concerns the transportation rate portion of a single rate schedule, for purposes of the filing requirements we shall treat this filing as a minor rate increase and accept the supporting statements as adequate compliance with the Commission's filing requirements.

Based on a review of Mountain Fuel's filing herein, the Commission finds that the proposed higher rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept Mountain Fuel's proposed rate increase for filing, suspend its use for five months or until June 18, 1979, when it shall become eligible to become effective in the manner prescribed in Section 4 of the Natural Gas Act, subject to refund, and shall set the matter for hearing, as hereinafter conditioned.

Mountain Fuel's rates reflect corporate federal income taxes calculated at a 48 percent rate. However, since Congress recently adopted a tax measure which reduced the corporate federal income tax rate from 48 percent to 46 percent effective on January 1, 1978,[1]

[1] H.R. 13511, PL 950600 (1978).

we shall require Mountain Fuel to file revised tariff sheets reflecting the lower rate (46 percent). However, Mountain Fuel shall not be permitted to make offsetting rate adjustments other than those made pursuant to Commission approved tracking provisions, those adjustments required by this order, and those required by other Commission orders.

The Commission orders:

(A) Mountain Fuel's proposed rate increase in the Transportation rate contained in Rate Schedule X-4 of its FERC Gas Tariff is hereby accepted for filing and suspended for five months, until June 18, 1979, at which time it may be made effective, subject to refund, upon motion filed by Mountain Fuel in accordance with the Natural Gas Act, as hereinafter conditioned.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held concerning the lawfulness of the increased rates proposed by Mountain Fuel.

(C) Staff shall serve its top sheets on or before April 20, 1979.

(D) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (18 C.F.R. 3.5(d)), shall convene a settlement conference in this proceeding to be held within 10 days after the service of a Statement of Position by the Staff in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary and to rule upon all motions (except motions to consolidate, sever, or dismiss), as provided for in the rules of practice and procedure.

(E) Thirty days prior to the end of the suspension period prescribed in this order, Mountain Fuel shall file revised tariff sheets reflecting the 46 percent corporate federal income tax rate. However, Mountain Fuel shall not be permitted to make offsetting rate adjustments other than those made pursuant to Commission approved tracking provisions, those adjustments required by this order, and those required by other Commission orders.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3254 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No. ER77-584]

NEW ENGLAND POWER CO.

Certification

JANUARY 18, 1979.

Take notice that on August 10, 1978, Presiding Administrative Law Judge Michel Levant certified the motion to terminate Docket No. ER 77-584. The Presiding Judge indicated after the Staff Counsel withdrew its prior objections when New England Power Company submitted additional data and since no other parties have intervened he believes that termination of the above referenced docket is appropriate and in the public interest.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before February 2, 1979. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3255 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No. CP79-138]

NORTHERN NATURAL GAS CO. AND PANHANDLE EASTERN PIPE LINE CO.

Application

JANUARY 24, 1979.

Take notice that on December 29, 1978, Northern Natural Gas Company (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, and Panhandle Eastern Pipe Line Company (Panhandle), 3000 Bissonnet Street, Houston, Texas 77001, (Applicants) filed in Docket No. CP79-138 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas in Kearny and Wichita Counties, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that they are parties to a gas exchange agreement dated August 11, 1978, which provides for the gathering, delivery and exchange of natural gas produced from certain acreage located in Kearny and Wichita Counties, Kansas. It is stated that the purpose of this exchange is to enable Applicants to receive into their respective pipeline system for general system use, by displacement, natural gas that has been committed by producers from properties which may not otherwise be feasible or economical to connect to the existing system of the Applicant to which the gas is committed.

Applicants further state that they request authorization to add wells to and delete wells from the exchange agreement as required from time to time. Such authorization would be limited to an area in Kearny and Wichita Counties, it is asserted.

It is asserted that the proposed exchange would be on a thermal basis and balancing would be acheived as nearly as practicable each month and any imbalance of deliveries during any month would be corrected by the delivery of gas from the party owing gas to the other at the existing point of interconnection of the facilities of the Applicants in Kiowa County, Kansas.

Applicants further state that they would install jurisdictional facilities required to connect any such exchange well to their system pursuant to their respective budget-type certificates for gas-purchase facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 16, 1979, file with the Federal Energy Regulatory Commission, Washington D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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, Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3256 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No. CP79-139]

NORTHERN NATURAL GAS CO.

Application

JANUARY 24, 1979.

Take notice that on December 29, 1978, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed an application in Docket No. CP79-139 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant (1) to construct and operate certain facilities; (2) to operate certain existing facilities in interstate commerce; and (3) to transport gas in interstate commerce, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to construct and operate 50.4 miles of 12-inch pipeline and to operate in interstate commerce 37.5 miles of 12-inch pipeline and 14.0 miles of 8-inch pipeline previously used for the intrastate transportaion of natural gas. The subject facilities would enable Applicant to transport in interstate commerce natural gas purchased and owned in the Vandagriff, Cass Ranch and Gardner Draw Fields in Eddy County, New Mexico, it is stated.

Applicant states that it has entered into gas purchase contracts with Mesa Petroleum Co., Phoenix Resources Company and Estoril Producing Corporation, *et al.*, for the purchase of gas from the above-referenced fields. The three contracts resulted in a dedication of gas from one hundred seventy-five thousand acres in Eddy County, it is said. In addition, the Exploration and Production Division of Applicant is lessee of twenty-five thousand acres in Eddy County, Applicant states. Development on such acreage to date has resulted in proven and probable reserves of approximately 57,000,000 Mcf, it is asserted.

The total cost of Applicant's proposed facilities is estimated to be $6,599,750, which cost will be financed from cash on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 16, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3257 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No. RP78-50]

NORTHWEST PIPELINE CORP.

Continued Informal Conference

JANUARY 17, 1979.

Take notice that on January 30, 1979, at 10:00 a.m. a settlement conference will be held in the instant docket. The conference will continue on January 31, 1979. The conference will be for the purpose of finalizing a stipulation and agreement settling this proceeding.

The conference will be held in Washington, D.C. Parties attending the conference should contact Staff Counsel on the morning of the conference for information on the location of the meeting. Staff Counsel assigned to this case is Donald Shepler, telephone No. 202/275-4211.

Any party desiring to attend said settlement conference is invited to attend.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3258 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Project No. 2149]

PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY, WASH.

Land Withdrawal (Additional), Washington

JANUARY 19, 1979.

On March 30, 1970, Public Utility District No. 1 of Douglas County, Washington, filed transmission line Exhibit K sheets 1 through 57 (FPC Nos. 2149-167 through -224), pursuant to Article 30 of the license for Project No. 2149 (Wells Hydroelectric Project). This filing included 7.22 acres of United States lands not previously withdrawn for the project.

In accordance with the provisions of Section 24 of the Act of June 10, 1920, as amended, notice is hereby given that the land hereinafter described, insofar as title thereto remains in the United States, is from the date of said filing, reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress:

WILLAMETTE MERIDIAN, WASHINGTON

All portions of the following described subdivision lying within 117.50 feet on either side of the center line survey of the transmission line right-of-way location as delimited on map Exhibit K sheet 53 of 57 (FPC No. 2149-220):

T. 24 N., R. 21 E.,
Sec. 32, NE¼SW¼

The general determination made by the Federal Power Commission at its meeting of April 17, 1922 (2nd Ann. FPC Rept. 128), with respect to lands reserved for transmission purposes only, is applicable to this land.

Copies of the aforementioned map Exhibit K sheet 53, have been transmitted to the Geological Survey and Bureau of Land Management.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3259 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No. RP78-50]

NORTHWEST PIPELINE CORP.

Continued Informal Conference

JANUARY 17, 1979.

Take notice that on January 30, 1979, at 10:00 A.M. a settlement conference will be held in the instant

docket. The conference will continue on Janury 31, 1979. The conference will be for the purpose of finalizing a stipulation and agreement settling this proceeding.

The conference will be held in Washington, D.C. Parties attending the conference should contact Staff Counsel on the morning of the conference for information on the location of the meeting. Staff Counsel assigned to this case is Donald Shepler, telephone no. 202/275-4211.

Any party desiring to attend said settlement conference is invited to attend.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3266 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No. CP79-148]

OKLAHOMA NATURAL GAS CO.

Petition for Declaratory Order

JANUARY 19, 1979.

Take notice that on January 12, 1979, Oklahoma Natural Gas Company (Applicant), 624 South Boston Avenue, Tulsa, Oklahoma, filed in Docket No. CP79-148 a petition pursuant to Section 501 of the Natural Gas Policy Act of 1978 (NGPA) and § 1.7(c) of the Commission's Rules and Regulations (18 CFR 1.7(c)) for an order declaring Oklahoma Natural Gas Company to be an intrastate pipeline as defined in Section 2(16) of the NGPA, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Oklahoma Natural states that it is concerned that without such a clarification, it might be construed that it is a local distribution company as defined in Section 1(17) of the NGPA or that it is exempt from the Natural Gas Act (NGA) *solely* because of Section 1(c) of the NGA and that therefore Oklahoma Natural would not be an intrastate pipeline under the NGPA. If Oklahoma Natural is not an intrastate pipeline within the meaning of the NGPA, then Oklahoma Natural will not be able to (1) transport gas for interstate pipelines under Section 311(a) of the NGPA; (2) sell gas to the interstate pipeline market under Section 311(b) of the NGPA; or (3) make assignments of gas purchase contracts under Section 312 of the NGPA. Applicant states that it is not a local distribution company as that term is defined in the NGPA and that less than 1% of its utility sales is attributable to purchases from interstate pipelines.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 2, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3267 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No RI79-21]

SHELL OIL CO.

Petition for Declaratory Order

JANUARY 19, 1979.

Take notice that on December 18, 1978, Shell Oil Company [Shell] filed a petition pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure (18 CFR 1.7(c)) requesing that the Commission issue an order removing any uncertainty as to the maximum lawful rate which Shell is entitled to receive for certain wells drilled in the Federal Domain Offshore Louisiana, and also in state waters offshore and the swamp and marsh areas onshore Louisiana.

Shell requests that the Commission clarify whether the utilization of previously set surface casing strings in offshore drilling precludes the producer from attaining the vintage price which would otherwise be attributable to that well.

Shell further states that a similar condition exists in State waters and the swamp and marsh areas of Southern Louisiana, where drilling is performed from a fixed platform. Shell requests clarification as to whether such "milling out" operations are considered a new onshore well, provided that the new well is drilled outside of the existing proration unit.[1]

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 26, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

[1] Alternatively if the well complies with the provisions of ordering paragraph (p) (Opinion No. 770-A, p. 196, slip opinion), it may qualify as a new onshore well within the meaning of Opinion 770-A although it is within an existing proration unit.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3268 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No. RI79-23]

SOUTHERN UNION GATHERING CO.

Order Rejecting Rate Filings or, in the Alternative, Providing for Hearing on and Suspension of Proposed Changes in Rate and Allowing Rate Changes To Become Effective Subject To Refund

JANUARY 17, 1979.

Southern Union Gathering Company (Southern Union) on December 11, 1978, filed two notices of change in rate, designated as Supplement Nos. 22[1] and 23[2] to its FERC Gas Rate Schedule No. 1, proposing to increase the gathering charge from 11.2743¢ to 19.2740¢ per Mcf at 14.73 psia for sales of natural gas to El Paso Natural Gas Company (El Paso) from the Kutz and San Juan Basin Areas, New Mexico. The proposed increases amount to an estimated $2,207,098 in increased annual revenues. Southern Union also filed on December 11, 1978, a new agreement, designated as Supplement No. 21 to its FERC Gas Rate Schedule No. 1, providing for the proposed increases in its gathering charge. In addition, Southern Union filed a statement and comparative cost data in support of its proposed increases.

Southern Union is not engaged in the production of natural gas. It purchases gas from both large and small producers, and then gathers, compresses and processes such gas before reselling the residue gas to El Paso. Southern Union's sale was classified as a producer type sale by the Federal Power Commission in 1955. The price for the sale to El Paso consists of the average wellhead cost of the gas purchased by Southern Union plus its gathering charge.

The rates for Southern Union's sale to El Paso are governed by the Natural Gas Policy Act of 1978 (NGPA) and the Commission's implementing regulations with respect thereto. Section 4 of the Natural Gas Act is not

[1] Covers Kutz Area.
[2] San Juan Basin Area.

applicable, and therefore the filings are rejected. Any relief from the otherwise applicable maximum lawful price for the first sale must be obtained pursuant ot Section 502(c) of the NGPA.

Our rejection is without prejudice to Southern Union's right to refile under Section 502(c) of the NPGA. Any request for relief should include detailed cost and volumetric data associated with each of the various functions of the gathering system, *i.e.*, gathering, compression, dehydration, etc. The data should be shown separately for the subject sale, any other jurisdictional sales and intrastate sales. In the event any costs represent allocations, the method of allocation should be detailed. The data should include, but not be limited to, original and net remaining investment (specifying the method of depreciation) for the most recent three year period; total operating expense broken down by category, total revenue broken down by source, and total volumes with Btu content associated with the above costs and revenues. Southern Union may also include any future projections of this data stating the basis for such projections. In addition, identification of the contract, volumes purchased, and prices paid will be necessary for each jurisdictional supplier sale to Southern Union.

However, even if Section 4 of the Natural Gas Act were determined to apply, Southern Union's filings would be treated as a request for special relief. Therefore, the rate change filings would be improper and would be rejected. Southern Union is not entitled to the requested rates unless or until the Commission takes favorable action on the request for relief.

In the alternative, if the rate change filings were made properly under the Natural Gas Act, the proposed increased rates filed by Southern Union may be unjust, unreasonable, unduly discriminatory, or preferential or otherwise unlawful and should be suspended.

The new agreement pertaining to the proposed rates shall be accepted for filing.

The Commission finds: The rate filings should be rejected, or, in the alternative, it is in the public interest and consistent with the Natural Gas Act that the Commission enter upon a hearing regarding the lawfulness of the proposed changes, and that the supplements relating thereto be suspended and their use be deferred as ordered below.

The Commission orders: (A) For the reasons set forth in the body of this order, Supplement Nos. 22 and 23 to Southern Union's FERC Gas Rate Schedule No. 1 are rejected.

(B) In the event the rate filings are not subject to rejection, under the Natural Gas Act, particularly Sections 4 and 15, the Regulations pertaining thereto [18 CFR, Chapter I], and the Commission's Rules of Practice and Procedure, a public hearing shall be held concerning the lawfulness of the proposed changes.

(C) Pending hearing and decision thereon, Supplement Nos. 22 and 23 to Southern Union's FERC Gas Rate Schedule No. 1 are suspended and their use deferred until June 11, 1979. The supplements shall become effective, subject to refund, as of the expiration of the suspension period without any further action by Southern Union or by the Commission. Southern Union shall comply with the refunding procedure required by the Natural Gas Act and Section 154.102 of the Regulations thereunder.

(D) Unless otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedule sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period, whichever is earlier.

(E) Supplement No. 21 to Southern Union's FERC Gas Rate Schedule No. 1, containing the new agreement with El Paso, is accepted for filing as of January 11, 1979.

(F) Southern Union shall file within 30 days of the issuance of this order comments on the propriety of the treatment accorded its proposed rate changes. If Southern Union believes that it is entitled to file for relief other than pursuant to Section 502(c) of the NGPA, it should set forth the applicable section of the Natural Gas Act or the NGPA and should explain the basis for its position.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3260 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No. CP77-127]

TENNESSEE GAS PIPELINE CO., A DIVISION OF TENNACO INC., AND EAST TENNESSEE NATURAL GAS CO.

Petition To Amend

JANUARY 24, 1979.

Take notice that on December 27, 1978, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, and East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP77-127 a petition to amend further the order issued February 12, 1977, as amended January 13, 1978, in the instant docket pursuant to Section 7(c) of the Natural Gas Act and § 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) granting a certificate of public convenience and necessity authorizing the transportation of up to 750 Mcf[1] of natural gas per day for a term of two years for Briggs, a Division of the Celotex Corporation (Briggs) from the Tomball Field, Harris County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to order of January 13, 1978, Applicants were authorized to transport natural gas received from a different source, in lieu of from ENERCO Exploration and Management Company, specifically, Texas General Petroleum Corporation and Bill Forney Inc. (General, *et al.*)[2] it is said. Applicants further state that no further change in the February 13, 1978 authorization in respect to the transportation and delivery of gas by Tennessee to East Tennessee and by East Tennessee to Knoxville Utilities Board (KUB) was requested nor required in order to effect deliveries of this new gas supply to Briggs.

It is asserted that Briggs has a continuing need for the gas supplied by its purchases from General, *et al.*, and that authorization expires on February 13, 1979; in order to ensure that Briggs' plant would be able to continue in operation and not be forced to shut down, Applicants request that the Commission further amend the said authorization to provide for the continuation of the presently authorized transportation service for Briggs for another two years, until February 13, 1981.

It is stated that the compensation to be paid by Briggs to Tennessee for the transportation service by Tennessee shall consist of the following charges:

(a) *Demand Charge:* For each month, a demand charge equal to $1.70 per Mcf Multiplied by the Maximum Daily Quantity.

(b) *Volume Charge:* For each month a volume charge equal to 21.64 cents per Mcf multiplied by the total of the Scheduled Daily Volumes during such month.

It is further stated that the compensation to be paid by Briggs to East Tennessee for the transportation service each month is a charge to be determined by multiplying the rate of 27.02 cents per Mcf by the volume of natural gas delivered by East Tennessee to KUB for the account of Briggs.

Applicants stated that under the terms of the gas sale and purchase

---

[1] The initial order in said docket authorized transportation of 850 Mcf of natural gas per day.

[2] Receipt of the gas would be at the interconnection of the facilities of Tennessee and General, *et al.* at Tennessee's Side Valve 21A-231.

contract between General, *et al.*, and Briggs the initial charge by General, *et al.* of $1.90 per million Btu's for gas sold to Briggs would increase to $2.00 per million Btu's effective January 18, 1979. Under the terms of an amendment to that contract dated November 1, 1978, the charge would increase to $2.10 per million Btu's effective January 18, 1980 and increase 10.0 cents per year thereafter until termination of the contract, it is said.

Briggs indicated that it would purchase up to 750 Mcf of natural gas on an average day during the proposed two year term, and a total annual quantity of up to 273,750 Mcf.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 16, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3261 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket Nos. RP75-13, RP75-113, RP76-137, and RP77-62]

TENNESSEE GAS PIPELINE CO.

Order Consolidating Proceedings on Certain Research and Development Issues

JANUARY 19, 1979.

On December 22, 1978, the presiding judge certified to the Commission a motion filed by Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee) which requests the Commission to consolidate Docket Nos. RP75-13, *et al.* with Docket No. RP77-62 for the purpose of hearing and deciding an issue common to both proceedings: the proper rate treatment to be afforded certain research and development (R&D) expenditures. Tennessee states that the Commission staff joins in its motion.

In Docket No. RP77-62, Tennessee has pending a general rate increase request. Among the issues to be resolved in Docket No. RP77-62 is the proper rate treatment of certain R&D expenditures.

In Docket Nos. RP75-13, *et al.*, most issues have been resolved by virtue of the Commission's May 1, 1978, approval of a settlement agreement. The settlement approved in these dockets, however, specifically reserves certain R&D issues for formal hearing. Testimony and exhibits have already been served in these dockets but no hearing dates have been set.

Based upon a review of Tennessee's motion, the Commission finds that Docket No. RP77-62 and Docket Nos. RP75-13, *et al.*, involve common issues of law and fact. Accordingly, we shall consolidate the two proceedings for purposes of hearing and decision on the R&D issues.

By notice issued July 3, 1978, the Secretary postponed procedural dates in Docket No. RP75-13, *et al.*, pending action upon Tennessee's motion to consolidate. Inasmuch as the proceedings required under Article X of the stipulation and agreement in Docket No. RP75-13, *et al.*, will be conducted pursuant to the procedural schedule established in Docket No. RP77-62, no further formal proceedings on the R&D issue will be required in Docket No. RP75-13, *et al.*

The Commission orders: (A) Docket Nos. RP75-13, *et al.*, and Docket No. RP77-62 are consolidated for purposes of hearing and decision on R&D issues.

(B) The consolidated proceeding shall be conducted pursuant to the procedural schedule set in Docket No. RP77-62.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3269 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No. CP79-137]

UNITED GAS PIPE LINE CO.

Application

JANUARY 24, 1979.

Take notice that on December 27, 1978, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP79-137 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition by purchase of metering and regulating facilities located in the Bayou Cassotte Area, Jackson County, Mississippi, all as more fully set forth in the application which is on file with the Commisssion and open to public inspection.

United and Chevron, U.S.A. (Chevron) exchange gas at a metering and regulating facility located in the Bayou Cassotte Area, Jackson County, Mississippi pursuant to a certificate of public convenience and necessity in Docket No. CP76-502 issued March 25, 1977, Applicant states. The certificate authorized the exchange of gas for a limited term, not to extend beyond April 1, 1978, and was subsequently amended by the order of the Commission issued March 31, 1978, which extended the limited-term of the exchange for an additional two-year period to April 1, 1980, Applicant further states. The metering and regulating facilities utilized in the exchange were originally installed and are presently owned by Chevron, it is said. The exchange service for which they are presently utilized benefits United alone, and the operation and maintenance of these facilities are performed by personnel employed by United and, accordingly, United submits that these facilities, more properly, should be owned, as well as operated, by United, it is asserted. United has agreed to a purchase price of $30,000, for the said facilities, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 16, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commisssion's Rules of Practice and Procedure (18 CFR 157.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petiton to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3262 Filed 1-30-79; 8:45 am]

[6450-01-M]

[Docket No. ER78-506]

WISCONSIN PUBLIC SERVICE CORP.

Order Accepting Proposed Rate Schedules for Filing

JANUARY 24, 1979.

By order issued August 24, 1978 in this docket, the Commission provisionally accepted and suspended Wisconsin Public Service Corporation's (WPS or Company) proposed rate increase to its nine full requirements customers [1] and two partial requirements customers.[2] The filing was provisionally accepted in order that the Commission could review the Company's contracts with certain of its customers to determine if the filing should be rejected as violative of the *Mobil-Sierra* doctrine.[3]

A response was filed by WPS on the *Mobile-Sierra* issue. WPS contends that its contracts with Algoma, New Holstein, Two Rivers, Stephenson and Stratford are not fixed rate contracts because the language in each instance provides for a change in rates. Since a change in rates was contemplated, WPS submits that the only question concerns *how* the change would be made under the contracts. On this point, WPS essentially makes three arguments.

First, WPS states that the contracts are ambiguous with respect to the intent of the parties towards Section 205 filings, so consideration of the conduct of the parties subsequent to the signing of the contracts is proper. WPS submits that a review of the conduct of the parties will indicate that Section 205 filings are consistent with the parties' real contractual expectations. WPS points out that since 1966 it has filed for several rate changes under Section 205. In particular, WPS states that at least three of the requested rate increases have been protested by these customers, but *Mobile-Sierra* defenses have never been raised.[4]

Second, WPS argues that even if the contracts of the parties are construed to generally prohibit Section 205 filings, a contractual modification allowing a Section 205 filing for the instant application was agreed to by the parties in the settlement of its last rate increase in Docket No. ER76-150.[5] WPS specifically refers to paragraph 2 of the settlement agreement which provides:

> *Moratorium:* WPS agrees that it will not increase the settlement rates prior to January 1, 1978. It is understood and agreed that WPS may submit for filing a proposed rate increase and may request a proposed effective date prior to January 1, 1978, provided that WPS requests suspension of the proposed rates until January 1, 1978.

WPS asserts that Paragragh 2 refers only to Section 205 proceedings since it has no application to Section 206 proceedings. Further, WPS contends that paragraph 5 of the settlement agreement entitled "Miscellaneous", which provides in pertinent part that, ". . . Neither WPS nor the customer is to be prejudiced in any future proceeding by this settlement", was not intended to vitiate the agreement of the parties as to the timing of the next rate filing as set forth in the "Moratorium" paragraph.

Thus, WPS submits that the "Moratorium" clause, while not constituting a permanent modification of the parties' contracts, did give the Company the right to make a unilateral filing under Section 205 for its next rate increase application, i.e., the instant filing.

Third, if the Commission concludes that the contracts in question prohibit unilateral filings under Section 205, then WPS contends that a Section 206 proceeding imposing a just and reasonable burden of proof is appropriate inasmuch as all the contracts are "going rate" rather than "fixed price" contracts. *See, United Gas Pipe Co., v. Memphis Gas and Water Division*, 358 U.S. 103 (1958).

In reply, the Cities and Villages of Algoma, Eagle River, Manitowoc, New Holstein, Sturgeon Bay, Two Rivers and Stratford, Wisconsin and Stephenson, Michigan (Intervenors) contend that WPS has failed to demonstrate any modification of the parties' original contracts, either through a course of conduct or by virtue of the settlement agreement in Docket No. ER 76-150.

With regard to the "Moratorium" clause, the Intervenors argue that this provision merely indicates that WPS cannot increase its rates prior to a certain date, but does not mention the basis upon which the Commission should determine when the rate may be placed into effect. Citing *City of Kaukauna v. Federal Energy Regulatory Commission*, 581 F.2d 993 (D.C. Circ. 1978), the Intervenors state that the provision is nothing more than a limitation on when an approved change, that is a change made in accordance with earlier contractual limitations, can take effect.

DISCUSSION

In our view the settlement agreement in Docket No. ER 76-150, to which all of the Intervenors were signatories except the City of Manitowoc, Wisconsin (Manitowoc), controls the propriety of WPS's Section 205 filing in the instant docket for all customers except Manitowoc.[6] We therefore find it unnecessary to interpret the underlying contracts of WPS and the Intervenors or to reach the issue of whether it would be proper to go outside the four corners of those instruments and take into account the conduct of the parties subsequent to the signing of their respective contracts.

As we have recently stated, the initial point of Commission inquiry in resolving *Mobile-Sierra* controversies is the contract of the parties, to establish whether the parties have agreed to a specific rate or whether they agreed to a rate changeable in a specific manner.[7] Regardless of the undelying contracts of WPS and the Intervenors we find that the settlement agreement clearly indicates that it was the intent of the parties to allow a Section 205 filing for the Company's next rate increase application. The language in the previously cited "Moratorium" provision reflects this intent.

The first sentence of the "Moratorium" clause contains a prohibition on rate increases for a particular length of time: "WPS agrees that it will not increase the settlement rates prior to January 1, 1978." The second sentence reflects how the next rate increase will be initiated and when the rate increase can be made operative: "It is understood and agreed that WPS may submit for filing a proposed rate increase and may request a proposed effective date prior to January 1, 1978, provided that WPS requests suspension of the proposed rates until January 1, 1978." This second sentence indicates that the next WPS rate filing was to be made pursuant to Section 205, because "suspension" has no

[1] City of Algoma, City of Eagle River, City of New Holstein, City of Sturgeon Bay, City of Two Rivers and Village of Stratford, Wisconsin; Village of Daggett, and Village of Stephenson, Michigan and Alger-Delta Cooperative Electric Association.

[2] City of Manitowoc, Wisconsin and Consolidated Water Power Company.

[3] *FPC v. Mobile Gas Service Corporation*, 350 U.S. 382 (1956); *FPC v. Sierra Pacific Power Co.*, 350, U.S. 348 (1956).

[4] Docket Nos. E-7627, E-8864 and ER76-150.

[5] *Wisconsin Public Service Corporation*, Docket No. ER76-150, Order Approving Settlement, Issued January 10, 1977.

[6] The WPS-Manitowoc contract is discussed *infra*, at 6. Additionally, the Village of Daggett, Michigan, although not a member of the "Intervenors" complaining herein, was a signatory to the ER76-150 settlement agreement, and as a consequence will be bound by our interpretation of the agreement.

[7] *Public Service Company of New Mexico*, Docket Nos. ER78-337 and ER78-338, Order Issued December 15, 1978, mimeo at 6.

meaning within the context of a Section 206 proceeding. Further, this sentence evinces the agreement of the parties as to the effective date of the allowable rate increase, i.e., no sooner than January 1, 1978. We agree with WPS, that the "miscellaneous" provision contained in Paragraph 5 does not serve to vitiate the specific agreement of the parties as to the timing and manner of implementing the next rate increase. Rather, we construe this provision as a general statement that cannot override the specific language of the parties contained in the "Moratorium" clause.

We do not find, as the Intervenors have urged, that *Kaukauna* requires a different result. In *Kaukauna*, the contract under review specifically provided that rate changes could be filed under Section 205 with the additional provision that the customer would accept such new or changed rates as would ultimately be made effective through such a proceeding and review. The Court held that while the parties had agreed to a Section 205 filing they had also agreed to delay the implementation of any rate increase until after a Commission decision and any judicial review.[8] Thus, as the Court stated:

> Beyond minimum statutory constraints the effective date of any consensual rate hike is a matter committed to agreement by the parties. (Slip Op. at 7.)

Insofar as *Kaukauna* holds that the parties may not only extend the protection of their agreement to the mechanics of a rate change but also to the effective date of the change, it supports the result reached here. As we previously indicated, the settlement agreement between WPS and the Intervenors not only reflects their mutual assent to a Section 205 filing for the instant rate increase but also provides that the effective date of such increase would be no sooner than Janury 1, 1978.

Our finding that WPS has acted in a manner consistent with the terms of the settlement agreement is limited to the instant filing and the Company does not assert otherwise.[9] Absent a new agreement between WPS and the Intervenors, the permissibility of subsequent rate increase filings will be controlled by the parties' underlying contracts.

We also find that the Company has properly filed under Section 205 for the remaining Intervenor, the City of Manitowoc. This conclusion rests on the language contained in Section 2 of the June 19, 1978 contract between WPS and Manitowoc which provides in pertinent part:

> Nothing contained herein shall be construed as affecting in any way the right of Public Service to unilaterally make application to the Federal Energy Regulatory Commission for a change in said rate schedule, the Service Schedules, rates, charges, classification, or service, or any rule, regulation, or contract relating thereto, under Section 205 of the Federal Power Act and pursuant to the Commission's Rules and Regulations promulgatd thereunder.

In sum, we find that as to Algoma, Eagle River, New Holstein, Stratford, Sturgeon Bay, Two Rivers, Stephenson and Daggett the settlement agreement in Docket No. ER76-150 specifically permitted the Company to make a Section 205 filing for the instant rate increase only. With regard to Manitowoc, the propriety of the Section 205 filing is of a continuing nature under the terms of the WPS-Manitowoc contract.

The Commission orders: (A) Paragraph (B) of the August 24, 1978 order is hereby modified to provide:

> Pending such hearing and decision thereon, the proposed increased rates and charges filed by Wisconsin Public Service Corporation on July 25, 1978 are hereby accepted for filing, suspended and the use thereof deferred until January 29, 1979, when they shall become effective subject to refund.

(B) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3263 Filed 1-30-79; 8:45 am]

[8] *Kaukauna, supra,* (Slip Op. at 7). In the contract before us the only reference to action by the Commission is the suspension which WPS would request if a filing had been made before January 1, 1978. Of course, the rate taking effect after suspension by the Commission is normally that proposed by the utility. Until adjudication, the customer is billed under that rate, subject to refund.

[9] *See,* WPS' Response to Intervenors' Allegations on *Mobile-Sierra* Issue, at 10.

[6450-01-M]

HARVEY E. YATES CO. AND EL PASO NATURAL GAS CO.

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

JANUARY 23, 1979.

On January 15, 1979, the Federal Energy Regulatory Commission received notice from the New Mexico Oil Conservation Division of a determination pursuant to 18 CFR 274.104(a) and Section 102 of the Natural Gas Policy Act of 1978 applicable to:

API Well Number: 30-015-22400
Operator: Harvey E. Yates Company
Well Name: Empire South Deep Unit #18
Field: und. South Empire Morrow
County: Eddy
Puchaser: El Paso Natural Gas Company
Volume: 2,500 MMcf.

The application for determination in this matter together with a copy of description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 15, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3272 Filed 1-30-79; 8:45 am]

[6450-01-M]

HARVEY E. YATES CO. AND NORTHERN NATURAL GAS CO.

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

JANUARY 23, 1979.

On January 10, 1979, the Federal Energy Regulatory Commission received notice from the New Mexico Oil Conservation Division of a determination pursuant to 18 CFR 274.104(a) and Section 103 of the Natural Gas Policy Act of 1978 applicable to:

API Well Number: 30-025-25593
Operator: Harvey E. Yates Company
Well Name: Hanlad State #1
Field: None—Wildcat Well
County: None
Purchaser: Northern Natural Gas Company
Volume: Unavailable

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 824 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 15, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3273 Filed 1-30-79; 8:45 am]

[6450-01-M]

YATES PETROLEUM CORP. AND EL PASO NATURAL GAS CO.

Determination by a Jurisdiction Agency Under the Natural Gas Policy Act of 1978

JANUARY 23, 1979.

On January 8, 1979, the Federal Regulatory Commission received notice from the New Mexico Oil Conservation Division of a determination pursuant to 18 CFR 274.104(a) and Section 103 of the Natural Gas Policy Act of 1978 applicable to:

API Well Number: 30-015-22068
Operator: Yates Petroleum Corporation
Well Name: Midwest HH Com #1
Field: Undesignated
County: Eddy
Purchaser: El Paso Natural Gas Company
Volume: 11.580 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 15, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3279 Filed 1-30-79; 8:45 am]

[6450-01-M]

YATES PETROLEUM CORP. AND EL PASO NATURAL GAS CO.

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

JANUARY 23, 1979.

On January 8, 1979, the Federal Energy Regulatory Commission received notice from the New Mexico Oil Conservation Division of a determination pursuant to 18 CFR 274.104(a) and Section 103 of the Natural Gas Policy Act of 1978 applicable to:

API Well Number: 30-015-22248
Operator: Yates Petroleum Corporation
Well Name: La Cama Com #1
Field: Wildcat Cisco
County: Eddy
Purchaser: El Paso Natural Gas Company
Volume: 168.350 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 15, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3278 Filed 1-30-79; 8:45 am]

[6450-01-M]

YATES PETROLEUM CORP. AND EL PASO NATURAL GAS CO.

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

JANUARY 23, 1979.

On January 8, 1979, the Federal Energy Regulatory Commission received notice from the New Mexico Oil Conservation Division of a determination pursuant to 18 CFR 274.104(a) and Section 103 of the Natural Gas Policy Act of 1978 applicable to:

API Well Number: 30-015-22329
Operator: Yates Petroleum Corporation
Well Name: Siegenthaler IS Com #1
Field: Kennedy Farms Morrow
County: Eddy
Purchaser: El Paso Natural Gas Company
Volume: 299.410 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 15, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3277 Filed 1-30-79; 8:45 am]

[6450-01-M]

YATES PETROLEUM CORP. AND EL PASO NATURAL GAS CO.

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

JANUARY 23, 1979.

On January 8, 1979, the Federal Energy Regulatory Commission received notice from the New Mexico Oil Conservation Division of a determination pursuant to 18 CFR 274.104(a) and Section 103 of the Natural Gas Policy Act of 1978 applicable to:

API Well Number: 30-015-22329
Operator: Yates Petroleum Corporation
Well Name: Siegenthaler IS Com #1
Field: Kennedy Farms Atoka
County: Eddy
Purchaser: El Paso Natural Gas Co.
Volume: None.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 15, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3284 Filed 1-30-79; 8:45 am]

[6450-01-M]

YATES PETROLEUM CORP. AND EL PASO NATURAL GAS CO.

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

JANUARY 23, 1979.

On January 8, 1979, the Federal Energy Regulatory Commission received notice from the New Mexico Oil Conservation Division of a determination pursuant to 18 CFR 274.104(a) and Section 103 of the Natural Gas Policy Act of 1978 applicable to:

API Well Number: 30-015-22413
Operator: Yates Petroleum Corporation
Well Name: Siegenthaler Is Com #2
Field: Wildcat (Canyon)
County: Eddy
Purchaser: El Paso Natural Gas Co.
Volume: 3.530 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 15, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3285 Filed 1-30-79; 8:45 am]

[6450-01-M]

YATES PETROLEUM CORP. AND TRANSWESTERN PIPELINE CO.

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

JANUARY 23, 1979.

On January 8, 1979, the Federal Energy Regulatory Commission received notice from the New Mexico Oil Conservation Division of a determination pursuant to 18 CFR 274.104(a) and Section 103 of the Natural Gas Policy Act of 1978 applicable to:

API Well Number: 30-015-22652
Operator: Yates Petroleum Corporation
Well Name: Rio Penasco JX Com #1
Field: Wildcat Morrow
County: Eddy
Purchaser: Transwestern Pipeline Co.
Volume: None

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 15, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3282 Filed 1-30-79; 8:45 am]

[6450-01-M]

YATES PETROLEUM CORP. AND TRANSWESTERN PIPELINE CO.

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

JANUARY 23, 1979.

On January 8, 1979, the Federal Energy Regulatory Commission received notice from the New Mexico Oil Conservation Division of a determination pursuant to 18 CFR 274.104(a) and Section 103 of the Natural Gas Policy Act of 1978 applicable to:

API Well Number: 30-015-22435
Operator: Yates Petroleum Corporation
Well Name: Ross IZ Com #1
Field: Cemetery Morrow
County: Eddy
Purchaser: Transwestern Pipeline Company
Volume: None

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 15, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3283 Filed 1-30-79; 8:45 am]

[6450-01-M]

YATES PETROLEUM CORP. AND TRANSWESTERN PIPELINE CO.

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

JANUARY 23, 1979.

On January 8, 1979, the Federal Energy Regulatory Commission received notice from the New Mexico Oil Conservation Division of a determination pursuant to 18 CFR 274.104(a) and Section 103 of the Natural Gas Policy Act of 1978 applicable to:

API Well Number: 30-015-22554
Operator: Yates Petroleum Corporation
Well Name: Stonewall EP State Com #4
Field: Burton Flat Morrow
County: Eddy
Purchaser: Transwestern Pipeline Company
Volume: 1296.74 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as a confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before February 15, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-3286 Filed 1-30-79; 8:45 am]

[6450-01-M]

Office of Assistant Secretary for Industrial Affairs

PROPOSED SUBSEQUENT ARRANGEMENT

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the International Atomic Energy Agency (IAEA) for Cooperation in Peaceful Application.

The subsequent arrangement to be carried out under the above mentioned agreement involves transfer of the material listed below for use in the IAEA's Safeguards Analytical Laboratory Evaluation (SALE) program. This program is designed to evaluate the capability of participating laboratories to analyze materials to be safeguarded in the nuclear fuel cycle and to provide the means by which measurement capability may be improved through the interchange of measurement technology.

Contract No.	Countries	Material
WC-CI-4.....	United States to Taiwan.	87 g U as UO_2 with 2.1 g U-235 20 g U as $U-NO_3$ with 0.8 g U-235
WC-EU-114	United States to Italy.	88.7 g U as UO_2 with 2.1 g U-235 20 g U as $U-NO_3$ with 0.8 g U-235

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: January 25, 1979.

HAROLD D. BENGELSDORF,
Director for Nuclear Affairs, International Programs.

[FR Doc. 79-3226 Filed 1-30-79; 8:45 am]

[6450-01-M]

PROPOSED SUBSEQUENT ARRANGEMENT

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (Euratom) Concerning the Peaceful Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above mentioned agreement involves the following sale S-EU-528—United States to Italy 50 mg. of plutonium containing Pu-242 enriched to greater than 90% as oxide for use as a standard in analyses performed in the frame of safeguard activities and in IAEA inter-laboratory program evaluation.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: January 25, 1979.

HAROLD D. BENGELSDORF,
Director for Nuclear Affairs, International Programs.

[FR Doc. 79-3226 Filed 1-30-79; 8:45 am]

[6450-01-M]

LOCAL GOVERNMENT ENERGY POLICY ADVISORY COMMITTEE

Determination To Establish

Pursuant to the Federal Advisory Committee Act (P.L. 92-463), I hereby certify that the establishment of the Local Government Energy Policy Advisory Committee as hereinafter identified, is in the public interest in connection with the performance of duties of the Secretary of Energy imposed by the Department of Energy Organization Act of 1977 and other applicable law. This determination follows consultation with the Administrator of General Services, pursuant to the Federal Advisory Committee Act, the Office of Management and Budget Circular A-63 (Revised) and Executive Order 12024, dated December 1, 1977.

1. *Name of Advisory Committee*—Local Government Energy Policy Advisory Committee.

2. *Purpose*—The Advisory Committee will advise and make recommendations to the Secretary of Energy on matters relating to Federal energy policies, programs and legislation so that the Secretary may reach a judgment as to whether national energy policies are reflective of and responsible to the needs of local governments, that components of the Department are coordinating their activities with local governments, where appropriate, and that intergovernmental communication exists with local governments.

3. *Effective Date of Establishment and Duration*—The Advisory Committee is established, effective 15 days after publication of this notice and after filing of the Charter with the Standing Committees of Congress having legislative jurisdiction over the Department of Energy and the Library of Congress, and will terminate two years thereafter unless properly renewed.

4. *Membership*—The membership of the Advisory Committee will be fairly balanced as required by the Department of Energy Organization Act (P.L. 95-91) and the Federal Advisory Committee Act (P.L. 92-463). It is expected that the membership will be balanced, among other factors, according to geographic distribution, demographic characteristics and balanced as to representation of cities and counties.

5. *Operation*—The Local Government Energy Advisory Committee will operate in accordance with the provisions of Section 624 of the Department of Energy Organization Act (P.L. 95-91), the Federal Advisory Committee Act (P.L. 92-463), Office of Management and Budget Circular A-63 (Revised), and other directives and instructions issued in accordance with the implementation of the Act. Local Government Energy Policy Advisory Committee meetings will be held a minimum of four times a year.

6. *Objectivity*—The advice and recommendations of the Local Government Energy Policy Advisory Committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the Advisory Committee's independent judgment.

Dated: January 25, 1979.

JAMES R. SCHLESINGER,
Secretary.

[FR Doc 79-3185 Filed 1-30-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1048-2]

CALIFORNIA MARINE SANITATION DEVICE STANDARD

Receipt of Petition

Notice is hereby given that two petitions have been received from the State of California requesting determinations by the Administrator, Environmental Protection Agency, pursuant to Section 312(f)(3) of Pub. L. 92-500, as amended by Pub. L. 95-217, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of two areas within the State of California: Avalon Harbor, on Santa Catalina Island, and Channel Island Harbor, at Oxnard. Both areas are in the southern portion of the state.

The State of California has certified that there are two pumpout facilities available to service vessels in Avalon Harbor. These facilities, which are installed on a large float on the east side of the harbor, are open 24 hours a day, and their use is free to the public. The two facilities are operated by the city of Avalon, and the waste collected at the two pumpout facilities is disposed of at the City of Avalon's secondary treatment sewage treatment plant (NPDES Permit Number CA 0054372).

The State of California has also certified that each pumpout facility can service from three to five vessels at one time, depending on vessel length, and that five minutes are required to pump out the average vessel. Peak period accommodation of Avalon Harbor during the summer of 1978 was 347 vessels; however, the two pump out facilities can service a total of approximately 576 vessels per day if required to do so, and both pumpout facilities can accommodate vessels with an 18-foot draft.

The State of California has further certified that there are three pumpout facilities available to service vessels in Channel Island Harbor. All three facilities are operated by the County of Ventura, Channel Island Harbor Manager, and are open 24 hours a day. Pumpout facility No. 1 is located at the Harbor Master's Dock, pumpout facility No. 2 is located at the Launch Ramp day-use dock, and pumpout facility No. 3 is located at the Peninsula Park dock; the three facilities can service approximately 1,500 vessels, considerably more than the present population of 1,150 vessels, and each facility takes approximately five minutes to pump out the average vessel. All three facilities are coin-operated, and provide five minutes of pumping for twenty-five cents ($0.25).

The wastes collected from the three pumpout facilities are discharged to the City of Oxnard's secondary treatment sewage treatment plant (NPDES Permit No. CA 00544097).

The State of California has also certified that pumpout facility No. 1 will accommodate vessels with approximately a 20-foot draft, and that pump out facilities Nos. 2 and 3 are in locations where the harbor is dredged to a depth of 10 feet at mean lower low water.

Comments and views regarding this request for action may be filed on or before March 19, 1979. Such communications, or requests for information or a copy of the applicant's petition, should be addressed to Kenneth M. Mackenthun, Director, Criteria and Standards Division (WH-585), Office of Water Planning and Standards, OWWM, Room 2824 Waterside Mall, Washington, D.C. 20460, Telephone: 202/755-0100.

Dated: January 26, 1979.

THOMAS C. JORLING,
Assistant Administrator for Water and Waste Management.

[FR Doc. 79-3292 Filed 1-30-79; 8:45 am]

[6560-01-M]

[FRL 1048-8; OPP-50400]

ISSUANCE OF EXPERIMENTAL USE PERMITS

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 7182-EUP-19. 3M Company, St. Paul, Minnesota 55101. This experimental use permit allows the use of 2,496 pounds of the herbicide mefluidide on soybeans to evaluate control of weeds. A total of 6,576 acres is involved; the program is authorized only in the States of Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from March 31, 1979 to March 31, 1980. A temporary tolerance for residues of the active ingredient in or on soybeans has been established. (PM-25, Room E-301, telephone 202/755-2196)

No. 100-EUP-59. Ciba-Geigy Corp., Greensboro, North Carolina 27409. This experimental use permit allows the use of 2,080 pounds of the herbicide metolachlor on corn to evaluate control of weeds. A total of 1,044 acres is involved; the program is authorized only in the forty-eight contiguous states. The experimental use permit is effective from February 24, 1979 to February 24, 1980. A permanent tolerance for residues of the active ingredient in or on corn has been established (40 CFR 180.368). (PM-23, Room E-351, telephone 202/755-1397)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

STATUTORY AUTHORITY: Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

Dated: January 24, 1979.

HERBERT S. HARRISON,
Acting Director,
Registration Division.

[FR Doc. 79-3300 Filed 1-30-79; 8:45 am]

[6560-01-M]

[FRL 1049-1; OPP-50399]

ISSUANCE OF EXPERIMENTAL USE PERMITS

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 100-EUP-43. Ciba-Geigy Corp., Greensboro, North Carolina 11422. This experimental use permit allows the use of 6,720 pounds of the herbicide metolachlor on soybeans to evaluate control of various weeds. A total of 3,302 acres is involved; the program is authorized only in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Wisconsin, and West Virginia. The experimental use permit is effective from January 6, 1979 to January 6, 1980. Temporary tolerances for residues of the active ingredient in or on soybeans, soybean forage and hay, and in meat, milk, poultry, and eggs have been established. (PM-23, Room E-351, Telephone 202-755-1397)

No. 35980-EUP-1. Atlantic and Pacific Research, Inc., North Palm Beach, Florida 33408. This experimental use permit allows the use of 0.4 gram of the plant growth regulator cytokinin on tomatoes. A total of ten acres is involved; the program is authorized only in the State of Ohio. The experimental use permit is effective from March 1, 1979 to October 15, 1979. A tolerance exemption for residues of the active ingredient in or on tomatoes has been established (40 CFR 180.1042). (PM-25, Room E-301, telephone 202-755-2196)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

STATUTORY AUTHORITY: Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

Dated: January 24, 1979.

HERBERT S. HARRISON,
Acting Director,
Registration Division.

[FR Doc. 79-3301 Filed 1-30-79; 8:45 am]

[6560-01-M]

[FRL 1048-7; PP 6G1802/T136]

PESTICIDE PROGRAMS

Establishment of a Temporary Tolerance for Oryzalin; Correction

In FR Doc. 78-9776 appearing at page 15487 in the issue of Thursday, April 13, 1978, the expiration date for the temporary tolerance of 0.1 part per million for residues of the herbicide oryzalin (3,5-dinitro-N^4,N^4-dipropylsulfanilamide) in or on wheat was incorrectly given as November 9, 1978. This date is hereby corrected to read July 9, 1979.

Dated: January 24, 1979.

HERBERT S. HARRISON,
Acting Director,
Registration Division.

[FR Doc. 79-3299 Filed 1-30-79; 8:45 am]

[6560-01-M]

[FRL 1048-6; PP 7G1916/T183]

PESTICIDE PROGRAMS

Extension of a Temporary Tolerance for Mefluidide

The Environmental Protection Agency in response to a pesticide petition (PP 7G1916) submitted to the Agency by 3M Co., 3M Center, St. Paul, MN 55101, established a temporary tolerance for residues of the herbicide mefluidide (*N*-2,4-dimethyl-5-[[(trifluoromethyl) sulfonyl]amino] phenyl acetamide) in or on the raw agricultural commodity soybeans at 0.01 part per million (ppm). This temporary tolerance is scheduled to expire March 31, 1979.

3M Co. requested a one-year extension of this temporary tolerance both to permit continued testing to obtain additional data and to permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of an experimental use permit (7182-EUP-19) that has been extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that an extension of the temporary tolerance would protect the public health. Therefore, the temporary tolerance has been extended on condition that

the pesticide is used in accordance with the experimental use permit with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. 3M Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance expires March 31, 1980. Residues not in excess of 0.01 ppm remaining in or on soybeans after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerance. This temporary tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Mr. Robert Taylor, Product Manager 25, Registration Division (TS-767), Office of Pesticide Programs, 401 M St., SW., Washington DC 20460 (202/755-7013).

STATUTORY AUTHORITY: Section 408(j) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(j)].

Dated: January 25, 1979.

HERBERT S. HARRISON,
Acting Director,
Registration Division.

[FR Doc. 79-3298 Filed 1-30-79; 8:45 am]

[6560-01-M]

[OPP-30141A; FRL 1048-5]

PESTICIDE PROGRAMS

Approval of Application To Register Pesticide Product Containing New Active Ingredient

On March 1, 1978, notice was given (43 FR 8293) that Atlantic and Pacific Research Inc., PO Box 14366, North Palm Beach, FL 33408, had filed an application (EPA File Symbol 35980-R) with the Environmental Protection Agency (EPA) to register the pesticide product SM-3 containing .0001% of the active ingredient cytokinin-like activity equivalent to 100 part per million (ppm) kinetin which was not registered at the time of submission. As stated in the notice, the pesticide is used as a plant regulator on oranges. The application was subsequently amended to include use on tomatoes and to change the name to CYTEX. Additionally, the active ingredient declaration was revised as "cytokinin (as kinetin) 0.001% based on biological activity".

This application was approved November 28, 1978 and the product has been assigned the EPA Registration No. 35980-1. CYTEX is classified for general use. A copy of the approved label and list of data references used to support registration are available for public inspection in the office of the Fedral Register Section, Program Support Division (TS-757), Office of Pesticide Programs, Rm. 401, East Tower, 401 M St., SW, Washington DC 20460. The data and other scientific information used to support registration, except for the material specifically protected by Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136) are available for public inspection in accordance with Section 3(c)(2) of FIFRA. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), EPA, 401 M St., SW, Washington DC 20460. Such requests should: (1) identify the product by name and registration number and (2) specify the data or information desired.

Dated: January 25, 1979.

EDWIN L. JOHNSON,
Deputy Assistant Administrator
for Pesticide Programs.

[FR Doc. 79-3297 Filed 1-30-79; 8:45 am]

[6570-06-M]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

IMPROVING GOVERNMENT REGULATIONS

Agenda of Significant Regulatory Activity

AGENCY: Equal Employment Opportunity Commission.

ACTION: Semiannual Agenda.

SUMMARY: This agenda announces the significant regulatory actions that EEOC plans to take during the six-month period January 1979—July 1979. This agenda was developed under the guidelines in Executive Order 12044 Improving Government Regulations (43 FR 12661, March 24, 1978). EEOC's purpose in publishing this agenda is to allow interested persons an opportunity to participate in all stages of its rulemaking process.

FOR FURTHER INFORMATION CONTACT:

Peter C. Robertson, Director, Office of Policy Implementation, 202-634-7060.

Signed at Washington, D.C. this 25th day of January 1979.

For the Commission.

ELEANOR HOLMES NORTON,
Chair.

SUPPLEMENTARY INFORMATION: On October 2, 1978, EEOC announced its schedule for publishing its semiannual agenda on January 31, 1979 and July 31, 1979. This initial agenda lists new significant regulations that are being considered, changes that are being considered for existing significant regulations and the significant regulations that will be reviewed during this six-month period.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

REGULATORY AGENDA

A. New regulations

1. Guidelines for the coordination and consulation required by Executive Order 12067.

a. Need for Regulation: E.O. 12067 requires that EEOC insure the effective coordination and consultation among all Federal departments and agencies charged with equal employment opportunity responsibilities. The Executive Order seeks to achieve consistency and uniformity, and to maximize the Federal EEO efforts. These new guidelines will aid in this effort by enunciating the groundrules for this function. The Executive Order is silent on the exact procedures to be followed in the coordination process.

b. Legal Basis: Executive Order 12067. President's Civil Rights Reorganization Plan No. 1 developed pursuant to P.L. 95-17.

c. Contact person: Fran Farmer, Acting Director, Office of Interagency Coordination, 202-653-5490.

2. Guidelines and/or regulations for processing of EEO complaints received by Title VI or other grantmaking agencies and programs.

a. Need for Regulation: Title VI of the Civil Rights Act of 1964 prohibits discrimination in programs which receive Federal financial assistance. Section 604 of Title VI relates narrowly to employment discrimination; that is, Title VI applies to employment discrimination only when it can be shown that the employment is service related, and that the funds are specifically granted to the participant for the purpose of providing employment. Despite this narrow provision, several Title VI and other grantmaking agencies have routinely accepted and investigated employment discrimination complaints. Because the remedies under this narrow provision are not co-extensive with the broad enforcement authority EEOC has, these agencies had been unable to effectively resolve the substantial number of individual or class complaints of discrimination.

The EEOC under its authority to coordinate Federal EEO efforts (EO 12067) is considering if procedures or guidelines ought be developed for these grantmaking agencies. It may develop appropriate guidelines in consulation with DOJ, which currently has Title VI coordinating authority.

b. Legal Basis: EO 12067. Title VI of the Civil Rights Act of 1967, Section 604, 42 USC 2000d (3).

c. Contract Person: Fran Farmer, Acting Director, Office of Interagency Coordination, 202-653-5490.

B. Changes to existing regulations

1. Sex Discrimination Guidelines.

a. Need for Change: Title VII of the Civil Rights Act of 1972, has been amended by P.L. 95-555, (October 31, 1978) to define sex discrimination to include pregnancy and maternity.

b. Legal Basis: P.L. 95-555 ¶ 701(K) of Title VII of Civil Rights Act of 1964, as amended, 42 U.S.C. ¶ 2000-(K).

(c) Contact person: Merle Morrow, Office of Policy Implementation, 202-634-7060.

d. Regulatory analysis: None is currently anticipated. The Commission views a regulatory analysis as unnecessary. P.L. 95-555, affirms pre-existing EEOC's Guidelines on Sex Discrimination. Only minor changes to the Guidelines are anticipated to exclude the current requirement that employers with health insurance programs pay for all abortions of their employees. Other possible changes to the Guidelines include implementing schedules in accordance with P.L. 95-555 for fringe benefits programs covering pregnancy related medical conditions.

2. Records and Reports

a. Need for change: To further EEOC's enforcement capabilities and to create uniform recordkeeping requirements.

b. Legal Basis: ¶ 709(c) of Title VII of Civil Rights Act of 1964, as amended 42 U.S.C. ¶ 2000e-8(c).

c. Regulatory analysis: The Commission has made a determination that a regulatory analysis is not required for these regulations. Nevertheless, the Commission is currently re-evaluating this determination.

d. Contact person: William L. Robinson, Esq., Associate General Counsel, Office of the General Counsel, 202-634-6592.

C. Regulations scheduled for review

1. Guidelines on Religious Discrimination.

a. Purpose of review: To determine what changes, if any, are required to be made to these guidelines based on the information received by the Commission through the informational hearings held by the Commission during the Spring of 1978.

b. Contact person: Sara Rearden, Office of Policy Implementation, 202-634-7060.

2: Procedures for EEO in the Federal Government.

a. Purpose of review: Due to Reorganization Plan No. 1 of 1978, effective January 1, 1979, certain functions relating to EEO in the Federal Government have been transferred to the EEOC. (43 FR 60900, and 60998 of December 29, 1978), the Commission believes it appropriate to review existing regulations concerning the Federal EEO program in order to determine what changes, if any, are needed.

b. Contact person: John Rayburn, Office of Field Services, 202-634-6863.

[FR Doc. 79-3156 Filed 1-30-79; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 1655]

OGLETHORPE INTERNATIONAL, JOHN B. HOHENSTEIN III, D.B.A.

Order of Revocation:

On January 3, 1979, Oglethorpe International, John B. Hohenstein III d.b.a., P.O. Box 2385, Savannah, Georgia 31402 requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 1655, effective December 31, 1978.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1, (Revised) section 5.01(c), dated August 8, 1977;

It is ordered, that the Independent Ocean Freight Forwarder License No. 1655 issued to Oglethorpe International, John B. Hohenstein III d.b.a. be and is hereby revoked effective December 31, 1978, without prejudice to reapplication for a license in the future.

It is further ordered, that Independent Ocean Freight Forwarder License No. 1655 issued to Oglethorpe International, John B. Hohenstein III d.b.a. be returned to the Commission for cancellation.

It is further ordered, that a copy of this order be published in the FEDERAL REGISTER and served upon Oglethorpe International, John B. Hohenstein III d.b.a.

ROBERT G. DREW,
Director, Bureau of Certification and Licensing.

[FR Doc. 79-3236 Filed 1-30-79; 8:45 am]

[4110-89-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Assistant Secretary for Education

COMMENTS ON COLLECTION OF INFORMATION AND DATE ACQUISITION ACTIVITY

Pursuant to Section 406(g)(2)(B), General Education Provisions Act, notice is hereby given as follows:

The National Center for Education Statistics, and the U.S. Office of Education have proposed collections of information and data acquisition activities which will request information from educational agencies or institutions.

The purpose of publishing this notice in the FEDERAL REGISTER is to comply with paragraph (g)(2)(B) of the "Control of Paperwork" amendment which provides that each educational agency or institution subject to a request under the collection of information and data acquisition activity and their representative organizations shall have an opportunity, during a 30-day period before the transmittal of the request to the Director of the Office of Management and Budget, to comment to the Administrator of the National Center for Education Statistics on the collection of information and data acquisition activity.

These data acquisition activities are subject to review by the HEW Education Data Acquisition Council and the Office of Management and Budget.

Descriptions of the proposed collections of information and data acquisition activities follow below.

Written comments on the proposed activities are invited. Comments should refer to the specific sponsoring agency and form number and must be received on or before March 2, 1979, and should be addressed to Administrator, National Center for Education Statistics, ATTN: Manager, Information Acquisition, Planning, and Utilization, Room 3001, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Further information may be obtained from Elizabeth M. Proctor of the National Center for Education Statistics, 202-245-1022.

Dated: January 25, 1979.

MARIE D. ELDRIDGE,
Administrator, National Center for Education Statistics.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY: Fall Enrollment in Institutions of Higher Education, 1979 Survey.

2. AGENCY/BUREAU/OFFICE: National Center for Education Statis-

tics/Division of Postsecondary and Vocational Education Statistics/University and College Surveys and Studies Branch.

3. AGENCY FORM NUMBER: NCES 2300-2.3.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY: "* * * The (National) Center (for Education Statistics) shall—* * * collect, collate, and, from time to time, report full and complete statistics on the condition of education in the United States * * *" (Sec. 501(a) of Pub. L. 93-380; Sec. 406(G) of the General Education Provisions Act, 20 U.S.C. 1221e-1). The execution of Pub. L. 89-329, as amended requires the use of college enrollment data in making formula allotments in college work-study programs, state incentive grants, direct loans to students, equipment and remodeling, and others.

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE:

VOLUNTARY: This survey is voluntary for all institutions of higher education in the universe for fall 1979.

6. HOW INFORMATION COLLECTED WILL BE USED:

1. The execution of Pub. L. 89-329, as amended, requires the making of formula allotments based upon the data collected from the Fall Enrollment Survey. More specifically the formula allotment programs using higher education survey data are:

Public Law	Program	Data Required
Pub. L. 89-329, Title IV C.....	College Work Study Program.	Total full-time enrollment in Higher Education including proprietary schools. Total estimated high school graduates "Related children" under 18 in families less than $3,000 p.a.
Pub. L. 89-329 as amended by Pub. L. 92-318 Title IV-A, Subpart 3.	State Incentive Grants...	*Total enrollment* in the higher institutions including proprietary schools.
Pub. L. 89-329, Title IV, Part E.	Direct Loans to Students.	Total full-time enrollment in Higher Education including proprietary schools.
Pub. L. 89-329 as amended by Pub. L. 92-318 Sec. 601 (b) equipment & remodeling. Sec. 601 (c) T.V. equip.-remodeling.	Equipment and remodeling.	F.T. & F.T.E. of degree-credit and nondegree-credit enrollment excluding proprietary schools in HEI.
Pub. L. 89-329 as amended by Pub. L. 92-318, Title IV, Part A. Subpart 2.	Supplemental Educational Opportunity Grants Initial Year Awards.	Total full-time and full-time equivalent degree-credit and non-degree-credit enrollment in institutions of higher education and full-time and full-time equivalent enrollment in proprietary schools.
Pub. L. 89-329, Title X, part A-2.	Community Colleges and Occupational Educational; Establishment and Expansion of Community Colleges.	*Population* 18 and over as of 4-1-70.
Pub. L. 89-329 as amended by H.E. Act, Title I Part A.	Community Services Continuing Education.	Total resident *population.*

2. Fall Enrollment data are also used to provide full and complete statistics on the condition of education in the United States, not only in their absolute form as standards of measurement and comparison, and in making projections, but also in combination with other educational variables to calculate indices and perform other analyses.

In addition, these enrollment data are used by other Federal agencies, by Congress, by state education agencies, by institutions of higher education, by private education associations and organizations, by market and other research firms and individuals, and by students.

7. DATA ACQUISITION PLAN:

a. Method of Collection: Mail.

b Time of Collection: October—December 1979.

c. Frequency: Annually.

8. RESPONDENTS:

a. Type: Colleges and Universities.

b. Number: 3130 Institutional Units.

c. Estimated Average Man-Hours Per Respondents: 1.0 hours.

9. INFORMATION TO BE COLLECTED: Numbers of students enrolled in institutions of higher education by sex, and by level of enrollment, and by race, and by field of study.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY: Residence and Migration of College Student, Fall 1979.

2. AGENCY/BUREAU/OFFICE: National Center for Education Statistics.

3. AGENCY FORM NUMBERS: NCES Form 2300-2.8.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY: "Section 406(b) * * * The Center shall collect, collate, and from time to time report full and complete statistics on the condition of education in the United States". (20 U.S.C. 1221-1) Pub. L. 93-380.

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE: Voluntary.

6. HOW INFORMATION WILL BE USED:

These data are used by: The Bureau of the Census in conjunction with the 1980 Census; the Bureau of Labor Statistics in their projections of manpower, the Congressional Research Service of the Library of Congress in preparing information for the members of Congress relating both to information regarding their constituencies and in the assessment of changing and developing needs of our Nation with respect to manpower and higher education; the Bureau of Higher and Continuing Education of the U.S. Office of Education, ASE, DHEW; and other Federal agencies.

Uses of the data by Federal agencies include: Assessing whether there are provisions in the State Student Incentive Grant Program and in financial aid programs limiting student mobility; assessing financial aid needs of different regions in the U.S.; analyzing supplemental grant needs by State for the State Student Incentive Grant program; analyzing regional needs for additional program/institutions by determining what institutions are attracting out-of-state students; analyzing trends where contiguous State agreements exist; and assessing potential situations for portability of State grants.

In addition to the above Federal uses, these data are used by many national associations and agencies for the benefit of the higher education sector, by regional associations, State higher education agencies and associations by individual institutions of higher education as well as by private citizens.

7. DATA ACQUISITION PLAN:

a. METHOD OF COLLECTION: Mail.

b. TIME OF COLLECTION: Academic year 1979-80; due date: November 1979.

c. FREQUENCY: Biennially.

8. RESPONDENTS:

a. TYPE: Institutions of Higher Education.

b. NUMBER: 3,200—Universe.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1.5.

9. INFORMATION TO BE COLLECTED: The data to be collected are the number of newly enrolled students by State of origin as of Fall 1979. Data are to be reported by each of the 3,200 institutions of higher education in the aggregate U.S. They are to report students by Home State and by First-Time Freshmen; First-Time Undergraduate Transfers; First-Time, First

Professionals; First-Time Graduate; and First-Time unclassified; and whether they are enrolled full or part time.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY: Survey of Salaries, Tenure, and Fringe Benefits of Full-Time Instructional Faculty in Institutions of Higher Education, 1979-80.

2. AGENCY FORM NUMBER: NCES 2300-3.

3. AGENCY/BUREAU/OFFICE: National Center for Education Statistics.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY: "* * * the (National) Center (for Education Statistics) shall—* * * collect, collate, and form time to time, report full and complete statistyics on the condition of education in the United States * * *" (Sec. 501(c) of Pub. L. 93-380; Sec. 406(G) of the General Education Provisions Act, 20 U.S.C. 1221 e-1).

5. VOLUNTARY/OBLIGATION NATURE OF RESPONSE: Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED: Institutions use the salary by rank and the distribution data to establish their own salary scales. State agencies rely on salary, tenure, and fringe benefit data to determine budgets for their State-supported institutions. Data are reviewed by professional and education associations and by Federal agencies to evaluate the extent to which a salary differential between men and women faculty exists and to monitor the progress of individual institutions, and the profession as a whole, to eliminate this differential. Tenure data are used by the above organizations to evaluate mobility of faculty. Salary and fringe benefit data used by: National Institute of Education to calculate the Higher Education Price Index; the Bureau of Labor Statistics to project salary levels for faculty; the Council of Wage and Price Control to evaluate compliance with the President's anti-inflation guidelines.

7. DATA ACQUISITION PLAN:

a. METHOD OF COLLECTION: Mail.

b. TIME OF COLLECTION: October 1979/February 1980.

c. FREQUENCY: Annually.

8. RESPONDENTS:

a. TYPE: Colleges and Universities.

b. NUMBER: Universe: 3100.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 8.0 hours.

9. INFORMATION TO BE COLLECTED:

Number of full-time instructional faculty by sex, rank, length of contract, and tenure status and of those contributing their services and/or active members of military organizations.

Total salary outlay of full-time instructional faculty, excluding the military and those contributing their services by sex, rank, and length of contract.

Distribution of full-time faculty by salary interval, sex, rank, and length of contract.

Salaries of continuing faculty by length of contract and rank. Expenditures for fringe benefits for full-time instructional faculty and the number covered by length of contract, type of benefit, and rank.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY: Higher Education General Information Survey of financial Statistics of Institutions of Higher Education for Fiscal Year Ending 1979.

2. AGENCY FORM NUMBER: NCES 2300-4.

3. AGENCY/BUREAU/OFFICE: National Center for Education Statistics/University and College Surveys and Studies Branch.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY: "* * * the (National) Center (for Education Statistics) shall—* * * collect, collate, and from time to time, report full and complete statistics on the condition of education in the United States * * *" (Sec. 501 (c) of Pub. L. 93-380; Sec. 406. (G) of the General Provisions Act, 20 U.S.C. 1221 e-1).

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE: Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED: The ways in which the data are used include the following: 1. States and regional agencies to make comparisons between States; 2. Institutions to make comparisons between institutions, to prepare budget requests, and to evaluate resource management; 3. The U.S. Bureau of the Census to report on State and Local governments' finances; 4. the U.S. Office of Education to determine an institution's eligibility for Title III grants; 5. the Boston Company to report on the performance of college and university endowments; 6. The U.S. Bureau of Economic Analysis to study the size, growth and indebtedness of physical plant; 7. education associations, researchers, and individuals to assess the financial condition of institutions, to develop price indexes, and other analytical tools.

7. DATA ACQUISITION PLAN:

a. METHOD OF COLLECTION: Mail.

b. TIME OF COLLECTION: October 1979/March 1980.

c. FREQUENCY: Annually.

8. RESPONDENTS:

a. TYPE: Colleges and Universities.

b. NUMBER: Universe: 3100.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 2.5 hours.

9. INFORMATION TO BE COLLECTED:

a. Current funds revenues by source;

b. Current funds expenditures by function;

c. Physical plant assets by type of asset;

d. Indebtedness on physical plant by balance and transaction;

e. Endowment assets by book and market values;

f. Statement of changes in fund balances by type of fund;

g. Assessment of financial condition and effect of various factors on it;

h. Balance sheet data;

i. Additional data needed by the U.S. Bureau of Census on the following: 1. Revenues and expenditures items; 2. debt outstanding, issued, and retired; and 3. cash and security holdings by type of asset.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY: Instructions for Completing the Financial Status Report and the Follow Through Grantee Performance Report.

2. AGENCY/BUREAU/OFFICE: U.S. Office of Education, Bureau of Elementary and Secondary Education, Division of Follow Through.

3.AGENCY FORM NUMBER: OE Form 376.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY:

"Sec. 551. (a)(1) The Secreatry is authorized to provide financial assistance in the form of grants to local educational agencies, combinations of such agencies, and, as provided in paragraph (2) of this subsection, any other public or appropriate nonprofit private agencies, organizations, and institutions for the purpose of carrying out Follow Through programs focused primarily on childern from low-income families in kindergarten and primary grades, including such children enrolled in private nonprofit elementary schools, who were previously enrolled in Headstart or similar programs. Other childern enrolled in private nonprofit elementary schools, who were previously enrolled in preschool programs of a compensatory nature which received Federal financial assistance may participate in such Follow Through programs * * *.

"Sec. 553. (a) The Secretary may provide financial assistance through grants or contracts for research, demonstration, or pilot projects conduct-

ed by public and private agencies which are designed to test or assist in the development of new approaches or methods that will aid in overcoming special problems of in otherwise furthering the purposes of this part * * *.

"Sec. 556. The Secretary may provide, directly or through grants or other appropriate arrangements (1) technical assistance to Follow Through programs in developing, conducting, and administering programs under this part, and (2) training for specialized or other personnel which is needed in connection with Follow Through programs."

(Economic Opportunity Act of 1964, as amended by Pub. L. 95-568, 42 U.S.C. 2929)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE: Required to obtain or maintain benefits.

6. HOW INFORMATION COLLECTED WILL BE USED: *Program Management* These Instructions will enable all grantees receiving funds under the Follow Through program to meet the reporting requirements in their Grant Terms and Conditions. The report forms will allow the a Office of Education to assess the Follow Through grantees' performance in terms of the objectives stated in their applications as well as to determine the amount of funds obligated.

7. DATA ACQUISITION PLAN:

a. METHOD OF COLLECTION: Mail.

b. TIME OF COLLECTION: 90 days from the end of grant period.

c. FREQUENCY: Annually.

8. RESPONDENTS:

a. TYPE: Local Education Agencies.

b. NUMBER: 141—Universe.

c. ESTIMATED AVERAGE MANHOURS PER RESPONDENT: 2.5.

a. TYPE: Colleges and Universities.

b. NUMBER: 19—Universe.

c. ESTIMATED AVERAGE MANHOURS PER RESPONDENT: 2.5.

a. TYPE: State Education Agencies.

b. NUMBER: 36—Universe.

c. ESTIMATED AVERAGE MANHOURS PER RESPONDENT: 2.5.

9. INFORMATION TO BE COLLECTED:

Follow Through Grantee Performance Report

There are ten items on the Follow Through Grantee Performance Report. Items #1 through 8 consist of basic information such as name of grantee, type of report, and the name of the person preparing the report Item #9 deals with the narrative statements in the report. This narrative statement will be completed in the same format as the narrative statement provided by the grantee in its approved application. Item #10 applies only to those local projects operating supplementary training components for the purpose of helping paraprofessionals employed in the projects with college degrees. The information to be collected is of a very basic nature consisting of such matters as the number of paraprofessionals funded, the ethnic/racial composition of the paraprofessionals, the academic status of the paraprofessionals, and the number of credits earned by the paraprofessionals.

Financial Status Report (HEW 601T)

The Financial Status Report (HEW 601T) is the standard form used by all Office of Education grantees to report financial obligations. There are thirteen items on the report. Items #1 through 9 consist of basic information such as name of grantee, grant number, and type of report. Item #10 consists of the financial data that must be reported according to the functions and activities in the approved budget. These data include total program outlays for the period of the report, non-Federal share of program outlays, total Federal share of program outlays, total unpaid obligations, and unobligated balance of Federal funds.

Item #11 deals with the indirect costs. The data to be collected include type of indirect cost rate, the rate, the base, and the amount of indirect costs. Item #12 allows the grantee to make any remarks believed necessary. Item #13 consists of a certification statement and signature block.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY: Study of Program Management Procedures in the Campus-Based and Basic Grant Programs—Mail Survey.

2. AGENCY/BUREAU/OFFICE: U.S. Office of Education, Office of Evaluation and Dissemination.

3. AGENCY FORM NUMBER: OE 637-1.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY: "* * * the Secretary shall transmit to (appropriate Congressional committees) an annual evaluation report which evaluates the effectiveness of applicable programs * * * such report shall * * * contain information on the progress being made * * * describe the cost and benefits of the applicable program * * * identify which sectors of the public receive the benefits of such program * * *" Sec. 417. (a)(1) (B)(C), Pub. L. 93-380 (20 U.S.C. 1226c)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE: Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED: The major purposes of this study are to evaluate the effectiveness and efficiency of operations and management procedures in terms of achieving the intended benefits of the Campus—Based and Basic Grant Programs; and to recommend appropriate techniques for improvements in the operation and managerial procedures. Data will be gathered from institutions on their policy and practices in financial aid management.

7. DATA ACQUISITON PLAN:

a. METHOD OF COLLECTION: Mail survey.

b. TIME OF COLLECTION: Spring, 1979.

c. FREQUENCY: Single time.

8. RESPONDENTS:

a. TYPE: Financial Aid Officers.

b. NUMBER: 1025.

c. ESTIMATED AVERAGE MANHOURS PER RESPONDENT: 2.0.

9. INFORMATION TO BE COLLECTED: Operating costs; Procedures for keeping, and contents of, financial aid records; Statistical data on aid recipients; Staff training provided; Procedures for informing potential students about financial aid programs; Procedures for developing student aid packages; Type of need analysis system used by the institution; Procedures for validating and correcting information submitted by students on Basic Grant and Campus-Based applications; Procedures used to allocate aid to students, including the notification and delivery of aid and the repackaging of aid; Procedures for monitoring the enrollment of aid recipients and for the recovery of aid from recipients who are no longer eligible.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY: Survey of Parent Involvement Activities in Federal Education Programs (Title I, ESAA, Bilingual and Follow Through).

2. AGENCY/BUREAU/OFFICE: U.S. Office of Education, Office of Evaluation and Dissemination.

3. AGENCY FORM NUMBER: OE 642-3, -4, -5, -6, -7.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY: Section 417(a)(1) of Pub. L. 93-380 requires that "—the Secretary shall transmit to (appropriate Congressional committees) an annual evaluation report which evaluates the effectiveness of applicable programs * * * such report shall * * * contain information on the progress being made * * * describe the cost and benefits of the applicable program * * * identify which sectors of the public receive benefits of such program * * *" (20 U.S.C. 1226c).

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE: Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED: The

Commissioner of Education is required by law (Sec. 427 General Education Provisions Act) to promulgate regulations which encourage parental participation where it is determined that such participation increases the effectiveness of such programs. Currently, little information exists concerning the nature or extent of parental participation in the four federal programs beyond some limited information concerning required advisory councils. The present study is designed to collect descriptive data on the nature and extent of both formal and informal parent participation in these educational programs. Such data will be useful to federal policymakers in recommending new regulations and for purposes of reporting to the Congress the costs and benefits of the currently required parent advisory councils. Additionally the study will attempt to identify and disseminate effective strategies or models of parental participation for use by local education agencies and communities.

7. DATA ACQUISITION PLAN:

a. METHOD OF COLLECTION: Interview/Observation.

b. TIME OF COLLECTION: Winter through Spring 1980.

c. FREQUENCY: Once.

8. RESPONDENTS:

a. TYPE: School Principal.

b. NUMBER: Sample—150.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1 hour.

a. TYPE: Teachers (Program Staff).

b. NUMBER: Sample—500.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT; 1 hour.

a. TYPE: Parents.

b. NUMBER: Sample—3700.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1 hour.

a. TYPE: School Administrator (Federal Program Coordinator).

b. NUMBER: Sample—50.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1 hour.

a. TYPE: Other—Parent Involvement Specialist/Parent Coordinators.

b. NUMBER: Sample—150.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1 hour.

9. INFORMATION TO BE COLLECTED:

RESPONDENT TYPE: School Principals—

- Nature and intensity of parent roles in school and district.
- Short and long-term goals for parental involvement.
- History of parental participation activities.
- Nature of school climate.
- Degree of principal's support for parent roles.
- Perceived degree of support for parental participation (district, school staff, community).
- Degree of community enthusiasm for parental participation.
- Perceived effectiveness of school staff-parent working relationships.
- Impacts of parental involvement (on: Federal program, school instructional program, student behaviors, school-community climate, levels of other parental involvement, other).

RESPONDENT TYPE: Teachers—

- Nature and intensity of parent roles in school and district.
- Nature of school climate.
- Personal role in parental involvement.
- Perceived degree of support for parental participation (district, school administration and staff, community).
- Perceived effectiveness of school staff-parent working relationships.
- Impacts of parental involvement.

RESPONDENT TYPE: Parents—

- Nature of school climate.
- Personal history of involvement.
- Perceived degree of support for involvement (district, school administration and staff, community).
- Participating parents:

—personal involvement role.

—decision areas for parents.

—goals for parental involvement.

- Non-participating parents:

—perception of nature of parent involvement roles.

—reasons for current non-involvement.

- Impacts of parental involvement.

RESPONDENT TYPE: School Administration—Program Coordinator—

- Nature and intensity of parental involvement activities at district level.
- History of parent participation activities at district level.
- Amount of funding for parental involvement activities.
- Perceived degree of support for parental participation (districts, school staffs, school administration, community).
- Impacts of district-level parental involvement.

RESPONDENT TYPE: Other—Parent Involvement Specialist/Parent Coordinators—

- Nature of parent involvement specialist/parent coordinator role.
- History of parent involvement specialist/coordinator role.
- Short and long-term goals for specialist/coordinator role.
- Impact of federal, state and district guidelines on parental involvement.
- Perceived degree of support for parental participation (district, school staff, school administrators, community).
- Effectiveness of parent involvement specialist/coordinator role on nature and intensity of parental involvement.
- Perceived effectiveness of school staff-parent working relationships.
- Impact of parental involvement.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA AQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY: A Study of Dissemination Efforts Supporting School Improvement.

2. AGENCY/BUREAU/OFFICE: U.S. Office of Education, Office of Evaluation and Dissemination.

3. AGENCY FORM NUMBERS: OE 656 -1, -2, -3, -4, -5.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY:

Section 417(a)(1) of Pub L. 95-561 requirement "The Secretary shall transmit to the * * * (Congress) * * * an annual report which evaluates the effectiveness of applicable programs in achieving their legislative purposes together with recommendations relating to such programs for the improvement of such programs which will result in greater effectiveness in achieving such purposes". (20 U.S.C. 2701)

In addition, Part K section 376 of Title III Special Project of Pub. L. 95-561 requires that "The Commissioner shall * * * collect, analyze and disseminate information derived from activities carried out under this title and under part C of Title IV, including information as to which of those activities have been successful in improving the achievement of students in the basic skills". (20 U.S.C. 3041)

5. VOLUNTARY/OBLIGATORY NATURE OF REPONSE: Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED: The information collected in the study will be used to provide program managers and Congress with information about the effectiveness of different types of dissemination strategies which support school improvement through fostering adoption/implementation of exemplary programs.

7. DATA ACQUISITION PLAN:

a. METHOD OF COLLECTION: Personal interview, questionnaire, observation.

b. TIME OF COLLECTION: Fall 1979 through Spring 1980.

c. FREQUENCY: Once.

8. RESPONDENTS:

a. TYPE: National Diffusion Network (NDN) contractors.

b. NUMBER: 200.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: ½ hour.

a. TYPE: SEA/State Personnel.

b. NUMBER: 100.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 2 hours.

a. TYPE: (1) School Administrators (2) Principals.

b. NUMBER: (1) 200; (2) 200.

c. ESTIMATED AVERAGE MANHOURS PER RESPONDENT: (1) 2 hours; (2) 2 hours.

a. TYPE: Teachers.

b. NUMBER: 6,000.

c. ESTIMATED AVERAGE MANHOURS PER RESPONDENT: 1 hour.

a. TYPE: Community education leaders.

b. NUMBER: 600.

c. ESTIMATED AVERAGE MANHOURS PER RESPONDENT: 1 hour.

9. INFORMATION TO BE COLLECTED:

RESPONDENT TYPE: NDN Contractors—

- Communication practices.
- Goals/ objectives.
- Activities/strategies.
- Dissemination perspectives.
- Evaluation procedures.

RESPONDENT/TYPE: SEA/State Personnel—

- Goals/objectives.
- Dissemination activities, strategies, resources.
- Dissemination/change perspectives and information.
- State political factors affecting school improvement.

RESPONDENT TYPE: School Administrators, Principals—

- Goals/objectives.
- Improvement activities, strategies, resources and perspectives.
- Local political factors.
- School climate.
- Perspectives on change.
- District/building demographics.
- Student achievement.

RESPONDENT TYPE: Teachers—

- Goals/objectives.
- Project implementation information.
- Perspectives on change and dissemination.
- Attitudes towards eductional practices.
- School climate.

RESPONDENT TYPE: Community Education Leaders—

- Perceptions of school needs.
- Local political factors.
- Perspectives on school improvement and dissemination.
- Perceptions on educational program impact.
- Participation in school improvement efforts.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY: A Study of ESEA Title VII-Funded and Other Bilingual Education Teacher Training Programs.

2. AGENCY/OFFICE: U.S. Office of Education, Office of Evaluation and Dissemination.

3. AGENCY FORM NUMBERS: OE 661 -1, -2, -3, -4.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY: General Education Provisions Act, Section 417(a)(1) states: "* * * an annual evaluation report which evaluates the effectiveness of applicable programs in achieving their legislated purposes together with recommendations relating to such programs for the improvement of such programs which will result in greater effectiveness in achieving such purposes * * * such report shall—

(A) Set forth goals and objectives in qualitative and quantitative terms * * *

(B) Contain information on the progress being made during the previous fiscal year toward the achievement of such goals and objectives;

(C) Describe the cost and benefits of the * * * program being evaluated * * *

(D) Contain plans for implementing corrective action * * *" (Pub. L. 93-380, 20 U.S.C. 1226(c)).

Also, the "Criteria Governing Grants", published in the FEDERAL REGISTER (June 11, 1976) states: "* * * Evidence that the applicant will cooperate with the Commissioner (or a public or private agency designated by the Commissioner) in the evaluation of the extent to which funds made available under this subpart (Subpart D—Training Programs) have been effective in achieving the purposes of this Part * * *"

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE: Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED:

(a) To estimate the extent to which teacher training programs are helpful in reducing the shortage of bilingual education teachers.

(b) To estimate the extent to which fellowship grantees are employed subsequently as instructors in teacher training programs or other related bilingual education capacity.

(c) To determine the effectiveness of the grants received by IHEs in establishing or improving a training program.

7. DATA ACQUISITION PLAN:

(a) METHOD OF COLLECTION: Site visits to IHEs, mail and telephone survey of graduates.

(b) TIME OF COLLECTION: 1979-1980 Academic Year.

(c) FREQUENCY: Single time.

8. A. RESPONDENTS (IHEs):

(a) TYPE: Administrator.

(b) NUMBER: 40.

(c) ESTIMATED AVERAGE MANHOURS FOR RESPONDENT: 1.0.

(a) TYPE: Project Directors.

(b) NUMBER: 40.

(c) ESTIMATED AVERAGE MANHOURS PER RESPONDENT: 1.0.

(a) TYPE: Instructors.

(b) NUMBER: 80.

(c) ESTIMATED AVERAGE MANHOURS PER RESPONDENT: 1.0.

B. RESPONDENTS:

(a) TYPE: Present and former students in the teacher training programs.

(b) NUMBER: 500.

(c) ESTIMATED AVERAGE MANHOURS PER RESPONDENT: 1.0.

9. INFORMATION TO BE COLLECTED:

RESPONDENT TYPE: IHEs:

- Source(s) of program funding.
- Institutional relationship of bilingual training to IHE.
- How program has evolved over recent years.
- How many students are in the program.
- What student competencies are taught in the school.
- What procedures are used to determine student attainment of these proficiences.

RESPONDENT TYPE: Current and former graduates of IHE training programs:

- Place of employment.
- Duties of employment.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA COLLECTION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY: Study of Supplementary Training Available to Follow Through Parents and Aides.

2. AGENCY/OFFICE: U.S. Office of Education, Office of Evaluation and Dissemination.

3. AGENCY FORM NUMBER(S): OE 662.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY: The Follow Through (FT) program was originally authorized in 1967 by the Economic Opportunity Act. The program was reauthorized by Congress in the Economic Opportunity Amendments of 1972. Two years later, the Community Services Act of 1974 re-extended authorization for the program and elaborated on the evaluation aspects of the program: "provide * * * for the evaluation of projects assisted under this part * * * including evaluations that describe and measure the impact of such projects, their effectiveness in achieving stated goals * * *" (Community Services Act of 1974, Pub. L. 93-644, Part B; 42 U.S.C. 2929)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE: Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED: The purpose of the Supplementary Training component of Follow Through is to allow paraprofessional employed in Follow Through projects to enroll in postsecondary education courses leading to a two-or four-year degree. The principal objective of this study is to present a historical account of Supple-

mentary Training by gathering information concerning characteristics of projects, participants, and training received. Numbers of students enrolled, budgetary information, dropouts, degrees conferred, achievement of nontraditional students, and present employment status of recipients will be documented in order to (a) determine the degree to which the programs in operation are achieving the objectives of Supplementary Training and (b) propose modification in these training programs if such be necessary.

7. DATA ACQUISITION PLAN:

(a) METHOD OF COLLECTION: Telephone and mail survey of former and present recipients of training funds.

(b) TIME OF COLLECTION: Spring 1979.

(c) FREQUENCY: Single time.

8. RESPONDENTS:

(a) TYPE: Former and present recipients of Follow Through training funds.

(b) NUMBER: 200.

(c) ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 0.25.

9. INFORMATION TO BE COLLECTED:

(a) Characteristics of participants:

i. Are trainees parents of Follow Through children? Teachers? Aides?

ii. Educational level prior to training.

iii. Cost per participant.

iv. Did trainee return to Follow Through project after training?

(b) Characteristics of training received:

i. Subject matter field, degree(s) received.

ii. Name of training facility.

iii. Cost per applicant by item (books, tuition, transportation).

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY: Study of Evaluation Practices and Procedures.

2. AGENCY/BUREAU/OFFICE: U.S. Office of Evaluation, Office of Evaluation and Dissemination.

3. AGENCY FORM NUMBER: OE Forms 682-1, -2, -3.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY: Section 1526, "The Commissioner of Education shall conduct a study of evaluation practices and procedures at the national, State, and local levels with respect to federally funded elementary and secondary educational programs and shall include in the first annual report to Congress submitted more than one year after the date of enactment of this Act proposals and recommendations for the revision or modification of any part or all of such practices and procedures. Such proposals and recommendations shall include provisions:

(1) To ensure that evaluations are based on uniform methods and measurements;

(2) To ensure the integrity and independence of the evaluation process; and

(3) To ensure appropriate follow-up on the evaluations that are conducted."

(Pub. L. 95-561; 20 U.S.C. 1231a)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE: Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED: The information collected in this survey will be used to respond to the Congressional request outlined in (4) above.

7. DATA ACQUISITION PLAN:

a. METHOD OF COLLECTION: Interview.

b. TIME OF COLLECTION: Spring or Fall, 1979.

c. FREQUENCY: One.

8. RESPONDENTS:

a. TYPE: School District Administrative Staff.

b. NUMBER: 120.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1 hour.

a. TYPE: School Principal.

b. Number: 150.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1 hour.

a. TYPE: Teachers.

b. NUMBER: 450.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1 hour.

9. INFORMATION TO BE COLLECTED:

RESPONDENT TYPE: School District Administrative Staff—

- Evaluation Procedures, Practices and Uses

RESPONDENT TYPE: Principal's—

- Evaluation Procedures, Practices, Practices and Uses.

RESPONDENT TYPE: Teachers—

- Evaluation procedures, Practices and Uses.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY: A study of the Sustaining Effects of Compensatory Education on Basic Skills: Student Follow Up.

2. AGENCY/BUREAU/OFFICE: U.S. Office of Education, Office of Evaluation and Dissemination.

3. AGENCY FORM NUMBER: OE Form 683 -1, -2.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY:

Section 417(a) * * * the report under this subsection shall include * * * "a survey of how many educationally disadvantaged children participate in such programs and projects and how many educationally disadvantaged children do not" * * * (Pub. L. 93-380; 20 U.S.C. 1226c) "For purposes of the preceding sentence, the term 'educationally disadvantaged children' refers to children who are achieving one or more years behind the achievement expected at the appropriate grade level for such children." Section 183(a) * * * "The Commissioner shall provide for independent evaluations which describe and measure the impact of programs and projects assisted under this title. Such evaluations may be provided by contract or other arrangements, and all such evaluations shall be made by competent and independent persons, and shall include, whenever possible, opinions obtained from program or project participants about the strengths and weaknesses of such programs or projects." (Pub. L. 95-561; 20 U.S.C. 2833)

Section 417(a)(1) " * * * the Secretary shall transmit to the * * * (Congress) * * * an annual evaluation report which evaluates the effectiveness of applicable programs in achieving their legislated purposes together with recommendations relating to such programs for the improvement of such programs which will result in greater effectiveness in achieving such purposes." (Pub. L. 93-380; 20 U.S.C. 1226c).

5. VOLUNTARY/OBLIGATORY NATURE OF REPSONSE: Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED: The information collected in this survey will be used to report on: (1) The proportions of students who received or did not receive compensatory services in the elementary grades compared with their receipt of such services in the junior high grades; (2) the nature of services received by students in (1); and, (3) the benefits that students derive from their services.

7. DATA ACQUISITION PLAN:

a. METHOD OF COLLECTION: Mail.

b. TIME OF COLLECTION: Spring, 1980.

c. FREQUENCY: Once.

8. RESPONDENTS:

a. TYPE: Students, public elementary/secondary schools.

b. NUMBER: 3150.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: .75 hour.

a. TYPE: School administrators and supervisors.

b. NUMBER: 150.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: .75 hour.

9. INFORMATION TO BE COLLECTED:

RESPONDENT TYPE: Students, public elementary/secondary schools—

- Nature and quantity of services received.

● Educational status and plans.

RESPONDENT TYPE: School administrators and supervisors—

● Districts Title I Allocation Practices.

● Districts Title I Implementation Procedures.

● School Compensatory Practices and Procedures.

● Teaching Staff's Compensatory Practices and Procedures.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY: Study of Successful ESAA Programs Supporting Intergroup Relations Activities.

2. AGENCY/BUREAU/OFFICE: U.S. Office of Education, Office of Evaluation and Dissemination.

3. AGENCY FORM NUMBER: OE 684-1 thru -6.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY: Section 417(a)(1) * * * "* * * the Secretary shall transmit to the * * * (Congress) * * * an annual evaluation report which evaluates the effectiveness of applicable programs in achieving their legislated purposes together with recommendations relating to such programs which will result in greater effectiveness in achieving such purposes." (Pub. L. 93-380; 20 U.S.C. 1226c)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE: Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED: The data collected in the study will be used to provide program managers and Congress with information about the conditions leading to successful intergroup relations in desegretating schools. The information will also be used to provide guidance to other LEAs desiring to implement similar programs.

7. DATA ACQUISITION PLAN:

a. METHOD OF COLLECTION: Mail/Personal Interview.

b. TIME OF COLLECTION: Spring 1980.

c. FREQUENCY: One time.

8. RESPONDENTS:

a. TYPE: 5th grade students receiving ESAA services (OE 684-1)

b. NUMBER: 2,880

c. ESTIMATED AVERAGE MANHOURS PER RESPONDENT: 1 hour.

a. TYPE: Teachers, elementary/secondary (OE 684-2).

b. NUMBER: 160.

c. ESTIMATED AVERAGE MANHOURS PER RESPONDENT: 2 hours.

a. TYPE: School Administrative Staff (OE 684-3).

b. NUMBER: 192.

c. ESTIMATED AVERAGE MANHOURS PER RESPONDENT: 1.3 hours.

a. TYPE: Parents of ESAA students (OE 684-4).

b. NUMBER: 102.

c. ESTIMATED AVERAGE MANHOURS PER RESPONDENT: 1 hour.

a. TYPE: District Administrative Staff (OE 684-5).

b. NUMBER: 168

c. ESTIMATED AVERAGE MANHOURS PER RESPONDENT: 1.1 hours.

a. TYPE: School Board Members (OE 684-6).

b. NUMBER: 48.

c. ESTIMATED AVERAGE MANHOURS PER RESPONDENT: 1 hour.

9. INFORMATION TO BE COLLECTED:

RESPONDENT TYPE: Students—

● Perception of intergroup relations in the school.

● Exposure to intergroup relations services.

● Knowledge of minority group contributions.

RESPONDENT TYPE: Teachers, elementary/secondary—

● Background characteristics of students.

● Types of human relations services and delivery methods.

● Coordination of human relations program.

● Perception of intergroup relations in the school.

RESPONDENT TYPE: School Administrative Staff—

● Administrative leadership in the school.

● Staff commitment to the program.

● Program integration within the school

● Program history.

RESPONDENT TYPE: Parents of ESAA students—

● Staff commitment to the program.

● Perception of intergroup relations in the school.

● Administrative leadership in the school

RESPONDENT TYPE: District Administrative Staff—

● Administrative leadership.

● Staff commitment to the program.

● Program coordination within district.

● Program history.

● Desegregation history in district.

RESPONDENT TYPE: School Board Members—

● Administrative leadership.

● Program continuity.

● Desegregation history.

● Program history.

● Perception of intergroup relations in the school.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY: Survey of Follow Through Student and Sponsor Status.

2. AGENCY/BUREAU/OFFICE: U.S. Office of Education, Office of Evaluation and Dissemination.

3. AGENCY FORM NUMBER: OE 685-1, -2, -3, -4.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY: Section 555 of Pub. L. 95-568 requires that "* * * the Secretary shall provide * * * for the continuing evaluation of programs under this part, including evaluations that measure and evaluate the impact of programs authorized by this part, in order to determine their effectiveness in achieving stated goals * * *" (45 U.S.C. 2929a).

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE: Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED: The Follow Through program focuses on the adoption by local sites of a number of innovative educational practices developed and coordinated by Follow Through sponsors. The data acquisition activity proposed here will allow assessment of the degree to which the practices included in each model are actually implemented in Follow Through classrooms. An earlier study, the *National Longitudinal Evaluation Study* (NLES), provided evaluative information regarding effects on students for early groups of students (through Cohort III) for many, but not all, of the sponsors in the program. This study will acquire information about student achievement and other outcomes associated with all sponsors for a later group of students (Cohort VIII). Additional information about characteristics associated with variability among project sites will address the issues raised, but not investigated, by the NLES. The data collected will be useful to other LEAs which desire information about the effectiveness of the educational practices advocated by the sponsors for improving the educational outcomes for low-income children. The information will also be responsive to the Congressional requirement outlined in (4) above, and will be useful for planning future Follow Through research and development activities.

7. DATA ACQUISITION PLAN:

a. METHOD OF COLLECTION: Interview.

b. TIME OF COLLECTION: Spring, 1980.

c. FREQUENCY: Once.

8. RESPONDENTS:

a. TYPE: Teachers.

b. NUMBER: Sample—1,000 Follow Through teachers.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1 hour.
a. TYPE: School Administrators.
b. NUMBER: Sample—300 Follow Through coordinators, resource personnel.
c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: ¾ hour.
a. TYPE: Students, elementary.
b. NUMBER: Sample—10,000 third grade Follow Through students.
c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: ½ hour.
a. TYPE: Other (Follow Through Sponsors personnel).
b. NUMBER: Sample—60 project personnel.
c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1 hour.
9. INFORMATION TO BE COLLECTED:
RESPONDENT TYPE: Teachers—
- Class demographics.
- Measures of Implementation of sponsor approach.
- Teacher background (training, experience).

RESPONDENT TYPE: School Administrators—
- School demographic (including population stability).
- Follow Through Project Implementation measures:
- Sponsor satisfaction.

RESPONDENT TYPE: Students—
- Affective measures (happiness, locus of control, sense of belonging).

RESPONDENT TYPE: Other—Follow Through sponsor personnel—
- Measure of site implementation.
- Site history (level of support, training, problems).

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY: State Evaluation and Performance Report on ESEA Title I for Fiscal Year 1980.
2. AGENCY/BUREAU/OFFICE: U.S. Office of Education, Office of Evaluation and Dissemination.
3. AGENCY FORM NUMBER: OE 686.
4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY: Section 183; "The models developed by the Commissioner shall specify objective criteria which shall be utilized in the evaluation of all programs and shall outline techniques (such as longitudinal studies of children involved in such programs) and methodology (such as the use of tests which yield comparable results) for producing data which are comparable on a statewide and nationwide basis." Pub. L. 95-561; 20 U.S.C. 2833.
5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE: Obligatory.
6. HOW INFORMATION TO BE COLLECTED WILL BE USED: The information collected will be tabulated for frequency distributions and descriptions and in the required report to Congress and will be disseminated to all Title I grantees.
7. DATA ACQUISITION PLAN:
a. METHOD OF COLLECTION: Mail.
b. TIME OF COLLECTION: January, 1981.
c. FREQUENCY: annually for descriptive data, biennially for impact data.
8. RESPONDENTS—
a. TYPE: State ESEA Title I Coordinators.
b. NUMBER: 58.
c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 400 hours.
9. INFORMATION TO BE COLLECTED:
RESPONDENT TYPE: State Title I Coordinator—
- Participation in Title I (buildings, students, services, racial/ethnic group).
- Parental involvement (advisory councils, other parent activities).
- Personnel (Staff, training).
- Achievement data (statewide average by grade and subject matter).
- Project descriptors (exposure, enrollment, achievement for grades 2, 6, 10).
- Summary program data (students by grade; services and ethnic background; staff).

[FR Doc. 79-3152 Filed 1-30-79; 8:45 am]

[4110-86-M]

Public Health Service

OPEN MEETING ON INFLUENZA

A meeting will be convened by the Surgeon General, Public Health Service, to review and discuss technical questions pertinent to the composition and formulation of influenza vaccines in 1979-1980, and to define individuals at high risk of complications from influenza illness. Specific agenda items will include the review and discussion of: current influenza epidemiology; choice of virus strains for 1979-1980 influenza vaccines; 1978 influenza vaccine trials; vaccine reactions and reaction surveillance; risk of complications from influenza illness; and antiviral drugs.

The meeting will be open to the public, limited only by the space available:

Date: February 12, 1979.
Time: 8:30 a.m.
Place: Wilson Hall, Building 1, National Institutes of Health, Bethesda, Maryland 20014.

Additional information may be obtained from: Dr. Gary R. Noble, Center for Disease Control, Building 7, Room 112, 1600 Clifton Road, N.E., Atlanta, Georgia 30333 (Phones: FTS: 236-3591; Commercial: 404/329-3591).

Dated January 24, 1979.

WILLIAM C. WATSON, Jr.,
Acting Director,
Center for Disease Control.

[FR Doc. 79-3230 Filed 1-30-79; 8:45 am]

[4110-12-M]

Office of the Secretary

SECRETARY'S ADVISORY COMMITTEE ON THE RIGHTS AND RESPONSIBILITIES OF WOMEN

Meeting

The Secretary's Advisory Committee on the Rights and Responsibilities of Women, which is established to provide advice to the Secretary of Health, Education, and Welfare on the impact of the policies, programs, and activities of the Department on the status of women, will hold its Family Policy Task Force meeting on Wednesday, February 14, 1979 from 2:00 to 6:00 p.m. The meeting will be held in Room 303-A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. The agenda will include briefings on Departmental programs and policies relating to family policy issues, including welfare reform and social security.

Further information on the Committee may be obtained from: Susan C. Lubick, Executive Secretary, telephone 202-245-8454. These meetings are open to the public.

Dated: January 12, 1979.

SUSAN C. LUBICK,
Executive Secretary, Secretary's Advisory Committee on the Rights and Responsibilities of Women.

[FR Doc. 79-3441 Filed 1-30-79; 8:45 am]

[4110-12-M]

SECRETARY'S ADVISORY COMMITTEE ON THE RIGHTS AND RESPONSIBILITIES OF WOMEN

Meeting

The Secretary's Advisory Committee on the Rights and Responsibilities of Women, which is established to provide advice to the Secretary of Health, Education, and Welfare on the impact of the policies, programs, and activities of the Department on the status

of women will meet on Thursday, February 15, 1979 from 10:00 a.m. to 5:00 p.m., and on Friday, February 16, 1979 from 9:30 a.m. to 3:00 p.m., Room 303-A HEW-Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. The agenda will include reports from Title IX, Health, Family Policy and Equal Employment Opportunity Task Forces and action decisions based upon those reports.

Further information on the Committee may be obtained from: Susan C. Lubick, Executive Secretary, telephone 202-245-8454. These meetings are open to the public.

Dated: January 12, 1979.

SUSAN C. LUBICK,
Executive Secretary, Secretary's Advisory Committee on the Rights and Responsibilities of Women.

[FR Doc. 79-3442 Filed 1-30-79; 8:45 am]

[4310-02-M]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

IRRIGATION OPERATION AND MAINTENANCE CHARGES

Water Charges and Related Information on the Fort Hall Irrigation Project, Idaho

This notice of operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 230 DM 1 and redelegated by the Assistant Secretary—Indian Affairs to the Area Directors in 10 BIAM 3. The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and Sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9), and also under 25 CFR 191.1(e).

On November 24, 1978, in 43 FR 54998, there was published a notice of proposed assessment rates and related provisions on the Fort Hall Project for Calendar Year 1979 and subsequent years until further notice. These regulations were proposed pursuant to the authority contained in the Acts of March 1, 1907 (34 Stat. 1024), and August 31, 1954 (68 Stat. 1026).

Interested persons were given 30 days in which to submit written comments, views, or arguments regarding the proposed rates and related provisions. During this period no comments, suggestions or objections were submitted. Therefore, the assessment rates and related provisions as set forth below are adopted effective 30 days after date of publication in the FEDERAL REGISTER.

FORT HALL IRRIGATION PROJECT

REGULATIONS AND CHARGES

Administration

The Fort Hall Irrigation Project, which consists of the Fort Hall Unit including ceded area south of the Fort Hall Indian Reservation, the Michaud Unit and the Minor Units on the Fort Hall Indian Reservation, Idaho, is administered by the Bureau of Indian Affairs. The Superintendent of the Fort Hall Agency is the officer-in-charge and is fully authorized to carry out and enforce the regulations, either directly or through employees designated by him. The general regulations are contained in Part 191, Operation and Maintenance, Title 25—Indians, Code of Federal Regulations (42 FR 30362, June 14, 1977).

Irrigation Season

Water will be available for irrigation purposes from April 15 to September 30 of each year. These dates may be varied by 15 days depending on weather conditions and the necessity for doing maintenance work.

Methods of Irrigation

Where soil, topography, and other physical conditions are unfavorable for surface irrigation, and the project facilities are designed to deliver water to farm units for sprinkler irrigation, the officer-in-charge may limit deliveries to this type of irrigation.

Distribution and Apportionment of Water

(a) *Delivery.* Water for irrigation purposes will be delivered throughout the irrgation season by either the continuous flow or rotation method at the discretion of the officer-in-charge. If during a time when delivery is by the rotation method, a water user desires to loan his turn to another eligible water user, he shall notify either the watermaster or the ditchrider who may permit such exchange, if feasible.

(b) *Preparation and Submission of a Water Schedule.* If the decision of the officer-in-charge is to deliver water by the rotation method, the watermaster will assist the water users on each lateral in preparing a rotation schedule should they choose to get together and prepare the schedule. In cases where the water users fail to exercise this right before March 1, the watermaster will prepare the schedule which shall be final for the season. Owners of 120 acres or more in one farm unit may elect between the continuous flow and rotation method of delivery, provided such choice does not interfere with delivery to other lands served by the lateral.

(c) *Application for Deliveries of Irrigation Water.* Request for water changes will be made at least 24 hours in advance. Not more than one change will be made per day. Changes will be made only during the ditchrider's regular tour. Pump shut-down, regardless of duration, without the required notice will result in the delivery being closed and locked. Repeated violations of this rule will result in strict enforcement of rotation schedules. Water uses will change their sprinkler lines without shutting off more than one-half of their lines at one time. Sudden and unexpected changes in ditch flow results in operating difficulties and waste of water.

Duty of Water

Dependent upon available supplies of water for each unit of the project, the duty of water is based on the delivery to the farm unit of 3.5 acre-feet of water per acre per irrigation season. This duty of water may be varied at the discretion of the officer-in-charge depending on supplies available, but each irrigable acre shall be entitled to its prorata share of the total water supply.

Charges

Bill covering irrigation charges will be issued to the owner of record taken from the Bannock, Bingham or Power County records as of December 31, preceding the due date. In the case of Indian-owned land leased to a non-Indian, when an approved lease contract is on file with the Superintendent of the Fort Hall Agency, operation and maintenance charges will be billed to the lessee of record.

Basic and Other Water Charges

(a) The annual basic water charges for the operation and maintenance of the Fort Hall Irrigation Project lands in non-Indian ownership, and assessable Indian-owned lands leased to a non-Indian or a nonmember of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, Idaho, are fixed for the Calendar Year 1979 and subsequent years until further notice as follows:

(1) Fort Hall Unit basic rate, $13.25 per acre.

(2) Michaud Unit basic rate, $17.75 per acre.

Additional rate for sprinkler irrigation when pressure is supplied by project, $6.50 per acre.

(3) Minor Units basic rate, $10.60 per acre.

(b) In addition to the foregoing charges there shall be collected a minimum charge of $5 for the first acre, or fraction thereof, on each tract of land for which operation and maintenance bills are prepared. The minimum bill issued for any area will, therefore, be the basic rate per acre plus $5.

Payments

The water charges become due on April 1 of each year and are payable on or before that date. To all assessments on lands in non-Indian ownership, and lands in Indian ownership which do not qualify for free water, remaining unpaid on or after July 1 following the due date, there shall be added a penalty of 1½ percent per month, or fraction thereof, from the due date until paid. No water shall be delivered to any farm unit until all irrigation charges have been paid.

Assessments on Indian Owned Land

When land owned by members of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation is first leased to non-Indians or nonmembers of the tribe, and an approved lease is on file at the Fort Hall Agency, the leased land is not subject to operation and maintenance assessments for 3 years. The 3 years the land is not subject to assessment need not run consecutively. When land has been leased for a total of 3 years, the land, when under lease to non-Indians or nonmembers of the tribe, is subject to operation and maintenance assessments the same as lands in non-Indian ownership and lands owned by nonmembers of the tribe within the project. (See Solicitor's Opinion M 28701, approved September 24, 1936, and the instructions of September 19, 1938, approved September 24, 1938, and instructions of December 1, 1938, approved Decembert 17, 1938.

VINCENT LITTLE,
Area Director.

JANUARY 23, 1979.

[FR Doc. 79-3231 Filed 1-30-79; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-8448-A2, AA-8448-D2 and AA-8448-E2]

ALASKA

Alaska Native Claims Selection

This decision rejects improper selections filed by various Native corporations and the State of Alaska and approves certain lands for conveyance to Leisnoi, Inc. To aid in the understanding of this decision, the following is a synopsis of the Executive Order and Public Land Order withdrawal history of the subject lands located near Cape Chiniak on Kodiak Island:

Executive Order 8877 of August 29, 1941, withdrew these lands for use of the War Department for military purposes.

Executive Order 9526 of February 28, 1945, amended EO 8877 by adding a paragraph to provide for termination of the withdrawal six months after termination of the national emergency declared by Proclamation No. 2487 of May 27, 1941 (55 Stat. 1647).

Public Land Order 1404 of April 3, 1957, transferred a portion of the lands reserved by EO 8877 from the Department of the Army to the Department of the Navy, partially revoking and amending EO 8877.

Public Land Order 5001 of January 26, 1971, transferred lands from the Department of the Navy to the Department of the Air Force; amended PLO 1404 in part.

Public Land Order 5353 of July 24, 1973 withdrew for Native selection under Sec. 12, certain lands surrounding the Native village of Woody Island. Lands withdrawn for national defense purposes were excepted from withdrawal.

Public Land Order 5558 of December 10, 1975, which was a partial revocation of EO 8877, as amended; transferred lands from the Department of the Air Force to the U.S. Coast Guard; withdrew lands for Native selection.

I. 14(h) (8) REGIONAL SELECTION APPLICATION REJECTED IN ENTIRETY

On June 3, 1976, Koniag, Inc., Regional Native Corporation filed selection application AA-11556 pursuant to Sec. 14(h)(8) of the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971 (85 Stat. 688, 705; 43 U.S.C. 1601, 1613 (Supp. V, 1975)), for lands at Cape Chiniak on Kodiak Island. AA-11556 selected all land withdrawn by PLO 1404 and certain islands located northeast of PLO 1404.

Section 14(h) of ANCSA authorizes the Secretary of the Interior to withdraw unreserved and unappropriated public lands for selection by regional corporations.

On July 23, 1973, PLO 5353 withdrew the subject islands for selection by the village of Woody Island, which later properly selected them. PLO 5558 partially revoked EO 8877, as modified by PLO 1404, as to the lands at the former Chiniak Air Force Station and withdrew these lands for selection by the regional and village corporations, except for a one-acre site which was transferred to the U.S. Coast Guard (remaining within PLO 1404).

At the time of application the lands were either withdrawn for defense purposes (PLO 1404) or withdrawn for and properly selected by Leisnoi, Inc., for the village of Woody Island (PLO 5353: applications AA-8448-B dated October 17, 1974, as amended; and PLO 5558: application AA-8448-A2, D2 and E2, all filed December 16, 1975). The lands described in application AA-11556 do not satisfy the criteria for unreserved and unappropriated lands and, therefore, are unavailable for selection by Koniag, Inc., Regional Native Corporation pursuant to Sec. 14 (h) (8) of ANCSA.

Additionally, in application AA-11556, Koniag, Inc., Regional Native Corporation states it is not their intent to adversely affect the selection of these lands by Leisnoi, Inc.

Accordingly, 14(h)(8) regional selection application AA-11556 is hereby rejected in its entirety:

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

T. 29 S., R. 18 W.
Secs. 26, 27 and 28 (fractional), all;
Sec. 32, except those lands outside PLO 5558;
Secs. 33 and 34 (fractional), all.

Containing approximately 937 acres.

T. 30 S., R. 18 W.
Secs. 3 and 4 (fractional), all;
Secs. 9, 10 and 16 (fractional), all;
Secs. 5, 8, 17 and 20, that portion within PLO 5558.

Containing approximately 2,482 acres.
Aggregating approximately 3,419 acres.

When this decision becomes final, selection application AA-11556 will be closed of record.

II. 14(h)(3) SELECTION APPLICATION REJECTED IN ENTIRETY

On June 3, 1976, Natives of Kodiak, Incorporated filed selection application AA-9106-N pursuant to Sec. 14(h)(3) of the Alaska Native Claims Settlement Act (ANCSA) on December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613 (Supp. V, 1975)) for lands at Cape Chiniak on Kodiak Island. AA-9106-N selected all land withdrawn by PLO 1404 and certain islands to the northeast of PLO 1404.

Section 14(h) of ANCSA authorizes the Secretary of the Interior to withdraw unreserved and unappropriated public lands for selection by the Natives residing in Kodiak.

On July 23, 1973, PLO 5353 withdrew the subject islands for selection by the village of Woody Island, which later properly selected them. Public Land Order 5558 partially revoked EO 8877, as modified by PLO 1404, as to the lands at the former Chiniak Air Force Station and withdrew these lands for selection by the regional and village corporations, except for a one-acre site which was transferred to the U.S. Coast Guard (remaining within PLO 1404). The lands within PLO 5558 were properly selected by Leisnoi, Inc., on December 16, 1975. Since these lands were withdrawn for selection under Sec. 12 of ANCSA and properly selected by Leisnoi, Inc., on the date application AA-9106-N was filed, or still remained withdrawn for military purposes, the lands selected do not satisfy the criteria for unreserved and unappropriated lands.

Furthermore, the Natives of Kodiak, Incorporated could select only lands withdrawn for them by the Secretary of the Interior (43 CFR 2653.7). The lands under discussion have never been withdrawn for selection by Natives of Kodiak, Incorporated.

Accordingly, 14(h)(3) selection application AA-9106-N is hereby rejected in its entirety.

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

T. 29 S., R. 18 W.,
Secs. 26, 27 and 28 (fractional), all;
Sec. 32, except those lands outside PLO 5558;
Secs. 33 and 34 (fractional), all.

Containing approximately 937 acres.

T. 30 S., R. 18 W.,
Secs. 3 and 4 (fractional), all;
Secs. 9, 10 and 16 (fractional), all;
Secs. 5, 8, 17 and 20 (fractional), that portion within PLO 5558.

Containing approximately 2,482 acres.
Aggregating approximately 3,419 acres.

When this decision becomes final, selection application AA-9106-N will be closed of record.

III. VILLAGE SELECTION APPLICATION REJECTED IN ENTIRETY

On December 13, 1974, Leisnoi, Inc., filed selection application AA-8448-C under the provisions of Sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611(a) (Supp. V, 1975)), for lands at Cape Chiniak and Middle Bay on Kodiak Island.

The written description of the lands selected by application AA-8448-C and the map differ. Therefore, the map portrayal of the lands selected is used as the controlling document for determining the lands selected (43 CFR 2650.2). The map shows as selected lands withdrawn by PLO 5558, PLO 1404, PLO 1949 and a portion of PLO 5550.

Leisnoi, Inc., the Native village of Woody Island was not among those Native villages listed pursuant to Sec. 11(b)(1). Section 11(b)(3) stated that lands shall be withdrawn purusant to Sec. 11 for selection by villages which are determined to be eligible and not listed in Sec. 11(b)(1). Section 11 states:

> The following public lands are withdrawn * * *. The following lands are excepted from such withdrawal: lands in the National Park System and lands withdrawn or reserved for national defense purposes * * *.

On the date application AA-8448-C was filed pursuant to Sec. 12(a)(1) of ANCSA, the lands selected at Cape Chiniak were subject to the military purposes withdrawal made by EO 8877, as amended. Lands at Cape Chiniak became available for village selection (PLO 5558) after the December 18, 1974, deadline for filing Sec. 12(a)(1) selections.

The lands selected at Middle Bay were subject to the military purposes withdrawal made by EO 8278 of October 28, 1939, as amended by PLO 5550, and by PLO 1949. These lands have been continuously subject to military withdrawal from October 28, 1939, until the date of this decision.

Accordingly, since the lands selected by application AA-8448-C were withdrawn for military purposes at the time of filing and throughout the entire Sec. 129a)(1) selection period and, therefore, unavailable for selection by any Native corporation, application AA-8448-C is hereby rejected in its entirety:

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

T. 29 S., R. 20 W., those portions of U.S. Survey 2539 more particularly described as (protracted):
Sec. 3 (fractional), that portion within PLO 5550;
Secs. 4, 5 and 8, that portion within PLO 5550;
Sec. 9, all;
Secs. 10 and 15 (fractional), that portion within PLO 1949 and PLO 5550;
Sec. 16 (fractional), that portion within PLO 5550;
Sec. 17, that portion within PLO 5550.

Containing approximately 2,146 acres.

T. 29 S., R. 18 W.,
Secs. 32, 33 and 34 (fractional), that portion formerly within PLO 1404.

Containing approximately 912 acres.

T. 30 S., R. 18 W.,
Secs. 3 and 4 (fractional), that portion formerly within PLO 1404;
Secs. 5 and 8, that portion formerly within PLO 1404;
Sec. 9 (fractional), all;
Secs. 10, 16, 17 and 20 (fractional), that portion formerly within PLO 1404.

Containing approximately 2,482 acres.
Aggregating approximately 5,540 acres.

When this decision becomes final, selection application AA-8448-C will be closed of record.

IV. STATE SELECTION APPLICATION REJECTED IN PART

The State of Alaska filed general purpose selection application A-063396, as amended, on August 26, 1965, pursuant to Sec. 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b) (1970)) for lands in the vicinity of Cape Chiniak on Kodiak Island.

The initial application did not select the lands under military withdrawal EO 8877, as amended. The amendment filed on June 16, 1972 created the current situation wherein the State has selected all of Ts. 29 and 30 S., R. 18 W., Seward Meridian, Alaska.

Section 6(b) of the Alaska Statehood Act states general purpose selections are to be made "* * * from the public lands * * * which are vacant, unappropriated and unreserved at the time of selection." Those lands currently withdrawn by PLO 1404 and PLO 5558, were withdrawn for military purposes from August 29, 1941 (EO 8877, as amended) until PLO 5558 of December 10, 1975, was issued, at which time EO 8877, as amended, was revoked in part and most of the lands withdrawn for Native selection. Approximately 1 acre remains withdrawn for the U.S. Coast Guard by PLO 1404. Therefore, these lands did not satisfy the criteria for unreserved and unappropriated lands at the time the amendment to application A-063396 was filed, nor have they been available for selection at any time since the amendment filing dates.

Accordingly, State selection application A-063396 is hereby rejected as to the following described lands:

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

T. 29 S., R. 18 W.,
Secs. 32, 33 and 34 (fractional), that portion within PLO 5558.

Containing approximately 912 acres.

T. 30 S., R. 18 W.,
Secs. 3 and 4 (fractional), that portion within PLO 5558;
Secs. 5 and 8, that portion within PLO 5558;
Sec. 9 (fractional), that portion within PLO 1404 and PLO 5558;
Secs. 10, 16, 17 and 20 (fractional), that portion within PLO 5558.

Containing approximately 2,482 acres.
Aggregating approximately 3,394 acres.

The state selected lands rejected above was not a valid selections and will not be charged against the village corporation as State selected lands. Further action on the subject State selection application, as to those lands not rejected herein, will be taken at a later date.

V. LANDS UNAVAILABLE FOR SELECTION, VILLAGE SELECTION APPLICATION REJECTED IN PART

On December 16, 1975, Leisnoi, Inc., filed selection application AA-8448-A2 under the provisions of Sec. 12(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (Supp. V, 1975)), for lands still withdrawn by PLO 1404.

The subject land was withdrawn for military purposes on August 29, 1941 by EO 8877. The Executive Order was amended several times and the land is currently withdrawn by PLO 1404 for military purposes. On December 10, 1975, PLO 5558 transferred jurisdiction of the land to the U.S. Coast Guard.

Public Land Order 5353 withdrew lands for selection by Leisnoi, Inc. pursuant to Sec. 11 of ANCSA. Section 11 states:

> The following public lands are withdrawn * * *. The following lands are excepted from such withdrawal: lands in the National Park System and lands withdrawn or reserved for national defense purposes * * *.

On the date filed, the lands selected by application AA-8448-A2 were subject to the military purposes withdrawal made by EO 8877 of August 29, 1941, as amended. These lands have

been continuously subject to military withdrawal from this date until the present.

Accordingly, since the lands selected by application AA-8448-A2 were withdrawn for military purposes at the time of filing and throughout the entire Sec. 12(b) selection period and, therefore, unavailable for selection by any Native Corporation, application AA-8448-A2 is hereby rejected in part:

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

T. 30 S., R. 18 W.,
Sec. 9, that portion within PLO 1404.

Containing approximately 1 acre.

VI. LANDS PROPER FOR VILLAGE SELECTION, APPROVED FOR INTERIM CONVEYANCE

Public Land Order 5558 of December 10, 1975, partially revoked military withdrawal EO 8877, as amended, and withdrew these lands for selection by Koniag, Inc., Regional Native Corporation and appropriate village corporation within that Region.

On December 16, 1975, Leisnoi, Inc., for the Native village of Woody Island, filed selection applications AA-8448-A2, AA-8448-D2 and AA-8448-E2 under the provisions of Sec. 12(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (Supp. V, 1975)), for the surface estate of certain lands at Cape Chiniak on Kodiak Island.

By Board of Directors Resolution No. 78-13 dated November 22, 1978, Koniag, Inc., Regional Native Corporation allocated the entire acreage contained in PLO 5558 to Leisnoi, Inc., pursuant to Sec. 12(b) of ANCSA. Koniag, Inc., Regional Native Corporation has reallocated a cumulative total of approximately 3,394 acres which does not exceed the regional minimum Sec. 12(b) entitlement of 103,763 acres (43 FR 53062).

This decision approves approximately 3,394 acres of Sec. 12(b) allocation for conveyance to Leisnoi, Inc., for a cumulative total of 3,394 acres pursuant to Sec. 12(b). This conveyance does not exceed the Leisnoi, Inc. Sec. 12(b) allocation of 3,394 acres.

As to the lands described below, the applications submitted by Leisnoi, Inc. are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with any laws leading to acquistion of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(b), aggregating approximately 3,394 acres, is considered proper for acquisition by Leisnoi, Inc., and is hereby approved for conveyance pursuant to Sec. 14(a) of the Alaska Native Claims Settlement Act:

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

AA-8448-E2

T. 29 S., R. 18 W.,
Secs. 32, 33 and 34 (fractional), that portion within PLO 5558.

Containing approximately 912 acres.

AA-8448-A2 and AA-8448-D2

T. 30 S., R. 18 W.,
Secs. 3 and 4 (fractional), that portion within PLO 5558;
Secs. 5 and 8, that portion within PLO 5558;
Sec. 9 (fractional), that portion within PLO 5558 and excluding PLO 1404;
Secs. 10, 16, 17 and 20 (fractional), that portion within PLO 5558.

Containing approximately 2,482 acres.
Aggregating approximately 3,394 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613 (f) (Supp. V, 1975)); and

2. A right-of-way, A-061264, 200 feet in width, in Sec. 32, T. 29 S., R. 18 W., Seward Meridian, Alaska, for a Federal Aid Highway. Act of August 27, 1958, as amended, 23 U.S.C. 317);

3. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708, 43 U.S.C. 1601, 1616 (b) (Supp. V, 1975)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in casefile AA-8448-ee, are reserved to the United States. All easements are subject to applicable Federal, State, or municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

60 Foot Road—The uses allowed on a sixty (60) foot wide road easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, four-wheel drive vehicles, automobiles, and trucks.

One Acre Site—The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping and loading or unloading. Temporary camping, loading or unloading shall be limited to 24 hours.

a. (EIN 44c D1, C5, L) An easement sixty (60) feet in width for an existing road, beginning at the western boundary of the former U.S. Naval Reserve at Cape Chiniak, where the State highway right-of-way ends, southeasterly and southerly to the Coast Guard LORAN facility in Sec. 9, T. 30 S., R. 18 W., Seward Meridian. The uses allowed are those listed above for a sixty (60) foot wide road easement.

b. (EIN 44e) An easement sixty (60) feet in width for an existing road from the Coast Guard LORAN facility in Sec. 9, T. 30 S., R 18 W., Seward Meridian, southwesterly to trail EIN 42 D9, L near Sequel Point. The uses allowed are those listed above for a sixty (60) foot wide road easement.

c. (EIN 55 L) A one (1) acre site easement upland of the mean high tide line in Sec. 32, T. 29 S., R. 18 W., Seward Meridian, on the south shore of Chiniak Bay between the beach and the State road. The uses allowed are those listed above for a one (1) acre site.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1970))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688; 43 U.S.C. 1601 (Supp. V, 1975)), any valid existing right recognized by said act shall continue to have whatever right to access as is now provided for under existing law;

3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (Supp. V, 1975)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Pursuant to Sec. 14(f) of the Alaska Native Claims Selection Act, conveyance to the subsurface estate of the lands described above shall be granted to Koniag, Inc., Regional Native Corporation, when conveyance is granted to Leisnoi, Inc., for the surface estate, and shall be subject to the same conditions as the surface conveyance.

The only additional lands remaining selected in AA-8448-E2 are the islands to the northeast of Cape Chiniak. There are no additional lands remain-

ing selected in AA-8448-A2 and AA-8448-D2.

The use permit dated December 30, 1975 between Leisnoi, Inc. and the Bureau of Land Management will be terminated upon conveyance to Leisnoi, Inc. pursuant to condition number 1 of said permit.

There are no inland water bodies considered to be navigable within the lands described above.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the ANCHORAGE TIMES and in the KADIAK Times. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until March 2, 1979, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

If an appeal is taken, the adverse parties to be served with a copy of the notice of appeal are:

Leisnoi, Inc., P.O. Box 641, Kodiak, Alaska 99615.
Koniag, Inc., Regional Native Corporation, P.O. Box 746, Kodiak, Alaska 99615.
Natives of Kodiak, Incorporated, P.O. Box 164, Kodiak, Alaska 99615.
State of Alaska, Division of Lands, 323 East Fourth Avenue, Anchorage, Alaska 99501.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing may be obtained from the Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510.

JUDITH A. KAMMINS,
Chief, Division of ANCSA Operations.

[FR Doc. 79-3227 Filed 1-30-79; 8:45 am]

[4310-84-M]

[OCS Sale No. 48]

OUTER CONTINENTAL SHELF PROPOSED OIL AND GAS LEASE SALE

Availability of Final Environmental Statement For Southern California

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement relating to a proposed Outer Continental Shelf (OCS) oil and gas lease sale of 217 tracts consisting of 462,087 hectares (1,141,818 acres) of submerged lands on the OCS offshore southern California (OCS Sale No. 48).

Single copies of the final environmental statement can be obtained from the Office of the Manager, Pacific Outer Continental Shelf Office, Bureau of Land Management, 7663 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012, and from the Office of Public Affairs, Bureau of Land Management (130), Washington, D.C. 20240.

Copies of the final environmental statement will also be made available for inspection in the following public libraries: Bodkir, McCarthy, Sargent and Smith, Attn: Library, 707 Wilshire Boulevard, 51st Pl. Los Angeles, California 90071; Business & Economics Dept., Los Angeles Public Library, 630 W. 5th St., Los Angeles, California 90071; California State University, Library-Documents Section, P.O. Box 4150, Fullerton, California 92634; California State University, Attn: Oviatt Library-Government Documents, 18111 Nordhoff St., Northridge, California 91330; County of Los Angeles Public library, Attn: Government Publications Unit, 320 W. Temple, Los Angeles, California 90012; County of Ventura Library Service Agency, Attn: Documents Section, P.O. Box 771, Ventura, California 93001; Long Beach Public Library, Attn: Government Publications Dept., Ocean & Pacific, Long Beach, California 90802; Loyola University, School of Law Library, 1440 W. 9th Street, Los Angeles, California 90015; San Diego Public Library, Science and Industry Dept., Attn: Dorothy Van Nice, 820 "E" St., San Diego, California 92101; Santa Barbara Public Library, Attn: Reference Section, P.O. Box 1019, Santa Barbara, California 93102; Santa Monica Public Library, Attn: Document Librarian, 1343 6th St., Santa Monica, California 90401; The Sea Library, Attn: Jill Fairchild, 408 Sycamore rd., Santa Monica, California 90402; University of California, Water resources Center Archives, Attn: Beth Willard, Librarian, 2081 Engineering I, Los Angeles, California 90024; University of California, Government Pub. Dept., Gen. Lib., P.O. Box 19557, Irvine, California 92713; University of California, SERIALS, SIO Library, C-075C, La Jolla, California 92093; University of California, The Library, Government Publication Dept., Santa Barbara, California 93106; and University of Southern California, government Documents Dept., P.O. Box 77983, Los Angeles, California 90007.

ARNOLD E. PETTY,
Acting Director, Bureau of Land Management.

Approved:

LARRY E. MEIEROTTO,
Deputy Assistant Secretary of the Interior.

[FR Doc. 79-2733 Filed 1-30-79; 8:45 am]

[4310-84-M]

[M-41649 (SD)]

SOUTH DAKOTA

Public Lands in Lawrence County, S. Dak.; Realty Action—Noncompetitive Sale

JANUARY 19, 1979.

The following described lands have been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713):

BLACK HILLS MERIDIAN, SOUTH DAKOTA

T. 5 N., R. 3 E.,
Sec. 33: Lot 15.
Containing .38 acres.

The above described lands are being offered as a direct sale to the Homestake Mining Company at the appraised fair market value. The sale of the lands to the Homestake Mining Company will not be held until 60 days after the date of this notice.

Residential homesites and city improvements are situated upon the subject lands. The Homestake Mining Company, after receiving a patent from the United States, will reconvey surface rights to other parties possessing valid rights to the subject lands. Because of the city improvements and the valid preference right interests of the homeowners, the lands are not being offered for sale at public auction.

The sale would resolve a number of land title conflicts and would allow community expansion in the town of Lead to continue in an orderly manner. As such, the public interest would be served by disposing of these public lands.

This sale is consistent with the Bureau of Land Management's planning for the lands involved and has been discussed with Lawrence County and South Dakota State government officials.

The terms and conditions applicable to the sale are:

1. The patent to Homestake will include a reservation of a right-of-way for ditches and canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. A reservation for street rights-of-way in accordance with the streets network of Lead, South Dakota, will be incorporated in the patent.

3. The sale of these lands will be subject to all existing rights.

4. The mineral rights will be reserved to the United States.

Detailed information concerning the sale, including the Land Report and Environmental Assessment Report, is available for review at the Miles City District Office, Box 940, Miles City, MT 59301.

On or before February 26, 1979, interested parties may submit comments to the Secretary of the Interior, LLM, 320, Washington, D.C. 20240. Any adverse comments will be evaluated by the Secretary of the Interior who may vacate or modify this realty action and issue a final determination. In the absence of any action by the Secretary of the Interior, this realty action will become the final determination of the Department of the Interior.

GEORGE S. NEUBERG,
Miles City District Manager.

[FR Doc. 79-3232 Filed 1-30-79; 8:45 am]

[4310-31-M]

Geological Survey

[INT DES 79-2]

COLSTRIP PROJECT, MONTANA; ENVIRONMENTAL IMPACT STATEMENT

Public Meetings

Notice is hereby given of public meetings to be held to discuss the Colstrip Project draft environmental statement (DES 79-2) and the related draft Corridor Option Summary. The purpose is to present summary information and to solicit comments. The DES assesses the environmental impacts of Federal decisions related to the Colstrip Project. The draft Corridor Option Summary presents disadvantages and advantages of the Colstrip transmission corridor options.

The meetings will be held on February 26, 1979, at 7:00 p.m., at the Ramada Inn, Montana Room, 2900 Harrison Avenue, Butte, Mont., on February 27, 1979, at 7:00 p.m., at the Colonial Inn, Executive Room, 2301 Colonial Drive, Helena, Mont.; on February 28, 1979, at 7:00 p.m., at the Village Red Lion Motor Inn, Bitterroot Room, 100 Madison, Missoula, Mont., on March 1, 1979, at 7:00 p.m., at the Northern Hotel, Carter Room, Broadway and First Avenue North, Billings, Mont., and on March 3, 1979, at 9:00 a.m., at the Rosebud County Library, Community Room, Ninth and Cedar, Forsyth, Mont.

Written comments also are invited until March 17, 1979, and should be mailed to Colstrip EIS Manager, Box 758, Kalispell, MT 59901.

Copies of the draft documents were widely distributed for public and agency review. A limited number of additional copies are available and may be requested at the above address.

Dated: January 25, 1979.

J. R. BALSLEY,
Acting Director.

[FR Doc. 79-3218 Filed 1-30-79; 8:45 am]

[4310-70-M]

National Park Service

[Order No. 1]

ADMINISTRATIVE OFFICER, LOWELL NATIONAL HISTORICAL PARK

Delegation of Authority

SECTION 1. *Administrative Officer.* The Administrative Officer, Lowell National Historical Park, Massachusetts may execute, approve and administer contracts not in excess of $10,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

(National Park Service Order No. 77 (38 FR 7478) as amended).

Dated: January 18, 1979.

LEWIS S. ALBERT,
Superintendent, Lowell National Historical Park.

[FR Doc. 79-3204 Filed 1-30-79; 8:45 am]

[4310-70-M]

[Order No. 1]

SUPERVISORY PARK TECHNICIAN; ADAMS NATIONAL HISTORIC SITE

Delegation of Authority

SECTION 1. *Supervisory Park Technician.* The Supervisory Park Technician, Adams National Historic Site, Massachusetts may execute, approve and administer contracts not in excess of $2,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

(National Park Service Order No. 77 (38 FR 7478) as amended).

Dated: January 19, 1979.

WILHELMINA S. HARRIS,
Superintendent, Adams National Historic Site.

[FR Doc. 79-3205 Filed 1-30-79; 8:45 am]

[4310-10-M]

Office of the Secretary

IMPROVING GOVERNMENT REGULATIONS

Semiannual Agenda of Rules Scheduled for Review or Development

AGENCY: Department of the Interior.

ACTION: Semiannual Agenda of Rules Scheduled for Review or Development.

SUMMARY: This notice provides the semiannual agenda of rules scheduled for review or development between January and June 1979, and the status of rules previously scheduled for review. This semiannual agenda is required by Executive Order 12044 and 43 CFR 14.8.

DATES: January to June 1979.

ADDRESSES: Unless otherwise indicated, all Knowledgeable Officials are located at the Department of the Interior, 1800 C Street, NW., Washington, D.C. 20240, Area Code 202.

FOR FURTHER INFORMATION CONTACT:

All comments and inquries with regard to these scheduled rules should be directed to the appropriate Knowledgeable Official.

Dated: January 25, 1979.

CECIL D. ANDRUS,
Secretary.

UNITED STATES DEPARTMENT OF THE INTERIOR

AGENDA OF REGULATIONS SCHEDULED FOR REVIEW OR DEVELOPMENT: JANUARY–JUNE 1979

CFR Citation	Subject	Purpose or review/ development	Significant Yes / No	Regulatory Analysis Yes / No	Expected date(s) of publication (if known)	Knowledgeable official
		OFFICE OF THE SOLICITOR				
41 CFR Subpart 14R-9.1	Inventions and Patents	To conform patent regulations to statutory authority and establish data regulations for the Office of Water Research and Technology.	X	X		D. A. Gardiner, 343-4471 Gersten Sadowsky, 343-4471
41 CFR Subpart 14R-9.2	Data	To revise and issue Department wide data regulations and policy.	X	X		D. A. Gardiner, 343-4471 Gersten Sadowsky, 343-4471
		OFFICE OF HEARINGS AND APPEALS				
43 CFR Part 4, Subpart B	General Rules Relating to Procedures and Practice.	New regulation to revise procedures in § 4.21(c) and limit petitions for reconsideration to one as well as time for filing such petitions.	X	X	Proposed Rule April 1979.	Newton Frishberg, 703-557-9040
		New regulation to revise and clarify § 4.24(a)(4) with respect to consideration on appeal of documents exempt from disclosure under 5 U.S.C 552(b).	X	X		
43CFR Part 4, Subpart C	Special Rules Applicable to Contract Appeals.	New procedural rules to implement P.L. 95-563 enacted November 1, 1978, with respect to accelerated appeals involving $50,000 or less and expediting appeals of $10,000 or less.	X	X	Proposed Rule January 1979; Final Rule February 1979.	Russell C. Lynch, 703-557-1450
43 CFR Part 4, Subpart D	Special Rules Applicable to Proceedings in Indian Probate, Including Hearings and Appeals; Tribal Purchase of Interests Under Special Statutes, Including Hearings and Appeals; and Administrative Appeals in Indian Affairs Generally.	New regulations to revise present regulations pertaining to Tribal purchase of certain interests of decedents in trust and restricted lands in Yakima, Warm Springs, and Nez Perce Reservations, as provided by special statutes.	X	X	Proposed Rule June 1979.	Laurie K. Luoma, 703-557-9200
43 CFR Part 4, Subpart E	Special Rules Applicable to Public Land Hearings and Appeals.	New regulation to revise § 4.433 and provide for recommended decisions by administrative law judges where requested by Board of Land Appeals.	X	X	Proposed Rule April 1979.	Newton Frishberg, 703-557-9040

UNITED STATES DEPARTMENT OF THE INTERIOR

AGENDA OF REGULATIONS SCHEDULED FOR REVIEW OR DEVELOPMENT: JANUARY–JUNE 1979

CFR Citation	Subject	Purpose or review/ development	Significant Yes / No	Regulatory Analysis Yes / No	Expected date(s) of publication (if known)	Knowledgeable official
		OFFICE OF HEARINGS AND APPEALS—Continued				
		New regulation to revise § 4.439 and provide that proposed findings or recommended decisions of administrative law judges shall be served on parties, and they may file timely exceptions thereto with the Board of Land Appeals.	X	X		
43 CFR Part 4, Subpart J	Special Rules Applicable to the Alaska Native Claims Settlement Act Hearings and Appeals.	New regulations to revise and clarify present procedural rules and to carry out Secretarial policy decisions on (1) Alaska Native Claims Appeal Board jurisdiction over appeals by persons claiming rights under §14(c) of the Alaska Native Claims Settlement Act, (2) requirement for standing to appeal, (3) standards for review and burden of proof, and (4) procedure for hearing on questions of fact.	X	X	Proposed Rule February 1979; Final Rule March 1979.	Judith M. Brady, Chairman, Alaska Native, Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, 907-265-5356
43 CFR Part 4, Subpart L	Special Rules Applicable to Surface Coal Mining Hearings and Appeals.	New regulations to provide additional procedural rules for hearings under the permanent regulatory program of the Office of Surface Mining Reclamation and Enforcement.	X	X	Proposed Rule March 1979; Final Rule May 1979.	Bruce R. Harris, 703-557-9037
		OFFICE OF INSPECTOR GENERAL				
43 CFR pt. 20	Employee Responsibilities and conduct.	The Ethics in Government Act of 1978, Pub. Law 95-521 signed by the President on 10-26-78, contains provisions which require a complete revision of existing conflict of interest rules and regulations.	X	X		Gabe Paone, 343-3932
30 CFR pt. 705 and pt. 706	Surface Mining Control and Reclamation Restrictions of Financial Interests of State and Federal Employees.	Changes to these regulations are necessary to clarify problem areas identified after applying the regulations in the first year. Changes will include clarifying definitions and inserting language to simplify Department policy.	X	X		Gabe Paone, 343-3932
43 CFR 7	Employees: Interest in Lands and Resources.	These regulations must be revised to eliminate contradictions with 43 CFR pt. 20.	X	X		Gabe Paone, 343-3932

UNITED STATES DEPARTMENT OF THE INTERIOR

AGENDA OF REGULATIONS SCHEDULED FOR REVIEW OR DEVELOPMENT: JANUARY–JUNE 1979

CFR Citation	Subject	Purpose or review/ development	Significant Yes / No	Regulatory Analysis Yes / No	Expected date(s) of publication (if known)	Knowledgeable official
OFFICE FOR EQUAL OPPORTUNITY						
43 CFR Part 34	Nondiscrimination in Activities Conducted under and Authorized by Pub. L. 94-586; Alaska Gas Pipeline.	To implement Section 17 of the Alaska Natural Gas Transportation Act. A determination of significance and the decision on preparation of a regulatory analysis have not been made at this time.				Sharon White, Office of the Solicitor, 343-2162
43 CFR Part 17, Subpart B	Nondiscrimination on the Basis of Handicap.	To implement Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, regarding federally-assisted programs administered by the Department. The decision on preparation of a regulatory analysis has not been made at this time.	X		Notice of Intent, January, 1979.	Alton Hancock, Office of the Solicitor, 343-6346
43 CFR Part 17, Subpart C	Nondiscrimination on the Basis of Age.	To implement the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq*). This subpart will be based on guidelines developed by HEW.	X	X		James Poole, 343-4331
GEOLOGICAL SURVEY						
30 CFR Part 241	Leasing and acquisition of water wells.	Update regulations to provide a more practical mechanisms for complying with a statutory requirements.	X	X	Proposed rule, March 1979.	Charles Sours, 860-7521
30 CFR Part 251	Geological and geophysical exploration of the Outer Continental Shelf.	Implement the Outer Continental Shelf Lands Act Amendments of 1978.	X	X	Proposed rule, January 1979; Final rule, May 1979.	Bruce Weetman, 860-7564
30 CFR Part 252	Oil and gas information program.	Implement the Outer Continental Shelf Lands Act Amendments of 1978.	X	X	Proposed rule, January 1979; Final rule, May 1979.	Bruce Weetman, 860-7564
BUREAU OF MINES						
30 CFR Part 601	Sales of Helium by and Rental of Containers from Bureau of Mines.	Revise fee schedule to reflect increases in costs since 1977.	X	X		Ray D. Munnerlyn, 634-4734
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT						
30 CFR Chapter VII, Subchapter R, Part 875.	Reclamation Standards	To implement legislation (Pub. L. 95-87, Title IV).	X	X	Notice of Intent, February 1979; Proposed Rule, March 1979.	M. Richard Nalbandian, 343-4057

UNITED STATES DEPARTMENT OF THE INTERIOR

AGENDA OF REGULATIONS SCHEDULED FOR REVIEW OR DEVELOPMENT: JANUARY–JUNE 1979

CFR Citation	Subject	Purpose or review/ development	Significant Yes / No	Regulatory Analysis Yes / No	Expected date(s) of publication (if known)	Knowledgeable official
		BUREAU OF LAND MANAGEMENT				
43 CFR Part 1600	Planning, programming and budgeting.	Write regulations incorporating the Bureau of Land Management's planning system into its regulations.	X	X	Final rulemaking about 6/1/79.	R. Jones, 343-5682 R. C. Bruce, 343-8735
43 CFR Part 1700	Advisory Councils	Revise regulations to incorporate policies and procedures of the Federal Land Policy and Management Act of 1976.	X	X	Proposed rulemaking early 1979.	L. Laitala, 343-5629 R. C. Bruce, 343-8735
43 CFR Part 2200	Exchanges of Public Lands..	Revise regulations to incorporate policies and procedures of the Federal Land Policy and Management Act of 1976.	X	X	Pre-proposed in early 1979.	M. Millenbach, 343-8731 R. C. Bruce, 343-8735
43 CFR Part 2300	Withdrawal of public lands..	Revise regulations to incorporate the policies and procedures of the Federal Land Policy and Management Act of 1976.	X	X	Proposed rulemaking, 6/79.	R. C. Bruce, 343-8735
43 CFR Parts 2540, 2740, and 9180.	Color-of-Title and Omitted Lands.	Revised regulations to incorporate policies and procedures of the Federal Land Policy and Management Act of 1976.	X	X	Final rulemaking about 5/1/79.	S. Spector, 343-8738 R. C. Bruce, 343-8735
43 CFR Part 2610	Carey Act Grants	Re-institute regulations withdrawn because of program inactivity and bring them into conformance with existing programs.	X	X	Final rulemaking in early 1979.	M. Millenbach, 343-8731 R. C. Bruce, 343-8735
43 CFR Part 2740	Recreation and Public Purposes Act.	Revise regulations to incorporate policies and procedures of the Federal Land Policy and Management Act of 1976.	X	X	Proposed rulemaking, 1/79.	M. Millenbach, 343-8731 R. C. Bruce, 343-8735
43 CFR Part 2800	Rights-of-way; principles and procedures.	Revised regulations to incorporate policies and procedures of the Federal Land Policy and Management Act of 1976.	X	X	Proposed rulemaking by 6/79.	J. Stephenson, 343-5441 R. C. Bruce, 343-8735
43 CFR Part 2880	Rights-of-way under the Mineral Leasing Act.	Revise regulations to incorporate policies and procedures of the Federal Land Policy and Management Act of 1976.	X	X	Final rulemaking in early 1979.	J. Stephenson, 343-5441 R. C. Bruce, 343-8735
43 CFR Subpart 3802	Surface protection, Wilderness.	Write regulations providing protection for the surface area of wilderness study areas from mining activity under the 1872 Mining Law.	X	X	Proposed rulemaking, 1/12/79; Final rulemaking, May 1979.	R. Anderson, 343-7722 R. C. Bruce, 343-8735
43 CFR Subpart 3809	Surface Management of unpatented mining claims located on public lands.	Write regulations providing protection of the public lands from undue degradation from mining activity under the 1872 Mining Law.	X	X	Proposed rulemaking, Feb 28, 1979; Final Rulemaking, Aug 1979, Effective Nov 1.	Robert Anderson, 343-7722 Robert C. Bruce, 343-8735
43 CFR Subpart 3828	Surface Management of unpatented mining claims located in the California Desert Cons. Area.	Write regulations providing protection of the public lands in the California Desert Conservation area from undue degradation under the 1872 Mining Law.	X	X	Proposed rulemaking, Feb 1979; Final rulemaking, May 1979.	Robert Anderson, 343-7722 Robert C. Bruce, 343-8735
43 CFR Part 4100	Amendments to the Grazing Administration and Trespass Regulations.	Revise regulations to incorporate changes made by the Public Rangelands Improvement Act.	X	X	Proposed rulemaking early in 1979.	David Little, 343-6011 Robert C. Bruce 343-8735

UNITED STATES DEPARTMENT OF THE INTERIOR

AGENDA OF REGULATIONS SCHEDULED FOR REVIEW OR DEVELOPMENT: JANUARY–JUNE 1979

CFR Citation	Subject	Purpose or review/ development	Significant Yes / No	Regulatory Analysis Yes / No	Expected date(s) of publication (if known)	Knowledgeable official
		BUREAU OF LAND MANAGEMENT—Continued				
43 CFR Section 4130.5	Amending the Grazing Regulations as they relate to the Grazing Fee.	Revise regulations to incorporate changes made by the Public Rangelands Improvement Act.	X	X	Final rulemaking in early 1979.	Ronald J. Younger, 343-6011 Robert C. Bruce, 343-8735
43 CFR Part 8340	Management of the use of Off-Road Vehicles on the public lands.	Write regulations to provide for the management of the use of off road vehicles on the public lands.	X	X	Final rulemaking in early 1979.	Larry R. Young, 343-9353 Cecil Peeney, 343-8735
43 CFR Part 4300	Coal Leasing	Revise regulations relating to the coal management program ensuring a complete understanding of the preferred program and how it will be implemented. The decision on preparation of a regulatory analysis has not been made at this time. A notice of intent was published in the FEDERAL REGISTER on December 15, 1978.	X		Proposed Rule, March 1979; Final Rule, June 1979.	Don Mitchell, 343-4537
		BUREAU OF RECLAMATION				
43 CFR 21	Occupancy of Cabin Sites	To review and make recommendations for modifications and changes if necessary.	X	X		T. G. Cooper, 343-5204
43 CFR 401	Entry on Reclamation Lands.	To bring the CFR into compliance with requirements of P.L. 94-579 (FLPMA).	X	X		T. C. Cooper, 343-5204
43 CFR 402	Sale of Small Tracts	To bring the CFR into compliance with requirements of P.L. 94-579.	X	X		T. C. Cooper, 343-5204
43 CFR 403	Unproductive Land	To bring the CFR into compliance with requirements of P.L. 94-579.	X	X		T. C. Cooper, 343-5204
43 CFR 406	Exchange or amendment of Farm Units.	To bring the CFR into compliance with requirements of P.L. 94-579.	X	X		T. C. Cooper, 343-5204
43 CFR 416	Reclassification of Highland Columbia Project.	To determine the necessity for the continuation in effect of the CFR or needed modifications.	X	X		T. C. Cooper, 343-5204
43 CFR 417	Procedural Methods for Implementing Colorado River Water Conservation Measures with Lower Basin Contractors and Others.	To determine if changes in existing rules are required in order to conserve water in the lower Colorado River Basin.	X	X		Roy H. Boyd, 343-5471
43 CFR 418	Newlands Reclamation Project, Nevada; Truckee River Storage Project, Nevada; and Washoe Reclamation Project, Nevada-California (Truckee and Carson River Basins, California-Nevada); Pyrimid Lake Indian Reservation, Nevada; Stillwater Area, Nevada.	To determine if changes in esisting rules are required in order to conserve water in the Truckee and Carson River Basins.	X	X		Roy H. Boyd, 343-5471
43 CFR 420	Off Road Vehicle Use	This was published as a proposed rule in the FEDERAL REGISTER on August 22, 1978.	X	X	Final Rule, January 1979.	T. C. Cooper, 343-5204

UNITED STATES DEPARTMENT OF THE INTERIOR

AGENDA OF REGULATIONS SCHEDULED FOR REVIEW OR DEVELOPMENT: JANUARY–JUNE 1979

CFR Citation	Subject	Purpose or review/ development	Significant Yes / No	Regulatory Analysis Yes / No	Expected date(s) of publication (if known)	Knowledgeable official
		U.S. FISH AND WILDLIFE SERVICE				
50 CFR Part 26	National Wildlife Refuge System—public entry and use.	To review for clarity, necessity, and conciseness, ensure that material is complete and current, and identify those rules that impose unnecessary burdens on the economy. E.O. 12044 and 43 CFR 14.	X	X		Marcus Nelson, 343-4791
50 CFR Part 32	Hunting on wildlife refuge areas.	....do	X	X		Marcus Nelson, 343-4791
50 CFR Part 33	Sport fishing on wildlife refuge areas.	....do	X	X		Marcus Nelson, 343-4791
50 CFR Part 80	Federal aid to States in fish and wildlife restoration.	To review with objective of reducing paperwork burden on States conducting fish and wildlife restoration projects. Significance and necessity of regulatory analysis is undetermined pending results of review.				Charles Phenicle, 703-235-1526
50 CFR Part 18	Marine mammals—manatee protection areas.	To develop rules that would provide procedures for establishing areas in which certain waterborne activities would be restricted or prohibited. (16 U.S.C. 1361-1407).	X	X	Proposed rule, February, 1979; Final rule, May, 1979.	Norman Johnson, 632-2202 Clark Bavin, 343-9242
50 CFR Part 20 Subpart K	Hunting of migratory birds.	To develop rules establishing 1979–80 annual seasons, limits, and shooting hour schedules for migratory birds. Dates of proposed and final rules uncertain (16 U.S.C. 703–711).	X	X	Notice of intent February, 1979.	John P. Rogers, 254-3207
50 CFR Part 403	Fish and Wildlife Coordination Act.	To implement the Fish and Wildlife Coordination Act which concerns the conservation of wildlife in projects involving the control or modification of any stream or other body of water. This Part is being developed in coordination with the Department of Commerce. The decision on preparation of a regulatory analysis has not been made at this time. A notice of intent was published in the FEDERAL REGISTER on September 29, 1978.	X			Karl Stutzman, 343-5715 Bill Garner, Office of the Solicitor, 343-2172

UNITED STATES DEPARTMENT OF THE INTERIOR

AGENDA OF REGULATIONS SCHEDULED FOR REVIEW OR DEVELOPMENT: JANUARY–JUNE 1979

CFR Citation	Subject	Purpose or review/ development	Significant Yes / No	Regulatory Analysis Yes / No	Expected date(s) of publication (if known)	Knowledgeable official
		NATIONAL PARK SERVICE				
36 CFR Part 2	Public Use and Recreation	Several amendments to existing regulations have been proposed that would reduce the number of special regulations required in Part 7.	X	X		Michael Finley, 343-5607
36 CFR Part 7	Special Regulations of the National Park System.	These regulations are submitted by individual park areas. The scope and application of the regulations is limited to a particular problem in a specific unit of the National Park System as opposed to the System as a whole. The number and frequency of these regulations cannot be determined at this time.	X	X		Michael Finley, 343-5607
36 CFR Pts. 2 and 7	Public Use and Recreation; Special Regulations of the National Park System.	Regulations in these parts will require review and may require revision in order to comply with Public Law 94-341 and insure that these regulations do not infringe upon native American traditional religious/ceremonial rights and practices.	X	X		George Gowans, 343-7456
		HERITAGE CONSERVATION AND RECREATION SERVICE				
36 CFR Part 1205	National Historic Landmarks.	To amend to reflect new Departmental policies and to transfer from 36 CFR Part 69.	X	X		George F. Emery, 343-6404
36 CFR Part 1210	Recovery of Scientific, Prehistoric, Historic, and Archeological Data: Procedures for Notification, Reporting, and Data Recovery Operations.	To codify existing procedures and standards for Archeological and Historical Preservation Act of 1974 (Pub. L. 93-291) and to transfer from 36 CFR Part 66.	X	X		L. E. Aten, 343-7105
36 CFR Part 1230	Land and Water Conservation Fund State Assistance Program.	To provide a general presentation on the existing requirements and procedures concerning administration of the Land and Water Conservation Fund program. This Part will reference the Heritage Conservation and Recreation Service Grants Manual as the official instrument for providing detailed program guidance.	X	X	Proposed Rule, April 1979.	Rowland Bowers, 343-7801
36 CFR Part 1228	Urban Park and Recreation Recovery Program.	To develop eligibility criteria and a list of those cities eligible for this program as required by Pub. L. 95-625.	X		Interim Rule, March 1979.	Sam L. Hall, 343-5971

UNITED STATES DEPARTMENT OF THE INTERIOR

AGENDA OF REGULATIONS SCHEDULED FOR REVIEW OR DEVELOPMENT: JANUARY-JUNE 1979

CFR Citation	Subject	Purpose or review/ development	Significant Yes / No	Regulatory Analysis Yes / No	Expected date(s) of publication (if known)	Knowledgeable official
		HERITAGE CONSERVATION AND RECREATION SERVICE—Continued				
		Other sections of this Part will also be developed to present the administrative and recovery action programs. The decision on the preparation of a regulatory analysis has not been made at this time.	X			Do.
		BUREAU OF INDIAN AFFAIRS				
25 CFR Part 47	Revision of the Membership Roll of the Eastern Band of Cherokee Indians, North Carolina.	To determine status and need.	X	X		John Geary, 343-2678
25 CFR Part 48	Enrollment of Indians of the San Pasqual Band of Mission Indians in California.	....do	X	X		Do.
25 CFR Part 20	Financial Assistance and Social Services Program.	To revise current near reservation definition for clarity.	X	X		Do.
25 CFR Part 91	Loans to Indians from the Revolving Loan Fund.	Sections of this Part are scheduled for review as required by current Departmental directives (43 CFR Part 14).	X	X		Robert Nordstrom, 343-5804
25 CFR Part 163	Establishment of Roadless and Wild Areas on Indian Reservations.	To define a roadless area	X	X		Robert Fleak, 343-9433
25 CFR Part 41	Preparation of Rolls of Indians—Qualifications for Enrollment and dealines for Filing.	To include qualifications for enrollment and deadlines for filing for enrollment with tribes for whom the Secretary is preparing rolls to be used in the distribution of judgment funds as requrired by Act of October 19, 1973, or other specific Acts of Congress.	X	X		John Geary, 343-2678
25 CFR Part 42	Enrollment Appeals	Amend to more accurately reflect the purpose of the Part.	X	X	Final Rule, March, 1979.	Do.
25 CFR Part 43g	Preparation of a Roll to Serve as the Basis for the Distribution of Judgment Funds awarded to the Pembina Band of Chippewa Indians.	To determine status and need.	X	X		Do.
25 CFR Part 43h	Preparation of a Roll of Alaska Natives.	....do	X	X		Do.

UNITED STATES DEPARTMENT OF THE INTERIOR

AGENDA OF REGULATIONS SCHEDULED FOR REVIEW OR DEVELOPMENT: JANUARY-JUNE 1979

CFR Citation	Subject	Purpose or review/ development	Significant Yes / No	Regulatory Analysis Yes / No	Expected date(s) of publication (if known)	Knowledgeable official
		BUREAU OF INDIAN AFFAIRS—Continued				
25 CFR Part 431	Preparation of a Roll to Serve as the Basis for the Distribution of Judgment Funds awarded Certain Warm Springs Indians.	....do	X	X		Do.
25 CFR Part 43n	Preparation of a Roll for Distribution of Grand River Ottawa Judgment Funds.	....do	X	X		Do.
25 CFR Part 43p	Revision of Membership Roll of Confederated Tribes of Siletz Indians of Oregon.	....do	X	X		Do.
25 CFR Part 46	Enrollment of Indians of the Rincon, San Luiseno Band of Mission Indians in California.	....do	X	X		Do.
25CFR Part 252	Business Practices on the Navajo, Hopi and Zuni Reservations.	To evaluate suggested revisions proposed by field offices of the Bureau..	X	X	Proposed Ruled, January, 1979.	Eugene Suarez, Sr., 343-5786
41 CFR Part 14H	Buy Indian Act Contracting	To set forth Bureau policy with regard to contracting in regulation form.	X	X	Notice of Intent, February, 1979.	Donald F. Asbra, 703-235-8061
25 CFR Part 120a	Land Acquisition	This Part, governing acquisition of trust or restricted lands, is being developed to conform to statutory requirements.	X	X		Raymond W. Jackson, Phoenix Area Office, P.O. Box 7707, Phoenix, AZ 85011, 602-261-4195
25 CFR Part 182	Oil and Gas Contracts	This Part is scheduled for review as required by current Departmental directives (43 CFR Part 14).	X	X		George Skibine, 343-5473
25 CFR Part 121	Issuance of Patents in Fee, Certificates of Competency, Removal of Restrictions, and Sale of Certain Indian Lands.	This Part is scheduled for review as required by current Departmental directives (43 CFR part 14).	X	X		Jack Daughtery, Muskogee Area Office, Muskogee, OK 74401, 918-687-2291
25 CFR		Rules must be developed to implement certain legislation. As of this date, Part numbers have not been assigned. The legislation are:.	X	X		
		Pub. L. 95-561, Title XI—Education Act Amendments.	X	X		Elizabeth Holmgren, 343-3151
		Pub. L. 95-471—The Indian controlled Community College Act.	X	X		Do.
		Pub. L. 94-142—Education of the Handicapped Act.	X	X		Do.

UNITED STATES DEPARTMENT OF THE INTERIOR

STATUS OF REGULATIONS PREVIOUSLY SCHEDULED FOR REVIEW: MAY–DECEMBER 1978

CFR Citation	Subject	Status	Knowledgeable official
	OFFICE OF THE SOLICITOR		
43 CFR Part 1	Practices before the Department of the Interior.	This regulation is still being reviewed and should be published as proposed rulemaking in January, 1979..	John D. Trezise, 343-5216
43 CFR Part 6	Patent Regulations	This regulation is still being reviewed and should be published as proposed rulemaking in February, 1979.	D. A. Gardiner, 343-4471 Gersten Sadowsky, 343-4471
	OFFICE OF INSPECTOR GENERAL		
43 CFR Pt. 20	Employee Responsibilities and Conduct.	Legislation requiring revision of this part was signed by the President on October 26, 1978. (Pub. Law 95-521). This legislation creates an Office of Government Ethics in the Office of Personnel Management (Formerly CSC). This new office is charged with developing regulations which are to be used by all federal agencies as guidelines for developing individual agency regulations (Pub. Law 95-521, Section 207). These guideline regulations are expected in early 1979 and 43 CFR pt. 20 will be completely revised in accordance with guidelines received. During the interim period (between now and the time guidelines are received from OPM) significant changes, appendix updates and addition of requirements under Pub. Law 95-372 will be published as amendments to 43 CFR pt. 20. (Expected publication date is January, 1979.).	Gabe Paone, 343-3932
	BUREAU OF MINES		
30 CFR 610	Coal analysis for non-Federal applicants.	Formally transferred to the Department of Energy on September 26, 1978. Notice published on page 43459 of the FEDERAL REGISTER.	William Schmidt, Department of Energy, 703-235-2700
30 CFR 651	Bureau of Mines grant programs...	Removal of references to MSHA are being held in abeyance pending development of policy regarding grants administration by the Department of the Interior.	Joseph Herickes, 634-4704

UNITED STATES DEPARTMENT OF THE INTERIOR—Continued

CFR Citation	Subject	Status	Knowledgeable official
	GEOLOGICAL SURVEY		
30 CFR Part 211	Coal mining operating regulations	Published as final August 22, 1978 (43 FR 163). However, due to revised Office of Surface Mining regulations, these are now being revised and are scheduled to be published as proposed rules in January 1979 and final in March 1979.	Tom Leshendok & Don Ziehl, 860-7506
30 CFR Part 221	Oil and gas operating regulations	Proposed general revisions to be published in June 1979. Proposed section concerning liquidated damages published as proposed in June 1977 (42 FR 124). Final to be published in April 1979.	Eddie R. Wyatt, 860-7535
30 CFR Part 250	Oil and gas and sulphur operations in the Outer Continental Shelf.	Scheduled to be published as proposed rule in Janury 1979. Final rule to be published in May 1979.	Richard Krahl, 860-7531
30 CFR Part 270	Geothermal resources operations on public, acquired and withdrawn lands.	Published as proposed rule in February 1978 (43 FR 22). Final to be published in April 1979.	Eddie R. Wyatt, 860-7535
43 CFR Part 3100	Oil and gas leasing	To be published as a Notice to clarify the effective date of known geologic structure (KGS) determinations.	Charles Sours, 860-7521
	OFFICE OF WATER RESEARCH AND TECHNOLOGY		
18 CFR Chapter IV	Office of Water Resources Research, Department of the Interior.	The present chapter provides the rules of the Secretary of the Interior for implementation of the Water Resources Research Act of 1964. As this Act has been repealed and superseded by the Water Research and Development Act of 1978 (Pub. L. 95-467), this chapter must be revised to reflect the provisions of the new law. It is estimated that a proposed revision will be published in June, 1979.	P. W. Koop, 343-4607 George Cassaday, 343-4607.
	BUREAU OF LAND MANAGEMENT		
43 CFR Group 2900	Land use, occupancy, and development.	Pre-proposed rulemaking has been drafted, reviewed in the Bureau of Land Management and is currently under review in the Department.	Mathew Millenbach, 343-8731 Robert C. Bruce, 343-8735
43 CFR Group 2700	Land disposal (sales)	Pre-proposed rulemaking has been drafted, reviewed in the Bureau of Land Management and is currently under review in the Department.	Stephen H. Spector, 343-8738 Robert C. Bruce, 343-8735
43 CFR Group 4000	Grazing Administration	Published in final rulemaking form in the FEDERAL REGISTER on July 5, 1978.	Max T. Lieurance, 343-6011 Robert C. Bruce, 343-8735
43 CFR Part 6260	Recreation management	Published in final rulemaking form in the FEDERAL REGISTER on February 24, 1978.	Larry R. Young, 343-9355 Billy R. Templeton, 343-8735
43 CFR Group 3800	Recordation of mining claims	Final rulemaking has been drafted, reviewed in the Bureau of Land Management and is currently under review in the Department. Final rulemaking is expected to be published in January 1979.	Gene Carlat, 343-7723 Robert C. Bruce, 343-8735

UNITED STATES DEPARTMENT OF THE INTERIOR—Continued

CFR Citation	Subject	Status	Knowledgeable official
	BUREAU OF RECLAMATION		
43 CFR Part 405	Certain Lands Sought to be Covered by Recordable Contracts; Columbia Basin Project.	Part 405 provides for implementation of Section 2 of the Columbia Basin Project Act. That Section was repealed in its entirety by the Act of October 1, 1962. Therefore, these regulations are no longer needed and will be removed in January, 1979.	Vernon S. Cooper, 343-2148
43 CFR Part 409	Leasing and Utilization of Lands in Page, Arizona.	All subject lands have been turned over the the City of Page. Therefore, these regulations are no longer needed and will be removed in January, 1979.	David Williamson, 343-5204
43 CFR Part 430	Rules for Management of Lake Berryessa.	Procedures were determined to be adequate as stated. No changes are recommended.	David Williamson, 343-5204
	NATIONAL PARK SERVICE		
36 CFR Pts. 1-4	Miscellaneous provisions; public use and recreation boating; and vehicles and traffic safety.	These revisions are scheduled for publication in January of 1979 as proposed rules.	Michael Finley, 343-5607
36 CFR Pt. 3	Boating	These regulations are currently under review and revision. A publication date has not been set.	James Carrico, 343-5607
36 CFR Pt. 5	Commerical and Private Operations.	These regulations are currently under review and revision. A publication date has not been set.	Richard Tousley, 343-4874
	U.S. FISH AND WILDLIFE SERVICE		
50 CFR Part 17	Endangered and threatened wildlife and plants.	This part will require further review due to the extensive 1978 amendments (Pub. L. 95-632) to the Endangered Species Act.	John Spinks, 703-235-2771 Clark Bavin, 202-343-9242 Richard Parsons, 703-235-1937
50 CFR Part 18 Subpart C	Marine mammals general exceptions.	To relieve an existing burden on the public, a proposed rule is being considered that would exempt fossil ivory from registration. Publication dates are uncertain.	Clark Bavin, 202-343-9242
50 CFR Part 18 Subpart F	Marine mammals—State laws and regulations.	A revision was published as a final rule on October 2, 1978, (43 FR 45370), which clarified procedures and criteria for obtaining a waiver of the moratorium on marine mammals.	Norman Johnson, 202-632-2202 Clark Bavin, 202-343-9242
50 CFR Part 19	Airborne hunting	This part is current and a revision is not necessary.	Clark Bavin, 202-343-9242

UNITED STATES DEPARTMENT OF THE INTERIOR—Continued

CFR Citation	Subject	Status	Knowledgeable official
	U.S. FISH AND WILDLIFE SERVICE—Continued		
50 CFR Part 20	Migratory bird hunting	To reduce costs and preclude possible confusion on the part of the public in reading non-current rules codified in 50 CFR, a proposed rule will be published in January, 1979, to eliminate codification of the annual seasons, limits, and shooting hour schedules—which are published in the daily issues of the FEDERAL REGISTER.	John P. Rogers, 202-254-3207
50 CFR Part 21	Migratory bird permits	To permit raptor propagation, a proposed rule is being considered that would implement the raptor amendment to the Endangered Species Act. Publication dates are uncertain.	Clark Bavin, 202-343-9242
50 CFR Part 22	Eagle permits—acts protecting bald and golden eagles.	This part will require further review due to a recent U.S. district court decision that suggested the need of a registration system for possession of pre-Act(s) feathers.	Clark Bavin, 202-343-9242
50 CFR Part 25	National Wildlife Refuge System—administrative provisions.	A proposed rule on closing National Wildlife Refuges was published on August 24, 1978, (43 FR 37732). The final rule should be published in January, 1979.	Ronald Fowler, 202-343-4305
	HERITAGE CONSERVATION AND RECREATION SERVICE		
36 CFR Part 61	Criteria for Comprehensive Statewide Historic Surveys and Plans.	To evaluate the effectiveness of the existing interim regulations and publish them in final. To incorporate changes reflecting the creation and reorganization of the Heritage Conservation and Recreation Service. To transfer to 36 CFR Part 1201. It is expected that a final rule will be published in May, 1979.	Carol Shull, 343-5221
43 CFR Part 31	Grants and Allocations for Recreation and Conservation Use of Abandoned Railroad Rights-of-Way.	This Part will be retained since it contains the compliance standards for nine projects approved in fiscal year 1978. It is expected that the contents of this Part will be transferred to 36 CFR Part 1225 in January, 1979.	Rowland T. Bowers, 343-7801
	BUREAU OF INDIAN AFFAIRS		
25 CFR Part 252	Business Practices on the Navajo, Hopi and Zuni Reservations.	This Part has been reviewed and changes have been recommended to waive or reduce bond requirements for reservation businesses on the Navajo reservation owned and operated by members of the Navajo tribe.	Eugene Suarez, Sr., 343-5786
25 CFR Part 251	Licensed Indian Traders	The Bureau of Indian Affairs has determined that this Part is current and a revision is not necessary.	Do.
25 CFR Part 261	Housing Improvement Program Eligibility.	do	G. Ronald Peake, 343-4876

UNITED STATES DEPARTMENT OF THE INTERIOR—Continued

CFR Citation	Subject	Status	Knowledgeable official
	BUREAU OF INDIAN AFFAIRS—Continued		
25 CFR Part 34	Vocational Training for Adult Indians.	Proposed revision published in the FEDERAL REGISTER on October 14, 1977. Final rule should be published before December 31, 1978.	John Jollie, 343-7408
25 CFR Part 80	Indian Business Development Program.	A further review is being considered to determine the status of this program.	Robert Nordstrom, 343-5804
25 CFR Part 93	Loan Guaranty Insurance and Interest Subsidy.	The Bureau of Indian Affairs has determined that this Part is current and a revision is not necessary.	Do.
25 CFR 271	Contents under Indian Self-Determination Act.	The bureau of Indian Affairs in consultation with the Indian people has determined that this Part is current and a revision is not necessary.	Dr. Helen Miller, 343-4796
25 CFR Part 21	Arrangement of States, Territories or other agencies for relief of distress and social welfare of Indians.	This Part is still under review and will continue during the January-June, 1979 review period.	John Geary, 343-2678
25 CFR Part 171	Leasing of Tribal Lands for Mining.	Proposed revision published in the FEDERAL REGISTER on April 5, 1978 (43 FR 18083). Final rule being processed and will be published in January, 1979.	George Skibine, 343-5473
25 CFR Part 177	Plans for Prospecting and Mining of Indian Mineral Lands: Reclamation of Non-Mineral Resources.	....do	Do.
25 CFR Part 183	Leasing of Osage Reservation Lands for Oil and Gas Mining.	The Bureau of Indian Affairs has determined that this Part is current and a revision is not necessary.	Do.
25 CFR Part 161	Rights-of-way over Indian Lands...	Proposed revision published in the FEDERAL REGISTER on July 7, 1978 (43 FR 29317). Final rule being processed and will be published in January, 1979.	Richard McDermont, Palm Springs Area, Field Office, 587 S. Palm Canyon Dr. Palm Springs, CA 92262, 714-325-2163
25 CFR Part 104	Individual Indian Money Accounts.	This Part is still under review and will continue during the January-June, 1979 review period.	Shirley M. Crosby, 343-8216
25 CFR Part 105	Deposit of Indian Funds in Banks.	....do	Do.
25 CFR Part 141	General Forest Contracts	....do	Do.
25 CFR Part 174	Leasing of Restricted Lands of Members of Five Civilized Tribes, Oklahoma for Mining.	....do	Do.
25 CFR Part 22	Care of Indian Children in Contract Schools.	This Part is still under review and will continue during the January-June, 1979 review period.	John Geary, 343-2678
25 CFR Part 162	Roads of the Bureau of Indian Affairs.	The Bureau of Indian Affairs has determined that this Part is current and a revision is not necessary.	Robert Fleck, 343-9433
25 CFR Part 273	Education Contracts Under Johnson-O'Malley Act.	This Part will be revised to incorporate the provisions of Pub. L. 95-561 (November 1, 1978) which amends the Johnson-O'Malley Act.	Elizabeth Holmgren, 343-3151
25 CFR Part 274	School Construction Contracts or Services for Tribally Operated, Previously Private Schools.	This Part is still under review and will continue during the January-June, 1979 review period.	Bill Henry, Division of Facilities Engineering, P.O. Box 1248, 500 Gold Ave. SW, Albuquerque, NM 87103, 505-766-2825
25 CFR Part 277	School Construction Contracts for Public Schools.	....do	Do.

[FR Doc. 79-3167 Filed 1-30-79; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

Antitrust Division

[M.D.L. Docket No. 50; Civ. No. 822-70]

UNITED STATES OF AMERICA, PLAINTIFF, V. BRISTOL-MYERS CO., ET AL., DEFENDANTS

Hearing on February 28, 1979

The Court (U.S. District Court for the District of Columbia) now has before it the proposed consent decree which would terminate this antitrust litigation with respect to the suit of the United States against the Beecham defendants. The proposed decree and the government's competitive impact statement have been published in the FEDERAL REGISTER, and the statutory period for the receipt of written comments from the public has now elapsed. The Court has stated that it intends to proceed to a prompt determination of whether the entry of the proposed judgment is in the public interest.

The Court has ordered that a hearing be held concerning the above-mentioned proposal, beginning at 9:30 a.m. on February 28, 1979, in Courtroom 11, United States Courthouse, Third and Constitution NW., Washington, D.C. The Court has further ordered that, by February 9, 1979, any person who so desires shall file with the Court any proposals concerning the order of procedure at the hearing of February 28, 1979, including the names of any witnesses they wish to call and any additional papers concerning the proposed judgment.

This Notice appears by order of the Court.

Dated: January 23, 1979.

CHARLES F B. MCALEER,
Special Assistant for Judgment Negotiations.

[FR Doc. 79-3233 Filed 1-30-79; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on January 24, 1979 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes:

The name of the agency sponsoring the proposed collection of information;

The title of each request received;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice thru this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF COMMERCE

Bureau of the Census
April 1979 Current Population Survey Alimony and Child Support Supplement
CPS-260
Single-time
Eligible interviewed households
28,000 responses; 1,166 hours
Office of Federal Statistical Policy & Standard, 673-7974

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration
Highway Performance Monitoring System
FHWA-1501, FHWA-15011
Other (See; SF-83)
State Highway Agencies
52 responses; 98,800 hours
Geiger, Susan B., 395-5867

EXTENSIONS

NATIONAL SCIENCE FOUNDATION

Students views on careers

Annually
Students
9,000 responses; 900 hours
Laverne V. Collins, 395-3214

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service
Employment questionnaire
I-314
On occasion
Off. or fac. which employ aliens
5,000 responses; 833 hours
Laverne V. Collins, 395-3214

Immigration and Naturalization Service
Report of alien person institutionalized
G-340
On occasion
Correctional institu., hosp. & sanitar.
6,000 responses; 1,500 hours
Laverne V. Collins, 395-3214

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration
Regulations for Application under Section 505 of the 4R Act of 1976
On occasion
Class 1 & 2 railroads
200 responses; 7,000 hours
Geiger, Susan B., 395-5867

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 79-3173 Filed 1-30-79; 8:45 am]

[4310-70-M]

PRESIDENT'S COMMISSION ON THE HOLOCAUST

Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the President's Commission on the Holocaust will be held at 11 a.m. on Thursday, February 15, 1979 in the Conference Room, (Room 308), Old Executive Office Building, 17th and Pennsylvania Ave., N.W., Washington, D.C. 20500.

The Commission was established by Executive Order 12093, November 1, 1978, to submit a report to the President and the Secretary of the Interior containing its recommendations with respect to the establishment and maintenance of an appropriate memorial to those who perished in the Holocaust. Also, the Commission's report shall examine the feasibility of obtaining funds for creation and maintenance of the Memorial through contributions by the American people. Further, the Commission shall recommend appropriate ways for the Nation to commemorate April 28 and 29, 1979, which the Congress has resolved shall be "Days of Remembrance of Victims of the Holocaust."

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Those wishing to attend on a first-come, first-serve basis should notify in writing no later than February 7, 1979, Dr. Michael Berenbaum, Deputy Director, President's Commission on the Holocaust, Suite 7233, 726 Jackson Place, N.W. Washington, D.C. 20503 of their intention to attend. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or who want further information concerning the meeting may contact Dr. Berenbaum at 202-395-7343. The proceedings will be transcribed and the transcripts will be available for public inspection two weeks after the meeting.

Dated: January 25, 1979.

DR. MICHAEL BERENBAUM,
Deputy Director.

[FR Doc. 79-3203 Filed 1-30-79; 8:45 am]

[7905-01-M]

RAILROAD RETIREMENT BOARD

SIGNIFICANT REGULATIONS UNDER DEVELOPMENT OR REVIEW

Semi-annual Agenda

AGENCY: Railroad Retirement Board.

ACTION: Semi-annual agenda of significant regulations under development or review.

EFFECTIVE DATE: Immediately.

FOR FURTHER INFORMATION CONTACT:

E. E. Koch, Chief Executive Officer, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

In accordance with Executive Order 12044, the Railroad Retirement Board hereby publishes its semi-annual agenda of significant regulations under development or review.

At the present time there are no completely new significant regulations or rules under development or scheduled for development by the Railroad Retirement Board. However, as the Board states in its report under Executive Order 12044, a review and revision of existing regulations has been commenced by this agency. The initial thrust of this project will center on the regulations issued by the Board under the Railroad Retirement Act. The Railroad Retirement Act of 1937, under which the majority of the current regulations was promulgated, was replaced by the Railroad Retirement Act of 1974, effective January 1, 1975, and accordingly there is a need to update the regulations. The parts of the current regulations which will be included in the initial segment of the review and revision project are as follows:

Part 208—Eligibility for an annuity
Part 225—Computation of annuity
Part 232—Spouse's annuities
Part 237—Insurance annuities and lump sums for survivors
Part 238—Residual lump-sum payments

Information concerning the status of the review and revision of the above listed parts of the Board's regulations may be obtained by contacting Mr. Dale G. Zimmerman, General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone number 312-751-4935 (FTS 387-4935).

By Authority of the Board.

Dated: January 16, 1979.

R. F. BUTLER
Secretary of the Board.

[FR Doc. 79-2630 Filed 1-30-79; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 15511; Filed No. 4-281]

AMERICAN STOCK EXCHANGE, INC. ET AL.

Application; Temporary Order

JANUARY 24, 1979.

In the Matter of American Stock Exchange, Inc., Boston Stock Exchange, Inc., Midwest Stock Exchange, Inc., National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., Pacific Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc.; Temp.

Notice is hereby given that the Securities and Exchange Commission has issued an order, pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (the "Act"), extending the authorization to certain self-regulatory organizations to act jointly, in accordance with the terms of a plan, as amended, with respect to matters as to which they share authority under the Act in planning, developing, operating and regulating a national market facility consisting of a consolidated quotation system (the "quotation system"). The order conditionally authorizes those self-regulatory organizations to continue implementing that facility on a temporary basis for a period of twelve months as a means of facilitating a national market system in accordance with the requirements of Section 11A of the Act.[1]

INTRODUCTION AND BACKGROUND

On January 26, 1978, the Commission adopted Rule 11Ac1-1 (the "Rule") under the Act which requires

[1] The temporary authorization granted herein includes not only the specific self-regulatory organization named above, but also any other self-regulatory organizations which agrees to become a participant in the quotation system by subscribing to the CQ Plan.

that every national securities exchange ("exchange") and national securities association ("association") establish and maintain procedures to collect, process and make available to vendors quotations (including size) in reported securities (*i.e.*, securities as to which last sale information is reported in the consolidated transaction reporting system ("consolidated system")).[2] Although the Rule does not require the self-regulatory organizations to implement the Rule on a joint basis, in the release announcing the adoption of the Rule the Commission encouraged the self-regulatory organizations to act jointly to implement the Rule. In response to the Commission's encouragement, on July 25, 1978, the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange, Inc. ("Amex") filed with the Commission a "Plan for the Purpose of Implementing Rule 11Ac1-1 under the Securities Exchange Act of 1934" ("CQ Plan" or "Plan"). The CQ Plan (i) establishes joint procedures to govern the collection, processing and dissemination of quotation information by the participating market centers, (ii) provides for selection and evaluation of an exclusive processor to collect quotation information from participants and to make that information available to quotation vendors in a single data stream, and (iii) establishes fees relating to the receipt of quotation information.

On July 28, 1978, the Commission issued a temporary order (the "CQ Order") pursuant to Section 11A(a)(3)(B) of the Act, authorizing any self-regulatory organization executing the Plan[3] (collectively, "participants") to act jointly in accordance with the terms of the Plan in operating and regulating the quotation system. The authorization was, however, conditioned on the participants not implementing that provision of the Plan proscribing the furnishing of quotation information with respect to any reported security which is the subject of a regulatory halt initiated by the "primary" market for that security.

Prior to August 1, 1978, the effective date of the Rule, the NYSE, Amex, Boston Stock Exchange, Inc., Midwest Stock Exchange, Inc., Pacific Stock Exchange, Inc. and Philadelphia Stock Exchange, Inc. executed the CQ Plan. In addition, on January 5, 1979, the participants filed amendments to the Plan contemplating the inclusion of the National Association of Securities Dealers, Inc. ("NASD") as well as certain other substantive concerns. A complete copy of the Plan, as amended, and all comments received with respect thereto are available for public inspection at the Commission's Public Reference Room, Room 6101, 110 L Street, N.W., Washington, D.C.[4]

Discussion of the Comments and the CQ Plan Amendments

In the CQ Order, the Commission solicited public comment on the CQ Plan concerning: (i) the dissemination of quotations during regulatory halts; (ii) the proposed fee schedules for receipt of quotation information disseminated pursuant to the CQ PLan; (iii) the time parameters within which participants are expected to collect quotation information and transmit that information to the processor; and (iv) the provisions concerning the proposed voting arrangements and allocation of revenues. Only the NYSE has submitted comments to the Commission on the CQ Plan.[5]

(A) Regulatory Halts

The terms of the CQ Plan provide that, during regulatory halt in a security, called by the "primary" market for that security, all participants must cease communicating quotation information in that security to the CQ Plan processor. Since Rule 11Ac1-1 requires the dissemination of quotations whenever a reported a reported security is traded[6] and because market centers other than the "primary" exchange markets lack alternative facilities to disseminate quotations to vendors during such a regulatory halt, the practical effect of this provision would be to require every participant to halt trading during the pendency of any regulatory halt initiated by the "primary" market.

The Commission indicated in the CQ Order that the regulatory halt provision of the Plan raises legal and policy questions with respect to the appropriateness of halting all trading during a regulatory halt initiated by one market center which we do not believe should be resolved in the context of the approval to the CQ Plan. In addition, because the practical effect of the provision would be to prevent all trading by participating market centers during a regulatory halt initiated by the "primary" market, and, in particular, would prevent any market center from resuming trading after such a halt is initiated and before the "primary" market determines that the regulatory problem giving rise to the halt has been resolved, the implementation of the regulatory halt provision may impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Accordingly, the Commission determined that its temporary order approving implementation of the Plan should be conditioned on the participants not implementing that provision of the Plan which prohibits the dissemination of quotation information for any reported security by any participant during a regulatory halt initiated by the "primary" market with respect to such security.

In its comment letter, the NYSE[7] asserted that the CQ Plan regulatory halt provision furthers the maintenance of a fair and orderly market by prohibiting the dissemination of quotation information when a regulatory problem with respect to a security exists such that the public should not be encouraged to trade such security (*e.g.*, the imminent disclosure of material information concerning such security). The NYSE argued that granting the self-regulatory organizations, particularly the "primary" market, the authority to call regulatory halts permits such halts to be imposed promptly and monitored closely. Furthermore, in the NYSE's view, any potential for abuse would be diminished by the Commission's plenary power to terminate a regulatory halt at such time as the Commission determined that the halt was no longer necessary.

The Commission believes that the regulatory halt provision raises significant concerns. First, the implementation of the provision may have anticompetitive effects on the regional exchanges and the third market, since those markets not only would be required to suspend trading when the NYSE called a regulatory halt, but could not recommence trading until after the NYSE determined that the regulatory concern which had given rise to the halt had been resolved. Second, as a matter of regulatory policy, the provision would, in effect, delegate to the "primary" market for a particular security the power to halt all trading in that security in a manner which may be contrary to the scheme of self-regulation created by the Act. For the foregoing reasons, the Commission has determined to continue to condition its temporary authorization of the CQ Plan on the participants not implementing the regulatory halt provision and hereby requests the CQ Plan participants to execute and file amendments to the Plan eliminating this provision. The Commission's decision to condition its approval of the CQ Plan should not be

[2] Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342.

[3] Securities Exchange Act Release No. 15009 (July 28, 1979) fn. 1, 43 FR 34851. In addition to the NYSE and Amex, the following self-regulatory organizations have executed the CQ Plan to date: Boston Stock Exchange, Inc., Pacific Stock Exchange, Inc., Philadelphia Stock Exchange, Inc., Midwest Stock Exchange, Inc., and the National Association of Securities Dealers, Inc.

[4] *See* File No. 4-281.

[5] *See* Letter from James E. Buck, Secretary, NYSE, dated September 29, 1978 (the "NYSE Letter").

[6] Rule 11Ac1-1(b)(1).

[7] *See* NYSE Letter, at 1-8.

construed as a determination that it is not appropriate to delegate to a single self-regulatory organization the authority to initiate and terminate a nation-wide suspension of trading for regulatory reasons. If two or more CQ Plan participants wish to allocate this responsibility to one self-regulatory organization, a plan specifically accomplishing this may be filed pursuant to Rule 17d-2 under the act for appropriate consideration by the Commission under Section 17(d) of the Act.[8] However, we believe that the temporary extension of the CQ Order is not the appropriate context in which to address the generic question of regulatory halt allocation.

(B) FEES FOR CONSOLIDATED QUOTATIONS

The CQ Plan establishes a fee schedule for subscription to consolidated quotation information which creates a permanent two-tier structure for Network A and Network B quotations.[9] Under the two-tier structure, subscribers to either network who are members of a participant are charged a lower fee than are subscribers who are not members of participants.[10] In the case of Network A, the rate for subscribers who are not members of participants is more than 50% higher than the rate for members of participants. For Network B, the disparity is approximately 8%. In addition, for a period of six years,[11] commencing on August 1, 1978, NYSE members subscribing to Network A are charged a fee which is lower than the fee charged to members of other participants.[12]

According to the NYSE, the CQ Plan was established on a "full cost recovery" allocation basis which would eventually result in a rate structure which is identical for all members of participants. The NYSE argues that the six year period in which members of the NYSE and members of other participants are charged differing rates is necessary to avoid a substantial one-time rate increase for NYSE members. In addition, the NYSE argues that the disparity of rates between members of participating market centers and persons who are not such members is justified by the payment of exchange membership fees which provide an additional indirect contribution to the overall maintenance of the operation of a participant.

While the Commission supports the continuation of the efforts by participants to collect and process quotation information and to disseminate such information in a consolidated data stream under the CQ Plan, the Commission believes that the fee structure established by the Plan, particularly the disparate treatment accorded various recipients of quotation information, must be further explored before the Commission can determine whether it is consistent wth the purposes of the Act.

NASD PARTICIPATION AND THE AMENDMENTS TO THE CQ PLAN

In connection with the NASD's recent agreement to disseminate third market quotations through the CQ Plan data stream, the NASD and other participants have agreed to certain amendments to the CQ Plan. These amendments provide for (i) the creation of a CQ Network C (to be administered by the NASD) for unlisted NASDAQ securities which are ultimately designated by the Commission as "qualified" for inclusion in the national market system and for which the disssemination of quotation information is required, (ii) the sharing of expenses for processing and disseminating quotation information between the hours of 9:30 a.m. and 6:30 p.m., eastern time;[13] (iii) the validation of the quotation information format by the CQ Plan processor;[14] and (iv) the dissemination of symbols accompanying third market quotations identifying the broker or dealer responsible for such quotations. The Commission does not object to the inclusion of these amendments in the CQ Plan and its authorization to act in accordance with the terms of the Plan extends to these amendments.

CONDITIONAL NATURE OF ORDER

In determining to extend temporary approval of the CQ Plan, as amended, the Commission believes that the consolidated quotation data stream contemplated by the Plan provides an appropriate basis for the creation of a consolidated quotation system—an essential element of a national market system. As a general matter, the Commission continues to support the cooperative effort of the participants and encourages their efforts to resolve individual differences in making progress toward a national market system.

The Commission has determined to extend for a period of 12 months the authorization to the participants to collect, process and make available quotation information in a consolidated data stream pursuant to the terms of the Plan, as amended, conditioned again on the participants not implementing the regulatory halt provision in the Plan. During that time, the Commission intends to monitor the implementation of the Plan by the participants and to explore the Plan fee structure such that, at the conclusion of the 12 month period, it may determine whether to issue an order authorizing the participants to act jointly in implementing the Plan, as amended, on a permanent basis.

Notice is hereby given that any interested person may submit written views, data and arguments with respect to the Plan, as amended, not later than September 30, 1979. Persons wishing to make such submissions should file six copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. 4-281 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C.

It is hereby ordered, pursuant to Section 11A(a)(3)(B) of the Act, that, subject to the terms and conditions described above, the self-regulatory organizations named above (and any other self-regulatory organization which agrees to be a participant in the CQ Plan) are authorized for 12 months from the date of this order to act jointly in planning, developing, operating or regulating the quotation system

[8] Rule 17d-2 establishes procedures for filing such a plan.

[9] Network A reports transactions in NYSE-listed securities which occur on any of the participating exchanges, in the "third market," or through the Institutional Networks Corporation. Network B reports transactions in Amex and certain regional exchange listed securities.

[10] Currently, this category of other subscribers includes brokers and dealers who are members of the Cincinnati, Intermountain or Spokane Stock Exchanges and no other self-regulatory organization, broker-dealers registered under Section 15(b) of the Act (SECO brokers) and institutional and private investors.

[11] At the conclusion of the six year period, the fee structure for members of all participating market centers would be identical.

[12] With respect to fees charged to participants, the CQ Plan states that no charge shall be made to any participating market center for receiving any quotation information service provided that (a) such information is furnished at the premises occupied solely by such market center or on the trading floor(s) of such center; (b) such information is used by such center for regulatory and surveillance purposes or for any other purposes specifically approved; and (c) such information is not made available to any person not located on such premises or trading floors. We understand that, pursuant to this provision, the quotation information displayed on participating exchanges, either by means of overhead displays or on interrogation devices generally available to members on the floor of the exchange, is provided without charge.

[13] The CQ Plan presently requires sharing CQ Plan expenses incurred between the hours of 9:30 a.m. and 4:15 p.m., eastern time. Prior to the amendment, any participant wishing to disseminate quotations at other times (*e.g.*, the PSE) incurred additional charges.

[14] Validation of quotation information permits the CQ Plan processor to reject any quotations which have been garbled in transmission.

in accordance with the terms of the CQ Plan, as amended.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-3174 Filed 1-30-79; 8:45 am]

[8010-01-M]

[Rel. No. 10565; 812-4395]

ASHLAND COAL AND COKE CO. ET AL.

Application for an order declaring that companies are not investment companies or, alternatively, for an order exempting companies from all provisions of the Investment Company Act

Notice is hereby given that Ashland Coal and Coke Company, Poplar Creek Development Company, and Sovereign Pocahantas Company ("Applicants"), 525 Federal Street, Bluefield, West Virginia 24701, have filed an application on November 20, 1978, and an amendment thereto on January 11, 1979, pursuant to Section 3(b)(2) of the Investment Company Act of 1940 ("Act"), for an order of the Commission declaring that Applicants are not investment companies, or, alternatively, for an order pursuant to Section 6(c) of the Act exempting Applicants from all provisions of the Act, terminating by its terms upon the earlier of December 31, 1979, or consummation of the reorganization referred to below. All interested persons are referred to the application and amendment filed with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant Ashland Coal and Coke Company ("Ashland CCC") is a West Virginia corporation incorporated in 1892. Applicant Poplar Creek Development Company ("Poplar Creek") is a West Virginia Corporation incorporated in 1953. Applicant Sovereign Pocahantas Company ("Sovereign Pocahantas") is a West Virginia corporation incorporated in 1929. None of the Applicants is now or has ever been registered as an investment company under the Act.

The application states that each of the Applicants is a member of a group of companies referred to in the application as the Ashland Group, consisting of the three Applicants and five other companies, all of which are engaged in the production of bituminous coal and related businesses in the Virginia, West Virginia and Kentucky region. In combination, the three Applicants own approximately 54% of the outstanding stock of one these companies, Harman Mining Corporation; in excess of 90% of Fairfax Coal Company; approximately 30% of Sovereign Coal Corporation, the balance of which is owned by another company, Ashland Mining Corporation; and slightly in excess of 20% of Majestic Collieries Company. All the outstanding stock of Applicant Sovereign Pocahantas is owned by Applicants Ashland CCC and Poplar Creek. Applicant Ashland CCC also owns approximately 20% of Applicant Poplar Creek.

The application states that Applicants have existed as a part of the Ashland Group in their present organizational structure since 1953 (although Harman Mining did not become a part of the Ashland Group until 1954). Until 1953, all members of the Ashland Group (consisting up to that time, among present companies, only of Ashland CCC, Majestic Collieries, sovereign Pocahantas, Sovereign Coal and Fairfax Coal) were principally engaged directly in the business of bituminous coal production and marketing. In 1953, as a result of poor economic conditions then prevailing in the coal industry, Ashland CCC and Poplar Creek were organized as holding companies for all non-mining assets previously held by Ashland CCC and Majestic Collieries. As a result of the 1953 reorganization, more than 40% of the total assets (less cash and government securities) of Ashland CCC and Poplar Creek came to consist of "investment securities". The application states that the bulk of these "investment securities" consisted of other Ashland Group holdings. Also, as a result of the improvment in the financial position of the operating companies in the Ashland Group, the "investment securities" of sovereign Pocahantas have, in recent years, exceeded 40% of its total assets (less cash and government securities).

The application states that, to the best knowledge of Applicants' management, at no time prior to September, 1978, was the attention of any officer, director or other person responsible for the management and affairs of Applicants ever called to the provisions of the Act. The application states, however, that Applicants believe that each Applicant has at all times qualified for the exemption contained in Section 3(b)(2) of the Act had it applied to the Commission for such an exemption. Additionally, the application states the belief of Ashland CCC that, until some time into the 1960's, it was exempt from all provisions of the Act by virtue of the exemption in Section 3(c)(1) thereof. As of the date of filing the application, the record shareholders of Poplar Creek and Ashland CCC numbered on the order of 105 and 112, respectively. The application also states that Applicant Sovereign Pocahantas is, and at all times relevant to the application has been, exempt by virtue of the provisions of Section 3(b)(1) thereof. In this connection, the application states that at all times up to the date of the application Sovereign Pocahantas' principal business activity has been the marketing of bituminous coal.

The application further states that the shareholders owning Applicant Ashland CCC and Poplar Creek substantially overlap. A similar overlap among substantially the same shareholders exists as to Ashland Mining and Majestic Collieries. Additionally, the application states that three families of persons associated with the Applicants and other related companies either from their organization, or as early shareholders, still control in excess of 60% of the capital stock of Ashland CCC and, when combined with Ashland CCC's holdings in Poplar Creek, in excess of 50% of Poplar Creek. The application further states that the boards of directors and management of the Applicants and other members of the Ashland Group are, and have been for many years prior to 1953, virtually identical. In 1977, 7 of Ashland CCC's 9 directors served as directors of Majestic Collieries, Ashland Mining, and Poplar Creek. No persons serve as directors or principal officers of Sovereign Pocahantas, Sovereign Coal or Fairfax Coal who do not also serve in comparable positions with either Ashland CCC or Poplar Creek. Additionally, the application states that many administrative, legal, accounting, insurance and other services and expenses are shared by members of the Ashland Group. Technical engineering services are provided by Poplar Creek to other members of the Ashland Group.

The application further states, in view of their longstanding historical relationship, the substantial existing and historical overlap among shareholders, the extensive intercompany stockholdings, the virtually identical boards of directors and officers, and the practice of sharing expenses and services among and between the Applicants and other members of the Ashland Group, that the Applicants individually and collectively should be deemed in control of other members of the Ashland Group under the standards set by § 2(a)(9) of the Act. That section states that a person shall be deemed in "control" of another person if it has the power to exercise a controlling influence over the management and policies of such other person.

Applicants represent that "investment securities", calulated at five year intervals, beginning in 1962, other than those of Ashland Group companies do not appear to have exceeded 33% in any year for Ashland CCC, 42% for Poplar Creek, or 12% for Sovereign Pocahantas, without regard to coal reserves which Applicants believe repre-

sent substantial asset values. Additionally, Applicants represent that calculations of the various revenue categories for each Applicant for the same five year intervals indicate that combined revenue from noninvestment sources and controlled companies has consitituted more than 60% of total revenues in all years in question.

Applicants claim that they have at all times relevant to the application consistently conducted themselves as companies engaged in a non-investment business or businesses through majority-owned or controlled companies or both; and that Sovereign Pocahantas Company has at all times relevant to the application consistently conducted and represented itself as a company primarily engaged directly in the operation of a business other than that of investing, reinvesting, owning, holding, or trading in securities. It is further asserted that Applicants' shareholders have acquired and retained their investments on the basis of the Applicants being companies of that character; Applicants have never offered their securities to the public; and that transfers of Applicants' shares only occur at isolated intervals and then largely as a result of bequests or legacies.

Section 3(a)(3) of the Act defines an investment company as any issuer which is engaged, or proposes to engage, in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(b)(2) of the Act, however, excepts from the definition of an investment company any issuer which the Commission finds and by order declares to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities, either directly or (a) through majority-owned subsidiaries or (b) through controlled companies conducting similar types of businesses.

For the reasons set forth above, Applicant contend that they are entitled to an order of the Commission under Section 3(b)(2) of the Act, finding and declaring that Applicants are primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities through majority-owned subsidiaries or through controlled companies conducting similar types of businesses, and that Applicants are not investment companies.

Alternatively, Applicants contend that they meet the requirements of Section 6(c) of the Act and are entitled to an exemption from all the provisions of the Act pursuant to Section 6(c). Applicants have consented that the entry of an exemptive order pursuant to Section 6(c) will terminate by its terms upon the earlier of December 31, 1979, or consummation of a proposed plan of reorganization involving all three Applicants as well as all the related Ashland Group operating companies. The primary purpose of the proposed reorganization is to simplify and consolidate the various inter-company holdings now existing. Applicants have indicated that they are willing to assume full responsiblity for reapplying to the Commission for appropriate exemptive orders from the Act in the event the Commission or any of the companies concludes such action is necessary or advisable in light of the final details of the reorganization.

Section 6(c) of the Act provides that the Commission may conditionally or unconditionally exempt any person or transaction from any provision or provisions of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 16, 1979 at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-3175 Filed 1-30-79; 8:45 am]

[8010-01-M]

[Release No. 20898; 70-6135]

GEORGIA POWER CO. AND PIEDMONT-FORREST CORP.

Post-Effective Amendment Regarding Extension of Period for Advances to Newly-Organized Property Company

Notice is hereby given that Georgia Power Company ("Georgia"), a wholly-owned electric utility subsidiary of The Southern Company, a registered holding company, and Piedmont-Forrest Corporation ("Property Company"), a new Georgia business corporation and a subsidiary of Georgia, 270 Peachtree Street NW., Atlanta, Georgia 30302, have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a), 7, 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated April 14, 1978 (HCAR No. 20503), Georgia, among other things, was authorized to advance to Property Company up to $62,500,000 as and if necessary to permit Property Company to acquire the land for and cause to be constructed Phase I of a new office building complex for Georgia to be located in downtown Atlanta, Georgia.

Although the application-declaration and the order stated that the advances were for construction of a building to be completed in mid-1981, the application-declaration specified December 31, 1978, as the last date for making the advances and it was so ordered. By post-effective amendment, it is stated that this was an error and that the date should have been December 31, 1981.

Applicants-declarants request that the order of April 14, 1978, be amended accordingly, the amendment to be effective April 14, 1978, the date of the original order. Pending action on this post-effective amendment, Georgia will continue making advances to Property Company pursuant to the emergency provision of Rule 45(b)(3).

Notice is further given that any interested person may, not later than February 20, 1979, request in writing

that a hearing be held in respect of such matter, stating the nature of his interest, the reasons for such request and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc 79-3176 Filed 1-30-79; 8:45 am]

[8010-01-M]

[File No. 1-4091]

HARTFIELD-ZODYS, INC.

Application to Withdraw Common Stock, Par Value $1.00 From Listing and Registration

JANUARY 23, 1979.

The above named issuer has filed an application with the Securities and Exchange Commission, pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the AMERICAN STOCK EXCHANGE, INC ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The common stock of Hartfield-Zodys, Inc. (the "Company") has been listed for trading on the Amex since November 25, 1957. On December 4, 1978, the stock was also listed for trading on the New York Stock Exchange, Inc. ("NYSE") and concurrently therewith the stock was suspended from trading on the Amex. In making the decision to withdraw its stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining a dual listing on both exchanges. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for such stock.

The application relates solely to the withdrawal from listing on the Amex and shall have no effect upon the continued listing of such common stock on the NYSE. The Amex has posed no objection in this matter.

Any interested person may, on or before February 23, 1979, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D. C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission will, on the basis of the application and any other information submitted to it, issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-3177 Filed 1-30-79; 8:45 am]

[8010-01-M]

[Release No. 10566; 812-4407]

STATE MUTUAL LIFE ASSURANCE CO. OF AMERICA

Filing or Application for Order Permitting Proposed Acquisition of Certain Notes

Notice is hereby given that State Mutual Life Assurance Company of America ("Applicant"), 440 Lincoln Street, Worcester, Massachusetts 01605, a mutual life insurance company organized under the laws of Massachusetts, filed an application on December 11, 1978, for an order, pursuant to Section 17(d) of the Investment Company Act of 1940 ("Act") and Rule 17d-1 thereunder, permitting Applicant to acquire $1,500,000 in principal amount of a new issue of 10-⅛% Junior Subordinated Notes ("Notes") due in 1994 of Northwest Acceptance Corporation ("Northwest"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is the investment adviser of State Mutual Securities, Inc. ("Investment Company"), a closed-end investment company registered under the Act. Applicant states that it has made a commitment to purchase at direct, placement $1,500,000 principal amount of a new issue of 10-⅛% Notes due 1994 of Northwest. Applicant and the Investment Company each currently hold $875,000, principal amount of 8-⅝% Senior Subordinated Notes due 1988 of Northwest ("8-⅝% Senior Notes") issued by Northwest in February and June, 1974. In addition, Applicant owns the following issues of Northwest: (a) $900,000 of 9% Senior Subordinated Notes due 1987 ("9% Senior Notes"), and (b) $500,000 of 7½% Senior Subordinated Notes due 1983 ("7½% Senior Notes"). The 9% and 7½% Senior Notes were acquired by Applicant in 1978 as a result of the merger of Northwest and Union Investment Company.

Pursuant to an order of the Commission issued on February 12, 1973 (Investment Company Act Release No. 7665), corrected on February 27, 1973 (Investment Company Act Release No. 7698) and amended by an order issued on July 28, 1976 (Investment Company Act Release No. 9371) (collectively referred to as the "Order"), Applicant is permitted to invest concurrently in each issue of securities purchased by Investment Company at direct placement in an amount equal to that invested in such issue by Investment Company and to exercise warrants, conversion privileges and other rights at the same time and in the same amount as Investment Company. The Order is subject to several conditions, one being that once the Applicant and the Investment Company have acquired interest in an issuer, neither Applicant nor the Investment Company, unless otherwise permitted by the order of the Commission, may acquire any further interest in such issuer or in any affiliated person of such issuer, or in securities issued by such issuer or affiliated person, other than interests in all respects identical. Applicant asserts that because the Investment Company will not acquire any of the Notes, Applicant may not purchase the Notes unless it first obtains an order of the Commission specifically permitting such purchase. Accordingly, Applicant's commitment is subject to the prior issuance of an order by the Commission permitting such purchase.

Section 17(d) of the Act and Rule 17d-1 thereunder provide that it is unlawful for an affiliated person of a registered investment company, acting as principal, to effect any transaction in which such investment company is a joint participant, without the permission of the Commission. Rule 17d-1

provides, in pertinent part, that in passing upon applications for orders granting such permission, the Commission will consider whether the participation of the investment company in such transaction on the basis proposed is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Accordingly, Applicant has requested an order, pursuant to Section 17(d) of the Act and Rule 17d-1, permitting Applicant to acquire $1,500,000 in principal amount of the Notes, notwithstanding the present ownership by Applicant and the Investment Company of the 8-⅝% Senior Notes.

Applicant represents that the proposed acquisition of Notes is in no way connected with the sale of the 8-⅝% Senior Notes to Applicant and the Investment Company in 1974 or the acquisition by Applicant of the 9% and 7-½% Senior Notes other than by virtue of the fact that Applicant's acquisition of these securities continued a business relationship with Northwest which commenced in 1974. Applicant states that neither it nor the Investment Company is an affiliated person, as defined in Section 2(a)(3) of the Act, of Northwest or an affiliated person of an affiliated person of Northwest.

Applicant asserts that Northwest will be receiving significant new value in consideration for issuing the Notes, the total issue of which is expected to be $10,000,000, and that a substantial portion of the proceeds received from the sale of the Notes will be used to repay presently outstanding short-term debts owed to banks and will result in an increase of Northwest's capital base. Applicant further asserts that the Notes will reduce Northwest's reliance upon prime-sensitive short-term debt and will, in effect, extend the final maturity of such refinanced bank debt until 1994 (the maturity date of the Notes). Applicant represents that the Notes will rank junior in priority and right of payment to the 8-⅝% Senior Notes and that the 8-⅝% Senior Notes will mature prior to the Notes. According to the application, the proposed purchase of the Notes by Applicant will not materially affect Northwest's ability to meet its obligation to the Investment Company on the 8-⅝% Senior Notes. Also, the Notes will provide Northwest with improved financing capability and flexibility and are non-refundable from lower cost borrowings for a 10-year period (which is beyond the maturity of the 8-⅝% Senior Notes), at which time the Notes may be prepaid only at a premium declining in equal annual increments from 10-⅛% in 1979 to par in 1994. Applicant states that voluntary prepayment of the Notes prior to the maturity of the 8-⅝% Senior Notes is an unlikely event.

Applicant submits that its proposed acquisition of the Notes is not disadvantageous to the Investment Company and is consistent with the provisions, policies, and purposes of the Act. Applicant asserts that the Notes are not an appropriate investment for the Investment Company and that the Investment Company's Board of Directors has voted to decline participation in the proposed acquisition of the Notes because the 10-⅛% yield on the Notes is inadequate for the Investment Company at this time in view of the junior subordinated status of the Notes and yields available from comparable unrestricted debt securities. However, in the judgment of the Applicant the Notes would be an attractive investment for it to acquire. Moreover, Applicant asserts that it would be disadvantaged if it is not permitted to acquire a portion of the Notes.

Notice is further given that any interested person may, not later than February 20, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-3178 Filed 1-30-79; 8:45 am]

[8010-01-M]

File No. 1-5864]

VAN DORN CO.

Application To Withdraw Common Shares, No Par Value From Listing and Registration

JANUARY 23, 1979.

The above named issuer has filed an application with the Securities and Exchange Commission, pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the AMERICAN STOCK EXCHANGE, INC. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The common shares of Van Dorn Company (the "Company") have been listed for trading on the Amex since February 25, 1969. On January 11, 1979, the shares were also listed for trading on the New York Stock Exchange, Inc. ("NYSE") and concurrently therewith such shares were suspended from trading on the Amex. In making the decision to withdraw its stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining a dual listing on both exchanges. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for such stock.

The application relates solely to the withdrawal from listing on the Amex and shall have no effect upon the continued listing of such shares on the NYSE. The Amex has posed no objection in this matter.

Any interested person may, on or before February 23, 1979, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission will, on the basis of the application and any other information submitted to it, issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-3179 Filed 1-30-79; 8:45 am]

[File No. 81-455]

AMERICAN TELECOMMUNICATIONS CORP.

Application and Opportunity for Hearing

JANUARY 24, 1979.

Notice is hereby given that American Telecommunications Corporation ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from the provisions of Sections 13 and 15(d) of that Act.

The Application states, in part:

1. The Applicant became subject to the periodic reporting requirements of Section 15(d) of the 1934 Act for its common stock in 1971.

2. Applicant's registration under Section 12(g) of the 1934 Act, effective in 1972, was terminated on December 14, 1978.

3. On December 1, 1978, the Applicant was merged into a subsidiary of General Dynamics Corporation ("GD") which is a reporting company under the 1934 Act.

4. As a result of the merger, the Applicant has only one shareholder General Dynamics.

In the absence of an exemption, Applicant would be required to file a report on Form 10-K for the period ended December 31, 1978. Applicant believes that its request for an order exempting it from the reporting provisions of Sections 13 and 15(d) of the 1934 Act is appropriate in view of the facts that it is now a wholly owned subsidiary and has no publicly held securities, there is no trading market for any of its securities, the time effort and expense involved in preparation of the report would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to the application which is on file in the offices of the Commission at 1100 L St., N.W., Washington, D.C. 20549.

Notice is further given that any interested person, not later than February 20, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed to Secretary, Securities and Exchange Commission, 500 North Capital Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person sumbitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-3190 Filed 1-30-79; 8:45 am]

[8010-01-]

[File No. 81-444]

CAPITOL INDUSTRIES—EMI, INC.

Application and Opportunity for Hearing

JANUARY 24, 1979.

Notice is hereby given that Capitol Industries—EMI Inc. ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended. (the "1934 Act") seeking an exemption from the requirements to file reports pursuant to Sections 13 and 15(d) of the Exchange Act.

The Applicant states in part:

1. On October 20, 1978 the Applicant was merged into a successor Delaware Corporation. Pursuant to the merger the publicly held shares of Applicant were automatically converted into cash and Applicant became a wholly-owned subsidiary of EMI North America Holdings, Inc.

2. In the absence of an exemption. Applicant would be required to file pursuant to Sections 13 and 15(d) of the 1934 Act and the rules and regulations thereunder the required periodic reports until the end of the fiscal year ending June 30, 1979. Applicant believes that its request for an order exempting it from the provisions of Sections 13 and 15(d) of the 1934 Act is appropriate in view of the fact that the time, effort and expense involved in preparation of additional periodic reports would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to said application which may be examined at the Commission's Public Reference Section, 1100 L Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person not later than February 20, 1979 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed to Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-3191 Filed 1-30-79; 8:45 am]

[8010-01-M]

[Release No. 34-15505; File No. SR-CBOE-78-36]

CHICAGO BOARD OPTIONS EXCHANGE, INC. (THE "CBOE" OR "EXCHANGE")

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on January 12, 1979 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The proposed rule change would repeal Sections 7.3 and 7.4 of the CBOE Constitution which relate to the composition of the CBOE Appeals Committee and would substitute a new Rule 2.11. Presently, the Appeals Committee is composed of ten individuals, nine of whom are elected by the CBOE membership and one of whom is appointed by the Chairman of the CBOE Board of Directors. Of the nine elected individuals, at least three must own or directly control their memberships and be engaged primarily in off-floor activities. Under the proposed CBOE Rule 2.11, all members of the Appeals Committee would be appointed by the Chairman of the Board of Directors and without regard to their primary business activity.

PURPOSE OF THE PROPOSED RULE CHANGE

The CBOE states that the purpose of the changes to Sections 7.3 and 7.4 of the CBOE Constitution and of proposed Rule 2.11 is to make the Appeals Committee an appointive rather than an elective Committee. This change in selection procedure has been recommended by the CBOE Nominating Committee in view of the difficulty that the Committee had in finding suitable candidates willing to serve a three-year elective term.

BASIS UNDER THE ACT

The CBOE states that the basis under the Act for the proposed rules change is Section 6(b)(5) in that such rules change will facilitate provision of an appellate body to review any denial, prohibition or limitation by the Exchange of any person seeking membership, association with an Exchange member, access to services offered by the Exchange and will serve to protect investors and the public interest.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS OR OTHERS ON PROPOSED RULE CHANGE

No comments were solicited or received by the CBOE respecting the proposed rules change.

BURDEN ON COMPETITION

The Exchange does not believe the proposed rules change will impose any burden on competition.

On or before March 7, 1979, 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 above-mentioned 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.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing wil also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 21, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 18, 1979.

[FR Doc. 79-3196 Filed 1-30-79; 8:45 am]

[8010-01-M]

[File No. 81-433]

COMPAC CORP.

Application and Opportunity for Hearing

JANUARY 24, 1979.

Notice is Hereby Given that Compac Corporation, ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for exemption from the filing requirements of Sections 13 and 15(d) of the 1934 Act.

The Application states in part:

(1) The Applicant is a Delaware corporation subject to the reporting provisions of Sections 13 and 15(d) of the 1934 Act;

(2) As a result of a merger in November 1977, Applicant has only one common stockholder; and

(3) There is no public market for Applicant's securities.

In the absence of an exemption, Applicant is required to file certain reports with the Commission pursuant to Sections 13 and 15(d) of the 1934 Act, including an annual report on Form 10-K for the fiscal year ended September 30, 1978. Applicant argues that no useful purpose would be served in filing the required periodic reports.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the office of the Commission at 1100 L St., N.W., Washington, D.C. 20549.

Notice is further given that any interested person not later than February 20, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-3192 Filed 1-30-79; 8:45 am]

[8010-01-M]

[File No. 81-392]

DIAMOND COAL COMPANY, INC.

Application and Opportunity for Hearing

JANUARY 25,1979.

Notice is hereby given that Diamond Coal Company, Inc. ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order granting Applicant an exemption from the provisions of Section 15(d) of the 1934 Act.

The Applicant states, in part:

1. On May 30, 1978, Applicant merged with and became a wholly-owned subsidiary of Transcontinental Oil Corporation. As a result of the merger, Applicant no longer has any publicly-owned common stock.

2. The Applicant has filed with the Commission a Form 10-Q for the period ended June 30, 1978 and a Form 8-K to reflect the merger.

Applicant argues that the granting of the exemption would not be consistent with the public interest or the protection of investors.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given that any interested person not later than February 20, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereto. Any such communication or request should be addressed to Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be

issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-3193 filed 1-30-79; 8:45 am]

[8010-01-M]

[File No. 81-385]

PEACHTREE DOORS, INC.

Application and Opportunity for Hearing

JANUARY 24, 1979.

Notice is hereby given that Peachtree Doors, Inc. (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for an order exempting the Applicant from the reporting requirements of Section 15(d) of the Exchange Act.

The Applicant states, in part:

1. Pursuant to a statutory merger effected on March 23, 1978, a wholly owned subsidiary of Indal, Inc. was merged with and into Applicant. As a result of this merger, Applicant is now wholly owned by Indal, Inc. and certain officers of Applicant, and no longer has any public shareholders.

2. Audited financial statements for Applicant for its fiscal year ended September 30, 1977 and unaudited financial statements for the 3 months ended December 31, 1977 were contained in the proxy statement sent to Applicant's shareholders in connection with the merger.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person not later than February 20, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-3194 Filed 1-30-79; 8:45 am]

[8010-01-M]

[File No. 7-5068]

UNION GAS LTD. COMMON STOCK, NPV CLASS A&B

Application for Termination of Unlisted Trading Privileges

JANUARY 25, 1979.

The above named issuer, an Ontario corporation, has submitted an application with the Securities and Exchange Commission, pursuant to Section 12(f)(4) of the Securities Exchange Act of 1934, 15 U.S.C. 78(1)(f)(4) (the "Act") and Rule 12f-3 thereunder, to terminate the unlisted trading privileges for the specified security on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for terminating the unlisted trading privileges include the following:

The common stock of Union Gas Limited ("Union Gas") has been traded on the Amex pursuant to unlisted trading privileges since August 15, 1931. The stock is also traded on the Toronto Stock Exchange. The aggregate number of issued common shares is approximately 18,000,000. Of that number, approximately 380,000 shares are held by individuals having addresses in the United States.[1] In 1978, only 19,800 shares of Union Gas common stock were traded on the Amex. Union Gas asserts that the increasing costs of maintaining unlisted trading privileges on the Amex are not justified by the limited traded volume. The common stock of Union Gas will continue to be traded on the Toronto Stock Exchange.

Any interested person may, on or before February 25, 1979, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the Commission should issue an order granting the Union Gas application. In accordance with Section 12(f)(4) of the Act, the Commission will issue an order terminating the unlisted trading privileges in the common stock of Union Gas on the Amex if the Commission finds that such is necessary or appropriate in the public interest or for the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-3195 Filed 1-30-79; 8:45 am]

[1] Union Gas has by mail notified each of its shareholders having addresses in the United States concerning its review of the need to maintain unlisted trading privileges on the Amex, and has invited comments thereon. Copies of responses received by Union Gas have been included in its application to the Commission.

[8010-01]

[Release No. 34-15534; File No. SR-NYSE-79-1]

NEW YORK STOCK EXCHANGE, INC. ("NYSE")

Self-Regulatory Organization; Proposed Rule Changes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on January 19, 1979, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change, and has submitted the following statements of the terms of substance and basis and purpose under the Act of the proposed rule change:

TERMS OF SUBSTANCE

The proposed amendment to NYSE Rule 410 would add a new paragraph (b) requiring members and member organizations executing orders for their own accounts in reliance upon Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) [17 CFR 240.11a1-1(T)] thereunder to identify such orders in a manner that will enable the executing member to disclose to other members in the trading Crowd that the order is subject to the provisions of Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder.

Proposed new Rule 90 mirrors Section 11(a)(1) of the Act by prohibiting a member or member organization from effecting a transaction in any security on the Exchange for his or its account, the account of an associated person, or an account with respect to which the member, member organization or an associated person thereof exercises investment discretion. The term "associated person" as contained in the Rule would have the same meaning as set forth in Section 3(a)(21) of the Act. Exempt from this prohibition are transactions effected pursuant to the exemptions contained in Section 11(a)(1) (A) through (H) of the Act, or a rule adopted thereunder.

The proposed new Rule also provides that no bid or offer made by a member on an order for the account of a member or member organization

subject to Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder shall be entitled to priority over, parity with, or precedence based on size over any order which is for the account of a person who is not a member, member organization or an associated person thereof.

When a member (other than the specialist in the security) is representing an order in the trading Crowd subject to Section 11(a)(1)(G) and Rule 11a1-1(T) thereunder, he must, immediately before executing such order, clearly announce or otherwise indicate to the specialist and other members present in the Crowd in the security that he is representing an order to be executed pursuant to these provisions.

STATEMENT OF BASIS AND PURPOSE

The purpose of the proposed changes to NYSE Rule 410 and the adoption of proposed new NYSE Rule 90 is to conform NYSE rules to Section 11(a)(1) of the Act, when Section 11(a)(1) becomes applicable to all members of all securities exchanges on February 1, 1979.

The proposed rule changes relate to Section 6(b)(1) of the Securities Exchange Act of 1934 in that they would provide the Exchange with the capacity for it to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members with the Act and the rules and regulations thereunder.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS, OR OTHERS ON PROPOSED RULE CHANGES

The Exchange has not solicited comments regarding the proposed rule changes and has received none.

BURDEN ON COMPETITION

The Exchange does not believe that the proposed rule changes will impose any burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.

In submitting the instant rule filing, the NYSE requests that the Commission order approval thereof prior to February 1, 1979, the date on which Section 11(a)(1) of the Act becomes fully effective as to all members of all national securities exchanges. To accomplish this, the NYSE suggests that the Commission accelerate approval upon a finding of good cause (and publication of the reasons for so finding) pursuant to Section 19(b)(2) of the Act. Although the Commission has determined at this time to publish notice of SR-NYSE-79-1 pursuant to Section 19(b)(1) of the Act, such action does not preclude the Commission's finding good cause to approve SR-NYSE-79-1 on an accelerated basis, on or before February 1, 1979.

On or before March 8, 1979, 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 above mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 22, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 29, 1979.

[FR Doc. 79-3445 Filed 1-30-79; 8:45 am]

[8010-01]

[Release No. 34-15535; File No. SR-NYSE-79-2]

NEW YORK STOCK EXCHANGE, INC.

Self-Regulatory Organizations; Proposed Rule Changes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on January 19, 1979 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rules changes as follows:

NEW YORK STOCK EXCHANGE'S ("NYSE's") STATEMENT OF THE TERMS OF SUBSTANCE OF PROPOSED RULES CHANGES

NYSE RULE 108

NYSE Rule 108 provides that no bid or offer made by a member on the Floor for a proprietary account to establish or increase a position may have parity or precedence based on size over a bid or offer made on an order originated off the Floor. The prohibition does not apply when a member is liquidating a position, and there are exemptions for: i) an odd-lot dealer in a stock in which he is registered to offset a position acquired as odd-lot dealer; ii) to offset a transaction made in error; and iii) for bona fide arbitrage.

(NOTE.—There is a fourth exemption—NYSE Rule 108(c)(4)—pursuant to a limit order given to the specialist in that stock. This exemption relates to orders given to specialists by competitive traders and is being rescinded as a "housekeeping" change in order to conform the Rule to Section 11(a)(1) of the Act.)

The proposed amendments to NYSE Rule 108 would permit a bid or offer made by a member on the floor for a proprietary account to establish or increase a position to have parity and precedence based on size over an order originated off the Floor which is executed in reliance upon Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) [17 CFR 240.11a1-1(T)] thereunder.

NYSE RULE 112

NYSE Rule 112 contains competitive traders' restrictions, but also makes reference to restrictions on specialists. Competitive traders cannot have priority over, parity with or precedence based on size over an off-Floor order when establishing or increasing a position, and may not have precedence based on size when liquidating. Thus, as Rule 112 is worded today, a competitive trader can have priority over, or parity with an off-Floor order when liquidating. Since competitive traders will be trading in reliance on Section 11(a)(12)(G) and Rule 11a1-1(T) thereunder, which require that priority, parity and precedence based on size be yielded in all cases to orders of public customers, Rule 112 is inconsistent with Section 11(a)(1)(G) and Rule 11a1-1(T) thereunder and should be amended.

Three other changes have been made to Rule 112. The first change relates to the current provision that permits a competitive trader's order to have priority over, parity with and precedence based on size over off-Floor orders when the competitive trader's order is placed on the specialist's book. This provision would be inconsistent with Section 11(a)(1) and therefore should be amended.

The second change is intended to place the competitive trader on an equal footing with an off-Floor professional trading in reliance upon Section 11(a)(1)(G) and Rule 11(a)1-1(T) thereunder by permitting the competitive trader to have priority over, parity with and precedence based on

size over a "G" order when establishing, increasing or liquidating a position, which is not always available to the competitive trader today.

The third change would, like the proposed amendment to 108, permit specialists to be on an equal footing with off-Floor professionals trading in reliance upon Section 11(a)(1)(G) and Rule 11(a)1-1(T) thereunder by letting specialists have parity with and precedence based on size over a "G" order when establishing or increasing a position.

NYSE'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the proposed amendments to NYSE Rules 108 and 112 are as follows:

PURPOSE OF PROPOSED RULES CHANGES

On February 1, 1979, Section 11(a)(1) of the Act will become fully applicable to all members of all national securities exchanges. Orders for the accounts of members and member organizations entered pursuant to Section 11(a)(1)(G) and Rule 11a1-1(T) thereunder will have to be identified so that the member representing them in the market will know that he must yield priority, parity and precedence based on size to orders that are for the accounts of persons who are not members or associated with members. In varying degrees, NYSE Rules 108 and 112 restrict bids and offers of specialists; registered competitive market-makers and competitive traders from having priority, parity or precedence based on size over orders initiated off the Floor. The rules apply regardless of whether the off-Floor order is for a firm proprietary account or for a public customer. The restriction primarily applies when a member is establishing or increasing a position as opposed to liquidating a position.

This concept has been embodied in Exchange rules since 1945 when members were perceived as having a time-place trading advantage by reason of their physical presence on the Trading Floor that permitted them to respond to trading activity in a particular stock before the transaction appeared on the tape. Another consideration was that since orders were not identified as to account, a member handling an off-Floor order would not know what type of account the order was entered for. The effects of the restrictions contained in Rules 108 and 112 have been that:

(i) When establishing or increasing a position, specialists and registered competitive market-makers *can* retain priority, but *cannot* have parity with or precedence based on size over a member's proprietary off-Floor order;

(ii) When establishing or increasing a position, a competitive trader *cannot* have priority, parity or precedence based on size over a member's off-Floor proprietary order;

(iii) When liquidating, specialists and registered competitive market-makers *can* have priority, parity and precedence based on size over a member's off-Floor proprietary order; and

(iv) When liquidating, a competitive trader *can* have priority and parity, but *cannot* retain precedence based on size over a member's off-Floor proprietary order.

When taken together, Section 11(a)(1) of the Act and Exchange Rules 108 and 112 have the following effects on member's proprietary trading:

(i) Section 11(a)(1) and NYSE rules permit specialists, registered competitive market-makers and competitive traders to compete with each other on the Trading Floor.

(ii) Section (a)(1) permits specialists and registered competitive market-makers to compete with any type of off-Floor order but NYSE rules prohibit competition in certain cases.

(iii) Section 11(a)(1) permits a competitive trader to compete with any off-Floor professional, but not with a public customer. The NYSE rules make no such distinction, and prohibit a competitive trader from competing with any off-Floor order.

The proposed changes to NYSE Rules 108 and 112 would place the on-Floor professional on an equal footing with the orders of the off-Floor professional trading in reliance upon Section 11(a)(1)(G) and Rule 11a1-1(T). No changes are with respect to priority, parity and precedence proposed based on size *vis-a-vis* orders of public customers.

While it might be said that being present on the Floor gives a member a better "feel of the market," the off-Floor professional's communications systems provide him with up-to-the-minute news of world events and of market activity on various exchanges. Often, the off-Floor professional is able to make a trading decision based on information he receives and to effect a transaction more rapidly than the on-Floor professional.

STATUTORY BASIS FOR PROPOSED RULES CHANGES

The proposed amendments to NYSE Rules 108 and 112 relate to Sections 6(b)(1) and 6(b)(8) of the Act in that the amendments will: (i) provide the NYSE with the capacity for it to carry out the purposes of the Act and to comply and enforce compliance by its members and persons associated with its members with the Act and the rules and regulations thereunder; and (ii) ensure that the rules of the NYSE do not impose any burden on competition not necessary or appropriate in the furtherance of the purposes of the Act.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS, OR OTHERS ON PROPOSED RULES CHANGES

The NYSE has not solicited comments regarding the proposed rules changes and has received none.

BURDEN ON COMPETITION

The NYSE does not believe that the proposed changes to NYSE Rules 108 and 112 will impose any burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the NYSE believes that the proposed changes will further competition between on-Floor and off-Floor professionals.

In submitting the instant rule filing, the NYSE requested that its proposed amendments to NYSE Rules 108 and 112 be approved on or before February 1, 1979, the date upon which Section 11(a)(1) of the Act and the rules promulgated thereunder become fully applicable to all exchange members. To accomplish this, the NYSE requests that the Commission accelerate approval of SR-NYSE-79-2 upon a finding of good cause (and publication of the reasons for so finding) pursuant to Section 19(b)(2) of the Act. Although the Commission has determined at this time to publish notice of SR-NYSE-79-2 pursuant to Section 19(b)(1) of the Act, such action does not preclude the Commission's finding good cause to approve SR-NYSE-79-2, on an accelerated basis, on or before February 1, 1979.

On or before March 8, 1979, 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 above mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submis-

sions should refer to the file number referenced in the caption above and should be submitted on or before February 22, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A FITZSIMMONS,
Secretary.

JANUARY 29, 1979.

[FR Doc. 79-3446 Filed 1-30-79; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

NATIONAL ADVISORY COUNCIL

Public Meeting

The Small Business Administration National Advisory Council will meet at 8:30 a.m. on Monday, February 26, 1979, at the Mayflower Hotel, 1127 Connecticut Avenue, N.W., Washington, D.C., to discuss such business as may be presented by members, the staff of the Small Business Administration, and others attending. The meeting will adjourn at 12:00 Noon, on Wednesday, February 28, 1979.

For further information, call K Drew, Deputy Advocate for Advisory Councils, U.S. Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416, (202) 653-6748.

Dated: January 25, 1979.

K DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 79-3197 Filed 1-30-79; 8:45 am]

[8025-01-M]

REGION VI ADVISORY COUNCIL

Public Meeting

The Small Business Administration Region VI Advisory Council, located in the geographical area of Houston, Texas, will hold a public meeting at 10:00 a.m., on Tuesday, March 6, 1979, in the Small Business Administration Conference Room, 500 Dallas, Suite 705, One Allen Center, Houston, Texas, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call John L. Carey, District Director, U.S. Small Business Administration, One Allen Center, Houston, Texas 77002—(713) 226-4897.

Dated: January 25, 1979.

K DREW,
Deputy Advocate for Advisory Councils.

[FR Doc 79-3198 Filed 1-30-79; 8:45 am]

[8025-01-M]

REGION VI ADVISORY COUNCIL

Public Meeting

The Small Business Administration Region VI Advisory Council, located in the geographical area of Little Rock, Arkansas, will hold a public meeting at 1:00 p.m., Thursday, March 29, 1979, in Suite 900, Blue Cross-Blue Shield Building, 7th and Gaines Streets, Little Rock, Arkansas, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Maurice Britt, District Director, U.S. Small Business Administration, P.O. Box 1401, Little Rock, Arkansas 72203, (501) 378-5871.

Dated: January 25, 1979.

K DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 79-3199 Filed 1-30-79; 8:45 am]

[4810-22-M]

DEPARTMENT OF THE TREASURY

Customs Service

SUSPENSION OF LIQUIDATION UPON EXPIRATION OF COUNTERVAILING DUTY WAIVER AUTHORITY

Amendment of Appendix to Notice

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Amendment of notice.

SUMMARY: This notice amends the Appendix of the previously published "Notice of Suspension of Liquidation Upon Expiration of the Countervailing Duty Waiver Authority."

EFFECTIVE DATE: January 3, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles F. Goldsmith, Economist, Office of Tariff Affairs, Department of the Treasury, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20220; telephone (202)566-2323.

SUPPLEMENTARY INFORMATION: On January 2, 1979, a "Notice of Suspension of Liquidation Upon Expiration of the Countervailing Duty Waiver Authority" was published in the FEDERAL REGISTER (44 FR 141). The Appendix to that notice presented estimated rates of countervailing duties for merchandise subject to outstanding waivers.

Further information has been developed since the publication of that Notice. The Appendix to the instant Notice amends the figures presented previously regarding Certain Fish from Canada, Cheese from the European Economic Community (EEC), Certain Cheese from Finland, Certain Textiles and Textile Mill Products from Brazil, and Canned Hams and Canned Shoulders from the EEC. The rates presented previously for other products are unchanged.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

JANUARY 23, 1979.

[4810-22-C]

EEC EXPORT RESTITUTION PAYMENTS ON CHEESE, BY COUNTRY, IN CENTS/POUND

TYPE OF CHEESE-EEC CODE NUMBER	GERMANY	BELGIUM-LUXEMBOURG	NETHERLANDS	DENMARK	U.K.	IRELAND	ITALY	FRANCE
Blue-veined, except Roquefort; #400000	50.6	39.7	39.9	36.1	9.3	32.6	22.2	26.6
Processed; #441010	29.1	20.4	20.5	17.3	-0-	14.8	6.4	9.9
Processed; #441020	22.7	18.6	18.7	17.3	7.1	15.8	11.9	13.6
Processed; #441040	22.7	18.6	18.7	17.3	7.1	15.8	11.9	13.6
Processed; #441030, #441050, #451020	33.4	27.4	27.5	25 5	10.5	23.4	17.6	20.1
Processed; #441060, #451030, #451040	48.8	40.0	40.2	37 1	15.3	34.1	25.7	29.3
Processed; #451050, #461000	57.9	47.4	47.7	44.1	18.2	40.4	30.5	34.8
Grana, Parmigiano, Reggiano; #471011, #471022	94.9	79.9	80.2	75.2	37.7	69.6	55.3	61.7
Fiore, Sardo, Pecorino; #471016	103.1	88.1	88.5	83.5	45.8	77.7	63.4	69.9
Asiago, Caciocavallo, Provolone, Ragusano; #512031	98.1	86.7	87 1	83.5	54.5	78.5	67.6	72.8
Danbo, Edam, Fontal, Fontina, Fynbo, Gouda, Havarti, Maribo, Samso, Tilsit; #512044	52.2	41.0	41.2	37.2	9.5	33.6	22.8	27.4
Butterkase, Esrom, Italico, Kernhem, Taleggio, Saint-Nectaire, Saint Paulin; #512054	45.6	36.8	37.0	33.9	12.1	30.9	22.5	26.2
Cantal, #512058	47.2	38.4	38.6	35.5	13.7	32.5	24.1	27.7
Salted Ricotta; #512059	32.1	23.3	23.4	20.2	-0-	17.7	9.3	12.8
Feta; #512082	25.2	16.5	16.5	13.3	-0-	10.9	2.6	6.0
Other; #512087	65.4	54.1	54.3	50.5	22.4	46.5	35.7	40.5
Other; #512092	52.2	41.0	41.2	37.2	9.5	33.6	22.8	27.4
Other; #531011	46.4	31.5	31.7	26.1	-0-	22.1	7.9	13.7
Other; #531022	51.9	37.0	37.2	31.7	-0-	27.5	13.3	19.1
Other- #531031	56.9	42.0	42.2	36.8	-0-	32.4	18.2	24.1
Emmenthaler, Gruyere; #380000	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Cheddar- #485000	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Lowfat cheeses; #512012, #512016, #512022	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Colby, Monterey; #512083	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Cottage cheese; #512098	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Camembert, Brie; no code numbers	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-

Groundfish from Canada:

From Atlantic region (i.e., Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, and Quebec), 1.17 percent ad valorem.

From the rest of Canada, zero.

Certain Cheese from Finland:

Emmenthaler:	Cuts	zero
	Blocks	zero
	Wheels	24.0¢/lb.
Lappi:		$1.14/lb.
Turunamaa		$1.36/lb.
Kreivi:		$1.66/lb.
Other processed cheeses:		$1.53/lb.

Canned Hams and Canned Shoulders from the EEC:
By Country, In Cents/Pound

	Germany	Belgium-Luxembourg	Netherlands	Denmark	U.K.	Ireland	Italy	France
Hams	46.1	29.1	29.2	23.0	-0-	18.6	2.8	15.5
Shoulders	38.4	24.2	24.3	19.1	-0-	15.5	2.3	13.0

Certain Textiles and Textile Mill Products from Brazil, exported before January 24, 1979.

For all those goods described in the appendix to the Federal Register notice published on October 13, 1978 (43 FR 47340), except leather wearing apparel and those items specified below, 18.6% ad valorem.

Leather wearing apparel, as described in the section so labeled in the above-cited Federal Register notice, 14.6% ad valorem.

Other items, by TSUSA number:

309.9800,	8.9%	ad valorem	702.5400,	12.2%	ad valorem	705.4000,	14.6%	ad valorem	705.8600,	13.1%	ad valorem
309.9900,	8.9%	ad valorem	702.5600,	12.2%	ad valorem	705.4200,	14.6%	ad valorem	706.2005,	12.2%	ad valorem
347.6800,	8.9%	ad valorem	702.6000,	12.2%	ad valorem	705.4300,	14.6%	ad valorem	706.2015,	12.2%	ad valorem
347.6900,	8.9%	ad valorem	702.6500,	12.2%	ad valorem	705.4500,	14.6%	ad valorem	706.2045,	12.2%	ad valorem
347 7000,	8.9%	ad valorem	702.7000,	12.2%	ad valorem	705.4600,	14.6%	ad valorem	706.2205,	13.8%	ad valorem
349.1060,	11.6%	ad valorem	702.7500,	12.2%	ad valorem	705.4800,	14.6%	ad valorem	706.2240,	12.2%	ad valorem
385.5300,	13.8%	ad valorem	702.8000,	12.2%	ad valorem	705.5000,	14.6%	ad valorem	706.2250,	13.8%	ad valorem
385.5500,	13.8%	ad valorem	703.0500,	12.2%	ad valorem	705.5100,	14.6%	ad valorem	706.2280,	13.8%	ad valorem
386.0410,	8.9%	ad valorem	703.1000,	12.2%	ad valorem	705.5300,	14.6%	ad valorem	706.2405,	13.8%	ad valorem
386.0430,	8.9%	ad valorem	703.1510,	12.2%	ad valorem	705.5400,	14.6%	ad valorem	706.2406,	13.8%	ad valorem
386.5010,	8.9%	ad valorem	703.1515,	12.2%	ad valorem	705.5500,	14.6%	ad valorem	706.2411,	13.8%	ad valorem
700.7510,	8.0%	ad valorem	705.3000,	14.6%	ad valorem	705.5700,	14.6%	ad valorem	706.2421,	13.8%	ad valorem
700.7520,	8.0%	ad valorem	705.3510,	14.6%	ad valorem	705.5800,	14.6%	ad valorem	706.2440,	13.8%	ad valorem
702.0600,	12.2%	ad valorem	705.3530,	14.6%	ad valorem	705.8520,	13.1%	ad valorem	706.2450,	13.8%	ad valorem
702.1210,	12.2%	ad valorem	705.3550,	14.6%	ad valorem	705.8540,	13.1%	ad valorem	706.2460,	13.8%	ad valorem
702.1220,	12.2%	ad valorem	705.3560,	14.6%	ad valorem	705.8560,	13.1%	ad valorem	727.8200,	14.6%	ad valorem

Certain Textiles and Textile Mill Products from Brazil, exported on or after January 24, 1979:

For all those goods described in the appendix to the Federal Register notice published on October 13, 1978 (43 FR 47340), except leather wearing apparel and those items specified below, 17.0% ad valorem.

Leather wearing apparel, as described in the section so labeled in the above-cited Federal Register notice, 13.2% ad valorem.

Other items, by TSUSA number:

309.9800,	8.1%	ad valorem	702.5400,	10.1%	ad valorem	705.4000,	13.2%	ad valorem	705.8600,	11.7%	ad valorem
309.9900,	8.1%	ad valorem	702.5600,	10.1%	ad valorem	705.4200,	13.2%	ad valorem	706.2005,	10.1%	ad valorem
347.6800,	8.1%	ad valorem	702.6000,	10.1%	ad valorem	705.4300,	13.2%	ad valorem	706.2015,	10.1%	ad valorem
347.6900,	8.1%	ad valorem	702.6500,	10.1%	ad valorem	705.4500,	13.2%	ad valorem	706.2045,	10.1%	ad valorem
347 7000,	8.1%	ad valorem	702.7000,	10.1%	ad valorem	705.4600,	13.2%	ad valorem	706.2205,	12.5%	ad valorem
349.1060,	10.2%	ad valorem	702.7500,	10.1%	ad valorem	705.4800,	13.2%	ad valorem	706.2240,	10.1%	ad valorem
385.5300,	12.5%	ad valorem	702.8000,	10.1%	ad valorem	705.5000,	13.2%	ad valorem	706.2250,	12.5%	ad valorem
385.5500,	12.5%	ad valorem	703.0500,	10.1%	ad valorem	705.5100,	13.2%	ad valorem	706.2280,	12.5%	ad valorem
386.0410,	8.1%	ad valorem	703.1000,	10.1%	ad valorem	705.5300,	13.2%	ad valorem	706.2405,	12.5%	ad valorem
386.0430,	8.1%	ad valorem	703.1510,	10.1%	ad valorem	705.5400,	13.2%	ad valorem	706.2406,	12.5%	ad valorem
386.5010,	8.1%	ad valorem	703.1515,	10.1%	ad valorem	705.5500,	13.2%	ad valorem	706.2411,	12.5%	ad valorem
700.7510,	7.4%	ad valorem	705.3000,	13.2%	ad valorem	705.5700,	13.2%	ad valorem	706.2421,	12.5%	ad valorem
700.7520,	7.4%	ad valorem	705.3510,	13.2%	ad valorem	705.5800,	13.2%	ad valorem	706.2440,	12.5%	ad valorem
702.0600,	10.1%	ad valorem	705.3530,	13.2%	ad valorem	705.8520,	11.7%	ad valorem	706.2450,	12.5%	ad valorem
702.1210,	10.1%	ad valorem	705.3550,	13.2%	ad valorem	705.8540,	11.7%	ad valorem	706.2460,	12.5%	ad valorem
702.1220,	10.1%	ad valorem	705.3560,	13.2%	ad valorem	705.8560,	11.7%	ad valorem	727.8200,	13.2%	ad valorem

[FR Doc. 79-3225 Filed 1-30-79; 8:45 am]

[4810-22-M]

VISCOSE RAYON STAPLE FIBER FROM SWEDEN

Countervailing Duty Determination

AGENCY: United States Customs Service, Treasury Department.

ACTION: Preliminary Countervailing Duty Determination.

SUMMARY: This notice is to advise the public that as a result of an investigation a preliminary determination has been made that benefits granted by the Government of Sweden to manufacturers or exporters of viscose rayon staple fiber constitute bounties or grants within the meaning of the U.S. countervailing duty law. A final determination will be made not later than April 25, 1979.

EFFECTIVE DATE: January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Michael E. Crawford, Operations Officer, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue, NW, Washington, D.C. 20229, telephone (202) 566-5492.

SUPPLEMENTARY INFORMATION: On June 26, 1978, a notice of "Receipt of Countervailing Duty Petition and Initiation of Investigation" was published in the FEDERAL REGISTER (43 FR 27631). The notice stated that a petition had been received alleging that a manufacturer of viscose rayon staple fiber received grants from the Government of Sweden which constituted the payment or bestowal of a bounty or grant, directly of indirectly, within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (the "Act"). Imports covered by this investigation are classified under items 309.4320 and 309.4325, Tariff Schedules of the United States Annotated (TSUSA).

On the basis of an investigation conducted pursuant to § 159.47(c) of the Customs Regulations (19 CFR 159.47(C)), it has been preliminarily determined that bounties or grants within the meaning of section 303 of the Act are being paid or bestowed, directly, or indirectly, by the Government of Sweden upon the manufacture, production or exportation of viscose rayon staple fiber from Sweden. The bounties or grants are paid under a government program which provides funds to ensure the employment of older workers in certain regions of the country. Further information is required to determine if such assistance constitutes a legitimate defrayal of increased expenses owing to the Swedish policy of long-term job security. At present, the Government of Sweden does not describe any sort of offsets or extra expenses incurred due to the maintenance of these employees on payroll.

Two other programs considered in this case are preliminarily determined not to be bounties or grants; however, more information will be requested from the Government of Sweden before making a final determination. These are:

(1) Interest-free loans provided for acquisition of machinery and equipment for the production of certain fiber which, it is claimed, is not exported to the United States. However, benefits of this sort can confer a bounty, directly or indirectly, if they serve to defray total capital expenditure on the subject merchandise. Further information will be requested in order to determine if this is the case.

(2) The granting of funds provided through a government program devised to stockpile raw materials and maintain extra production capacity for national defense purposes. A company is compensated for the extra expense incurred in providing these services. It is necessary to determine how stockpiles of raw materials and machinery are maintained and what prevents these materials or machines from being used in production for normal market purposes.

A fourth program, which provided grants to combat cyclical unemployment, was discontinued in July 1977, and, therefore, is not considered a bounty or grant.

A final determination will be made not later than April 25, 1979.

An investigation under the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*) involving this same product is currently under way. A notice of "Withholding of Appraisement" was published in the FEDERAL REGISTER of November 5, 1978 (43 FR 53533). In accordance with the international obligations of the United States, any determinations made in these investigations will not be duplicative, and the product concerned will not be subject to both dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

Before a final determination is made, consideration will be given to any relevant data, views or arguments submitted in writing with respect to this preliminary determination. Submissions should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, in time to be received by his office not later than March 2, 1979. Any request for an opportunity to present views orally should accompany such submission and a copy of all submissions should be delivered to any counsel that has heretofore represented any party to these proceedings.

The preliminary determination is published pursuant to section 303(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190, Revision 15, March 16, 1978, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954, and § 159.47 of the Customs Regulations (19 CFR 159.47) insofar as they pertain to the issuance of a preliminary countervailing duty determination by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel
of the Treasury.

JANUARY 24, 1979.

[FR Doc. 79-3224 Filed 1-30-79; 8:45 am]

[4830-01-M]

Internal Revenue Service

PUBLIC INSPECTION OF WRITTEN DETERMINATIONS

Notice of Intention to Disclose

AGENCY: Internal Revenue Service, Treasury

ACTION: Notice of Intention to Disclose.

SUMMARY: This document provides notice that the Service intends to make open to public inspection certain written determinations. This notice also explains how any person may determine whether any of the described written determinations pertain to that person, and explains the procedures that person may follow if there is disagreement regarding the proposed deletions. This document does not meet the criteria for significant regulations set forth in paragraph eight of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, November 8, 1978.

DATE: Persons wanting to find out whether their particular written determinations are among those to be made open to public inspection pursuant to this notice are requested to contact the Service by February 15, 1979.

Requests for additional deletions must be submitted by March 7, 1979. A petition in the United States Tax Court must be filed by April 16, 1979. Except for the disputed portion of any document that is the subject of an action brought in the United States Tax Court, the written determinations described in this notice will be made open to public inspection on May 21, 1979.

ADDRESS: Any questions or correspondence regarding this notice should be sent to: Internal Revenue Service, Attention: T:FP:R, Ben Franklin Station, Post Office Box 7604, Washington, D.C. 20044.

FOR FURTHER INFORMATION:

George E. Freeland of the Rulings Disclosure Branch, Tax Forms and Publications Division, Office of the Assistant Commissioner, Technical; 202-566-4378 or 202-566-6272.

SUPPLEMENTARY INFORMATION: Section 6110(h) of the Internal Revenue Code of 1954 provides that certain written determinations (letter rulings and technical advice memoranda) issued in response to requests submitted before November 1, 1976, shall be open to public inspection. Accordingly, the Service is preparing to open to public inspection the general written determinations issued after July 4, 1967, (except those issued in response to requests submitted after October 31, 1976) that originated in the Engineering and Valuation Branch and the Reorganization Branch, Corporation Tax Division, Office of the Assistant Commissioner (Technical), or predecessor branches, and that involve issues falling within the jurisdiction of those branches. A general written determination is one the Commissioner has not determined to have significant reference value.

Issues falling within the jurisdiction of the Engineering and Valuation Branch and of the Reorganization Branch are those involving:

(a) The application of Federal tax laws in depreciation, depletion, valuation and other engineering issues, including fine arts valuation;

(b) Requests for permission to change methods of accounting for depreciation and depletion;

(c) Plans for the aggregation of nonoperating mineral interests as a single property, and changes to previously approved aggregations of operating interests;

(d) Requests for approval to compute gross income from mining for depletion purposes by use of an alternative method;

(e) Interest on bond obligations incurred for purposes of sewage or solid waste disposal facilities or facilities for the local furnishing of electric energy or gas, and air or water pollution control facilities;

(f) The application of Federal income tax laws to exchanges and distributions in connection with corporate organizations, reorganizations, insolvency reorganizations, liquidations, and spin-offs;

(g) The application of Federal income tax laws to stock dividends, redemptions, exchanges in obedience to Securities and Exchange Commission orders, and to distributions pursuant to the Bank Holding Company Act;

The application of Federal income tax laws to losses on small business stock;

(i) Determinations whether distributions, redemptions, exchanges, or tranfers referred to in sections 306(b)(4), 355(a)(1)(D)(ii), 367, and 1492 of the Internal Revenue Code are in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

All general written determinations issued during the prescribed time periods discussed in this notice and originating in these branches or predecessor branches are intended to be within the scope of this notice.

DELETIONS

Section 6110(c) of the Code requires the Internal Revenue Service to delete certain information from the documents described in this notice. The Service intends to delete names, addresses, and taxpayer identifying numbers, and will also attempt to recognize and delete other identifying details, trade secrets, and the other information described in section 6110(c), before making the written determination open to public inspection.

Persons to whom the written determinations described in this notice pertain (or successors in interest, executors, or authorized representatives of these persons) may contact the Internal Revenue Service to find out whether their particular written determinations are among those to be made open to public inspection pursuant to this notice. These persons may request a copy of their written determinations with proposed deletions indicated. Such requests should be submitted by February 15, 1979. Such requests must indicate the specific name of the party to which the written determination pertains, for example, a corporation acting on behalf of one or more subsidiaries must indicate the name of such subsidiary or subsidiaries. If such a person disagrees with the proposed deletions, that person may indicate any additional information that person believes should be deleted. Any request for additional deletions must be submitted by March 7, 1979, and must include a statement indicating which of the exemptions provided in section 6110(c) of the Code is applicable to each additional deletion requested. If the Service feels it cannot make any or all of the additional deletions requested, the Service will so advise the requester. The requester will then have the right to file a petition in the United States Tax Court. This petition must be filed by April 16, 1979.

ADDITIONAL DISCLOSURE

After the deleted copy of a written determination is made open to public inspection in the National Office Reading Room, any person may request the Service to make additional portions of the written determination open to public inspection. If the Service receives a request that involves disclosure of names, addresses, or taxpayer identifying numbers, the Service will deny the request. If the request involves disclosure of anything other than names, addresses, or taxpayer identifying numbers, the Service will contact the person to whom the written determination pertains before further action is taken.

BACKGROUND FILE DOCUMENTS

After the deleted copy of a written determination is made open to public inspection, any person may request copies of related background file documents. Notice will be provided to the person to whom the written determination pertains if a request for related background file documents is received.

Any notice regarding background file documents or requests for additional disclosure and any other correspondence relating to public inspection of written determinations, will be mailed to the latest address in the Service's written determination file, unless a later address is provided to the Service in connection with these matters.

The written determinations described in this notice will be made open to public inspection by being placed in the National Office Reading Room, Room 1564, Internal Revenue Service Building, 1111 Constitution Avenue, N.W., Washington, D.C. on May 21, 1979. However, the disputed portion of any document that is the subject of an action brought in the United States Tax Court shall not be made available until after a court determination regarding such portion is made.

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 79-3000 Filed 1-30-79; 8:45 am]

[8320-01-M]

VETERANS ADMINISTRATION

AVAILABILITY OF SUMMARY REPORT OF 38 U.S.C. 219 PROGRAM EVALUATION

Notice is hereby given that the program evaluation of the Veterans Administration's Exchange of Medical Information has been completed.

Single copies of the Exchange of Medical Information evaluation are available free. Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries, specifying the name of the program evaluation desired, to Mr. Errol D. Clark, Director, Program Evaluation and Appraisal Service, Veterans Administration (074), 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: January 25, 1979.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

[FR Doc. 79-3237 Filed 1-30-79; 8:45 am]

[8320-01-M]

AVAILABILITY OF SUMMARY REPORT OF 38 U.S.C. 219 PROGRAM EVALUATION

Notice is hereby given that the evaluation of the Veterans Administration's Department of Veterans Benefits Burial Benefits Program has been completed.

Single copies of the Department of Veterans Benefits Burial Benefits program evaluation are available free. Reproduction of multiple copies can be arranged at the requester's expense.

Direct inquiries, specifying the name of the program evaluation desired, to Mr. Errol D. Clark, Director, Program Evaluation and Appraisal Service, Veterans Administration (074), 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: January 25, 1979.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

[FR Doc. 79-3238 Filed 1-30-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice No. 153]

MOTOR CARRIER TRANSFER PROCEEDINGS

JANUARY 31, 1979.

Application filed for temporary authority under Section 210a(b) in connection with transfer application under Section 212(b) and Transfer Rules, 49 CFR Part 1132.

MC FC 78003. By application filed January 16, 1979, BOYD MARTIN ENTERPRISES, INC., Route 5, Box 570, Fulton, MO 65251, seeks temporary authority to transfer the operating rights of ELWOOD LYNCH, AN INDIVIDUAL, 1009 Halleck Street, Moberly, MO 65270, under section 210a(b). The transfer to BOYD MARTIN ENTERPRISES, INC., of the operating rights of ELWOOD LYNCH, AN INDIVIDUAL, is presently pending.

MC FC 78010. By application filed January 16, 1979, WOLTER TRUCK LINES, INC., Greenwood, DE, seeks temporary authority to transfer a portion of the operating rights of BLUE HEN LINES, INC., P.O. Box 280, Milford, DE 19963, under section 210a(b). The transfer to WOLTER TRUCK LINES, INC., of a portion of the operating rights of BLUE HEN LINES, INC., is presently pending.

MC FC 78012. By application filed January 24, 1979, MIRMAN TRANSPORTATION, INC., 86 Jack London Square, Oakland, CA 94607, seeks temporary authority to transfer a portion of the operating rights of MITCHELL BROS. TRUCK LINES, 3841 N. Columbia Boulevard, Portland, OR 97217, under section 210a(b). The transfer to MIRMAN TRANSPORTATION, INC., of a portion of the operating rights of MITCHELL BROS. TRUCK LINES, is presently pending.

MC FC 78013. By application filed January 23, 1979, COYLE TRANS., INC., 180 W. First Street, South Boston, MA 02127, seeks temporary authority to transfer the operating rights of KEMP TRANSFER, INC., 265 South Main Street, West Bridgewater, MA 02379, under section 210a(b). The transfer to COYLE TRANS., INC., of the operating rights of KEMP TRANSFER, INC., is presently pending.

MC FC 78016. By application filed January 22, 1979, COLORADO-DENVER / WAREHOUSE-DELIVERY, INC., 4902 Smith Road, Denver, CO 80216, seeks temporary authority to transfer the operating rights of SOUTH PARK MOTOR LINES, INC., 1420 38th Street, Denver, CO 80205, under section 210a(b). The transfer to COLORADO-DENVER / WAREHOUSE-DELIVERY, INC., of the operating rights of SOUTH PARK MOTOR LINES, INC., is presently pending.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-3239 Filed 1-30-79; 8:45 am]

[7035-01-M]

Office of Hearings

[Notice No. 17]

ASSIGNMENT OF HEARINGS

JANUARY 26, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 133937 (Sub-25F), Carolina Cartage Company, Inc., now assigned January 23, 1979, at Atlanta, Georgia is now transferred to Modified Procedure.

MC 120651 (Sub-3F), Hires Trucking Co., Inc., now assigned January 31, 1979, at Indianapolis, Indiana is cancelled transfered to Modified Procedure.

MC 113651 (Sub-269F), Indiana Refrigerator Lines, Inc., now assigned for hearing on February 13, 1979, Boston Mass. and will be held on Fifth Floor, 150 Causeway.

MC 144401F, General Oilfield Trucking, Inc., now assigned for hearing on February 5, 1979, at Baton Rouge, Louisiana and will be held in Grand Jury Room 316, U.S. Attorney's Office.

MC 144288F, Evans Reliable Messenger, Inc., now assigned for hearing on February 7, 1979 at New Haven, Connecticut and will be held in The New Court House.

MC 140024 (Sub-119F), J. B. Montgomery, Inc., a Deleware Corporation, now assigned for hearing on February 15, 1979, at Boston, Mass. 150 Causeway, Fifth Floor.

MC 144225, Jadeel Trucking, Inc., now assigned for hearing on February 12, 1979, at Boston, Mass. 150 Causeway, Fifth Floor.

MC 144979F, Daniel P. Geiger, dba Atlantic Limousine Service now assigned February 12, 1979, at Atlantic City, N.J., is postponed to March 16, 1979, (4 days), at Atlantic City, N.J., in a hearing room to be later designated.

MC 143917 (Sub-3F), Sam Young, Inc., now assigned January 26, 1979, at Chicago, Illinois is cancelled transferred to Modified Procedure.

MC 42405 (Sub-36F), Mistletoe Express Service DBA Mistletoe Express, now assigned February 12, 1979, at Oklahoma City, Oklahoma is cancelled transferred to Modified Procedure.

MC 98952 (Sub-54F), General Transfer Company a Delaware Corporation, now assigned for hearing on February 28, 1979, at Room No. 1319, Everett McKinley Dirksen Building.

MC 114273 (Sub-368F), CRST, Inc., now assigned for hearing on February 26, 1979, at Chicago, Illinois and will be held in E. M. Dirksen Building, Room 1319.

MC 135874 (Sub-108F), LTL Perishables, Inc., now assigned for hearing on February 22, 1979, at Chicago, Illinois and will be held in Room 1319, E. M. Dirksen Building.

MC 1515 (Sub-241), Greyhound Lines, Inc., now assigned for hearing on April 17, 1979, (4 days), at the Dallas Marriot, 2101 Stemmons Freeway, Dallas Texas, and continued to April 23, 1979, (1 week), at the Houston Ramada Inn, 4225 North Freeway, Houston, Texas.

MC 143775 (Sub-4F), Paul Yates, Inc., now assigned for hearing on February 21, 1979, at Chicago, Illinois and will be held in Room 1319, E. M. Dirksen Building.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-3240 Filed 1-30-79; 8:45 am]

[7035-01-M]

[Notice No. 18]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 26, 1979.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of it application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 2960 (Sub-22TA), filed September 18, 1978, published in the FEDERAL REGISTER of November 14, 1978, and republished this issue. Applicant: ENGLAND TRANSPORTATION COMPANY OF TEXAS, 2301 McKinney St., Houston, TX 77023. Representative: E. Larry Wells, Winkle and Wells, Suite 1125, Exchange Park, P.O. BOX 45538, Dallas, TX 75245. By order of the Motor Carrier Board granted authority to applicant to operate as a *common carrier,* by motor vehicle, over irregular routes transporting: *General commodities,* with the usual exceptions, from Shreveport and Lake Charles, LA and from points in TX on and east of U.S. Hwy. 277 and U.S. Hwy. 87 in Bowie, Cass, Red River, Navarro, Kaufman, Rockwall, Grayson, Collin, Dallas, Ellis, Johnson, Tarrant, Wise, Cooke, Hood, Parker, Palo Pinto, Jack, Archer, Baylor, Haskell, Throckmorton, Young, Denton, Stevens, Shackleford, Jones, Taylor, Callahan, Eastland, Coleman, Runnels, Concho, Cole, Tom Green, McCulloch, San Saba, Llano, Mason, Gillespie, Kendall and Morris Counties, TX, to Houston, TX, restricted to traffic having a prior movement by water.

Notice of this application in the FEDERAL REGISTER on November 14, 1978, failed to reflect Lake Charles, LA as a point of origin. Interested parties may file petitions for reconsideration on or before 15 calendar days from the date of publication of this notice. SEND PETITIONS TO: Secretary, Interstate Commerce Commission, Washington, DC 20423.

MC 69834 (Sub-17TA), filed November 1, 1978, and published in the FEDERAL REGISTER issue of December 22, 1978, and republished as corrected this issue. Applicant: PRICE TRUCK LINE, INC., 2945 North Market, Wichita, KS 67219. Representative: Paul V. Dugan, 2707 West Douglas, Wichita, KS, 67213. *Crayons, educational and school art and hobby supplies, and materials, and supplies* used in the manufacture, packaging, distribution, and selling thereof, over irregular routes, between Winfield, KS, and Easton, PA, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), for 180 days. Supporting shipper(s): Binney & Smith, Inc., P.O. Box 431, Easton, PA, 18042. Send protests to: M. E. Taylor, ICC, 101 Litwin Building, Wichita, KS, 67202. The purpose of this republication is to correct the territorial description which read between points in Kansas.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-3241 Filed 1-30-79; 8:45 am]

[7035-01-M]

[Notice No. 13]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 19, 1979.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

NOTE.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

MOTOR CARRIERS OF PROPERTY

MC 409 (Sub-70TA), filed December 26, 1978. Applicant: SCHROETLIN TANK LINE, INC., P.O. Box 511, Sutton, NE 68979. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Propane in bulk, in tank vehicles,* from Mid American Pipeline Terminal at or near Greenwood, NE to points in SD, for 180 days. SUPPORTING SHIPPER(S): Farmland Industries, Inc., 3315 North Oak Tfwy., Kansas City, MO 64116. SEND PROTESTS TO: Max H. Johnston, I.C.C., 285 Federal Bldg. and U.S. Courthouse, 100 Centennial Mall North, Lincoln, NE 68508.

MC 2368 (Sub-88TA), filed December 20, 1978. Applicant: BRALLEY-WILLETT TANK LINES, INC., P.O. Box 495, Richmond, VA 23204. Representative: William T. Marshburn, P.O. Box 495, Richmond, VA 23204. *Chemicals, in bulk,* between Hopewell, VA on the one hand, and on the other, West Memphis, AR and its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Allied Chemical Corporation, 1411 Broadway, New York City, New York 10018. SEND PROTESTS TO: Paul D. Collins, I.C.C., Rm. 10-502 Federal Bldg., 400 N. 8th St., Richmond, VA 23240.

MC 18738 (Sub-47TA), filed December 27, 1978. Applicant: SIMS MOTOR TRANSPORT LINES, INC., 610 W. 138th Street, Riverdale, IL 60627. Representative: Eugene Cohn, One No. La Salle Street, Chicago, IL 60606. *Iron and steel products,* from Milwaukee, WI to Chicago, IL, and its commercial zone, for 190 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Douglas Lawson, Raco Steel Co., Inc., 19421 Forest Avenue, Glenwood, IL 60425. SEND PROTESTS TO: Lois M. Stahl, Trans. Asst., Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Rm. 1386, Chicago, IL 60604.

MC 41932 (Sub-12TA), filed December 27, 1978. Applicant: BROWNING FREIGHT LINES, INC., 650 South Redwood Road, Salt Lake City, UT 84104. Representative: Ben D. Browning, 1321 S.E. Water Avenue, Portland, OR 97214. Authority sought to operate as a *common carrier,* by motor vehicle, over regular routes, transporting: *General commodities* (with the usual exceptions): (1) Between Elko, NV and Owyhee, NV serving all intermediate points via State Hwy. 51, (2), Between Mountain Home, ID and Owyhee, NV over Hwy. 51 serving no intermediate points and serving Owyhee, NV for purpose of joinder only with the authority listed in (1) above, (3) between Twin Falls, ID and Elko, NV serving all intermediate points from Twin Falls, ID to Wells, NV over U.S. 93, then over Interstate Hwy 80 to Elko, NV and return over the same routes, (4) between Wells, NV and Salt Lake City, UT over Interstate Hwy. 80 as an alternate route for operationg convenience only between the authority listed in (3) above and applicant's existing authority, (5) Duck Valley Indian Reservation located in ID and NV as an off-route point in connection with applicant's existing authority in MC-41932, authorizing service between Salt Lake City, UT and Boise, ID over described highways, for 180 days. Tacking, interlining and service to commercial zones is requested. An underlying ETA seeks 90 days authority. There are approximately 45 statements of support attached to this application which may be examined at the I.C.C., in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: L. D. Helfer, I.C.C., 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 111302 (Sub-141TA), filed December 18, 1978. Applicant: HIGHWAY TRANSPORT, INC., P.O. Box 90408, 934 44th Avenue North, Knoxville, TN 37209. Representative: David A. Pertersen (same as above). *Ethyl acrylates, butyl acrylate, and methyl methacrylate, in bulk, in tank vehicles,* from the plantsite of Rohm & Hass Co., in Houston, TX to the plantsite of Rohm & Hass Co., in Knoxville, TN, for 180 days. SUPPORTING SHIPPER(S): Rohm & Hass Co., Independence Mall West, Philadelphia, PA. SEND PROTESTS TO: Glenda Kuss, Trans. Asst., I.C.C., Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 112520 (Sub-359TA), filed October 18, 1978. Applicant: McKENZIE TANK LINES, INC., P.O. Box 1200, Tallahassee, FL 32302. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. (1) *Black liquor* and (2) *white liquor and caustic soda, in bulk, in tank vehicles,* (1) from Charleston, SC to Jesup, GA and (2) from Jesup, GA to Charleston, SC, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): ITT Rayonier, Inc., 126 W. Bay St., P.O. Box 1747, Savannah, GA 31402. SEND PROTESTS TO: G. H. Fauss, Jr., I.C.C., Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 112627 (Sub-31TA), filed December 18, 1978. Applicant: OWENS BROS., INC., P. O. Box 247, Dansville, NY 14437. Representative: S. Michael Richards/Raymond A. Richards, P. O. Box 225, Webster, NY 14580. (1) *Alcoholic beverages, and* (2) *materials, supplies, and equipment used in the manufacture, sale, and distribution of alcoholic beverages,* between Peoria, IL, on the one hand, and, on the other, all points in CT, NJ, NY, and PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Dean J. Anderson, Gen. Traffic Mgr., Hiram Walker & Sons, Inc., P. O. Box 479, Peoria, IL 61651. Send protests to: I.C.C., U.S. Courthouse & Federal Bldg., 100 S. Clinton St., Rm. 1259, Syracuse, NY 13260

MC 112713 (Sub-230 TA), filed December 18, 1978. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Shawnee Mission, KS 66207. Representative: John M. Records (same as applicant). *General commodities,* except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities of unusual value and those requiring special equipment, serving the facilities of James David, Inc. near Clinton, TN as a off-route point in connection with carrier's otherwise authorized operations, for 180 days. SUPPORTING SHIPPER(S): James David, Inc., P.O. Box 7240, St. Louis, MO 63177. SEND PROTESTS TO: John V. Barry, Rm. 600, 911 Walnut, Kansas City, Mo. 64106.

MC 113624 (Sub-83 TA), filed December 20, 1978. Applicant: WARD TRANSPORT, INC., P.O. Box 100, Commerce City, CO 80037. Representative: Leslie R. Kehl, Suite 1600, 1660 Lincoln Street, Denver, CO 80264. *Anhydrous ammonia, in bulk, in tank vehicles* from the storage facilities of Gulf Central Pipeline located at or near Aurora, NE to points in KS, SD and WY for 180 days. SUPPORTING SHIPPER(S): Farmland Industries, Inc., P.O. Box 7305, Kansas City, MO 64116. SEND PROTESTS TO: Herbert C. Ruoff, I.C.C., 492 U.S. Customs House, 721 19th St., Denver, CO 80202.

MC 115092 (Sub-75 TA), filed December 12, 1978. Applicant: TOMAHAWK TRUCKING, INC., P.O. Box O, Vernal, UT 84078. Representative: Walter Kobos, 1016 Kehoe Drive, St. Charles, IL 60174. *Cedar shakes and shingles,* from points in WA, to points in WY, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Dler Lumber Company, Inc., 291 Roymar, Oceanside, CA 92054. (Eric Scott, Vice President). SEND PROTESTS TO: Lyle D. Helfer, I.C.C., 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 117119 (Sub-709 TA), filed December 18, 1978. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). *Lecithin (except in bulk), in vehicles equipped with mechanical refrigeration* from Stuttgart, AR to points in CA, IL, NJ, NY, OH and PA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): American Lecithin Company, P.O. Box 4056, Atlanta, GA 30302. SEND PROTESTS TO: William H. Land, Jr., 3108 Federal Office Bldg., 700 West Capitol, Little Rock, AR 72201.

MC 118159 (Sub-307 TA), filed December 18, 1978. Applicant: NATIONAL REGRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 E. Commerical Blvd., Fort Lauderdale, FL 33308. *Porch swings and related accessories* from the plantsite of A & D Chair Company, Inc, at Clanton, AL and Yellville, AR to points in the United States, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: A & D Chair Company, P.O. BOx 368, Yellville, AR 72687 (Robert L. Duncan). Send protests to: Connie Stanley, Trans. Asst., I.C.C., Rm. 240, Old Post Office & Courthouse Bldg., 215 N.W. 3rd., Oklahoma City, OK 73102

MC 118224 (Sub-3 TA), filed December 18, 1978. Applicant: STANDARD FRUIT & VEGETABLE COMPANY, INC., 2111 Taylor Street, Dallas, TX 75201. Representative: Lawrence A. Winkle, Suite 1125 Exchange Park,

P.O. Box 45538, Dallas, TX 75245. *Bananas,* from Gulfport, MS to Dallas, TX, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Kroger Co., P.O. Box 226328, Dallas, TX 75266. Chiquita Brands, Inc., 212 Veterans Blvd., Suite 100, Metairie, LA 70005. SEND PROTESTS TO: Opal M. Jones, I.C.C., 1100 Commerce St., Rm. 13C12, Dallas, TX 75242.

MC 118457 (Sub-18 TA), filed December 18, 1978. Applicant: ROBBINS DISTRIBUTING COMPANY, INC., 11104 West Becher Street, West Allis, WI 53227. Representative: Donald S. Mullins, 4704 West Irving Park Rd., Chicago, IL 60641. *Packing House Products,* from the facilities of Birchwood Meat & Provision Co. and Kenosha Beef International in Kenosoha County, WI, to points in the District of Columbia and the States of CT, DE, GA, ME, MD, MA, NH, NJ, NC, PA, RI, SC, TN, VT, VA and WV, for 180 days. SUPPORTING SHIPPER(S): Birchwood Meat & Provision Co., P.O. Box 639, Kenosha, WI 53141, SEND PROTESTS TO: Gail Daugherty, Trans. Asst., I.C.C., U.S. Federal Bldg. & Courthouse, 517 East Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 118560 (Sub-9 TA), filed December 19, 1978. Applicant: GENERAL TRUCKING CO., INC., P.O. Box 269, Santa Fe Pk., Columbia, TN 38401. Representative: Edward C. Blank, II, Middle Tennessee Bank Bldg., P.O. Box 1004, Columbia, TN 38401. *Silica gravel and silica sand* from Jemison, Alabama, to Maury County, TN. RESTRICTION: Restricted to transportation of commodities listed in dump trucks and dump trailers, and further restricted to traffic originating at the above named location and destined to the above named destination point, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Monsanto Company, 800 N. Lindbergh Blvd., St. Louis, MO 63166. SEND PROTESTS TO: Glenda Kuss, Trans. Asst., I.C.C., Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 123310 (Sub-17 TA), filed December 27, 1978. Applicant: DOUG ANDRUS & SONS, INC., 1820 West Broadway, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Cedar fencing materials,* from Superior and Troy, MT to points in CO, in and north of Routt, Eagle, Lake, Chaffee, Fremont, Pueblo, Lincoln, Washington and Logan Counties, for 180 days. Restricted to shipments orginating at the facilities of Idaho Cedar Sales Co., and destined to the named destination. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Idaho Cedar Sales Co., P.O. Box 398, Troy, ID 83871. SEND PROTESTS TO: Barney L. Hardin, I.C.C., 1471 Shoreline Drive, Suite 110, Boise, ID 83706.

MC 124078 (Sub-911 TA), filed December 18, 1978. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. *Liquid Chemicals,* in bulk, in water carrier supplied containers, from Decatur, AL to Savannah, GA; Jacksonville, FL and Charleston, SC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: MONSANTO COMPANY, 800 N. Lindberg Blvd., St. Louis, MO 63166, R. W. Bradshaw, Supervisor, Bulk Truck Transportation. Send protests to: Gail Daugherty, Trans. Asst., I.C.C., U.S. Federal Bldg. & Courthouse, 517 East Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 125433 (Sub-186 TA), filed December 18, 1978. Applicant: F-B TRUCK LINE COMPANY, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson, 1945 South Redwood Road, Salt Lake City, UT 84104. *Iron and steel articles,* from Portland, OR and its commercial zone to points in CA; for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Metra Steel, P.O. Box 3154, Portland, OR 97208. (Michael S. Pierce, Fleet Mgr.) Northwest Pipe & Casing Co., 9200 Southeast Lawnfield Rd., Clackamas, OR 97015. SEND PROTESTS TO: L. D. Helfer, I.C.C., 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 133204 (Sub-2 TA), filed December 20, 1978. Applicant; KEITH TRUCKING, INC., Route 394 (Levant Road), Falconer, NY 14733. Representative: Ronald W. Malin, Bankers Trust Bldg., Jamestown, NY 14701. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Paper and paper products, wood and wood products, cabinets, doors, cement asbestos products, plastic products, plastic products, aluminum and aluminum products, products of wood and metal combined, wood and cement asbestos combined, plastic and metal combined, combined, plastic and wood combined, and materials, supplies, machinery and equipment used in the manufacture of the commodities described above,* between the facilities of Overhead Door Corporation, at Cattaraugus (Cattaraugus County), NY, on the one hand, and on the other, to points, to points in AL, CT, DE, GA, IL, IN, KY, MD, MA, MI, MO, NJ, NY, NC, OH, PA, RI, SC, TN, VA and WV, for 180 days under a continuing contract or contracts with Overhead Door Corporation of Cattaraugus, NY. Restricted against the transportation of commodities in bulk, in tank or hopper type vehicles. An underling ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Overhead Door Corporation, 6250 LBJ Freeway, Dallas, TX 75222. SEND PROTESTS TO: I.C.C., 910 Federal Bldg., 111 West Huron St., Buffalo, NY 14202.

MC 133485 (Sub-25TA), December 13, 1978. Applicant: INTERNATIONAL DETECTIVE SERVICE, INC., 1828 Westminster Street, Providence, RI 02909. Representative: Morris J. Levin, 1050 Seventeenth Street, N.W., Washington, D.C. 20036. *Cobalt metal, escorted by armed guards,* between New York, NY, on the one hand and on the other, Elizabethtown, KY and Cleveland, OH, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Phillip Brothers, 1221 Avenue of the Americas, New York, NY 10020. SEND PROTESTS TO: Gerald H. Curry, I.C.C., 24 Weybosset St., Rm. 102, Providence, RI 02903.

MC 133708 (Sub-36TA), filed December 29, 1978. Applicant: FIKSE BROS., INC., 12647 East South Street, Artesia, CA 90701. Representative: R. Y. Schureman, 1545 Wilshire Boulevard, Los Angeles, CA 90017. *Cement,* (in bulk, in pneumatic equipment), from San Diego, CA, to points in AZ., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Melwire Trading Company, Inc., 4400 San Fernando Road, Glendale, CA 91204. SEND PROTESTS TO: Irene Carlos Transp. Asst., ICC, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 133828 (Sub-9TA), filed December 5, 1978. Applicant: CASAZZA TRUCKING CO., 1250 Glendale Avenue, P.O. Box 7154, Sparks, NV 89431. Representative: Earl Casazza, 1250 Glendale Avenue, P.O. Box 7154, Sparks, NV 89431. *Petroleum Products in tank vehicles as described in Appendix XIII, Description in Motor Carrier Certificates 61 M.C.C. 294,* from Richmond, CA to points and places in NV, for 180 days. SUPPORTING SHIPPER(S): Union Oil Company, 123 Camino De La Reina, San Diego, CA. SEND PROTESTS TO: W. J. Huetig, I.C.C., 203 Federal Bldg., 705 North Plaza St., Carson City, NV 89701.

MC 134238 (Sub-13TA), filed December 18, 1978. Applicant: GENE'S INC., 10115 Brookville-Salem Road, Clayton, OH 45315. Representative: Berry & Spurlock Co., 275 E. State Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Merchandise, as is dealt in by wholesale, retail, and chain gro-*

cery and food business houses, and in connection therewith, equipment, materials, and supplies used in the conduct of such business (except commodities in bulk) in refrigerated vehicles, between the facilities of The Kroger Co., at Cincinnati and Columbus, OH, on the one hand, and, on the other, all points in IN, IL, AR, TX, TN, KY, GA, WV, the lower peninsula of MI, points in PA on and west of U.S. hwy. 219, VA, MO, and points in CA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): The Kroger Co., 1014 Vine St., Cincinnati, OH 45201. SEND PROTESTS TO: Paul J. Lowry, I.C.C., 5514-B Federal Bldg., 550 Main St., Cincinnati, OH 45202.

MC 134477 (Sub-300TA), filed December 12, 1978. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring the use of special equipment) which at the time are moving on bills of lading of freight forwarders under Part IV of the Interstate Commerce Act, from the facilities of ABC-Trans National Transport, Inc., and Acme Fast Freight, Inc., at Atlanta, GA and Charlotte, NC to Chicago, IL, for 180 days. SUPPORTING SHIPPER(S): ABC-Trans National Transport, Inc., 201 11th Avenue, New York, NY 10001. Acme Fast Freight, Inc., 2335 New Hyde Park Road, New Hyde Park, NY 11040. SEND PROTEST TO: Delores A. Poe, ICC, 414 Federal Building and U.S Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 134477 (Sub-303TA), filed December 19, 1978. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Cleaning, washing, buffing or polishing compounds, textile softener, lubricants, hypochlorite solution, deodorants or disinfectants, paints, stains, or varnishes, plastic bags, and filters (except commodites in bulk)* from the facilities of Economics Laboratory, Inc. at or near joliet, IL to Hanover, PA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Economics Laboratory, Inc., Osborn Building, St. Paul, MN 55101. Send protests to: Delores A. Poe, Trans. Asst., I.C.C., 414 Federal Bldg. & U.S. Courthouse, 110 South 4th St., Minneapolis, MN 55401.

MC 135874 (Sub-150TA), filed December 18, 1978. Applicant: LTL PERISHABLES, INC., 550 East 5th Street South, South St. Paul, MN 55075. Representative: K. O. Petrick, 550 East 5th Street South, South St. Paul, MN 55075. *Meat, meat products, meat byproducts and articles distributed by meat packinghouses, as described in Sections A and C of Appendix 1 to the report in Descriptions in Motor Carriers Certificates, 61 M.C.C. 209 and 766 (except commodities in bulk and hides),* from the facilities of Goldberger Foods, Inc., Minneapolis, MN to points in OH, PA, NY, NJ, CT, MA, RI, ED, MD and DC. Restricted to the traffic originating at the facilities of Goldberger Foods, Inc., Minneapolis, MN and destined to the named states, for 180 days. SUPPORTING SHIPPER(S): Goldberger Foods, Inc., 11 West 28th St., Minneapolis, MN 55408. SEND PROTESTS TO: Delores A. POE, Trans. Asst., I.C.C, 414 Federal Bldg. & U.S. Courthouse, 110 South 4th St., Minneapolis, MN 55401.

MC 138415 (Sub-20TA), filed December 18, 1978. Applicant: TRAILER EXPRESS, INC., Box 327, Topeka, IN 46571. Representative: Michael M. Yoder, Box 157, Topeka, IN 46571. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Conoes,* loose or in packages, from the facilities of The Coleman Company, Inc. at Wichita, Kansas, to all points in the United States (except Alaska and Hawaii). RESTRICTED: to transportation for the account of The Coleman Company, Inc. for 180 days. an underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): The Coleman Company, Inc., 250 N. St. Francis Street, Wichita, KS 67201. SEND PROTESTS TO: J. H. Gray, I.C.C., 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802

MC 138777 (Sub-7TA), filed December 18, 1978. Applicant: FETZ INCORPORATED, P.O. Box 47685, Doraville, GA 30340.. Representative: Frank D. Hall, Postell & Hall, P. C., Suite 713, 3384 Peachtree Rd., N.E., Atlanta, GA 30326. *Liquid aluminum sulphate (alum),* from East Point (Fulton County), GA to all points in NC, SC, AL and TN, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Burris Chemical, Inc., P.O. Box 4956, Charleston, SC 20405. SEND PROTESTS TO: Sara K. Davis, I.C.C., 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 140389 (Sub-42TA), filed December 18, 1978. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O. Box 12566, Atlanta, GA 30315. *Foodstuffs,* (except in bulk), when moving in mechanically-refrigerated equipment, from the facilities of Munford Refrigerated Warehouse, Division of Munford, Incorporated, at or near Atlanta, GA, to points in AL, FL, IN, KY, LA, MS, NC, SC, TN, VA and WV., for 180 days. SUPPORTING SHIPPER(S): Munford Refrigerated Warehouse, Division of Munford, Inc., 6150 Xavier Drive, S.W., Atlanta, GA 30336. SEND PROTESTS TO: Mabel E. Holston Transp. Asst., ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 140829 (Sub-159TA), filed December 18, 1978. Applicant: CARGO CONTRACT CARRIER CORP., P.O. Box 206, U.S. Hwy 20, Sioux City, IA 51102. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. *Lawn mowers,* from the facilities of Outboard Marine Corporation, at or near Manwa, WI, to points in the states of CO, CT, DC, IA, KS, ME, MD, MA, MO, NE, NH, NJ, NY, OK, PA, RI, TX, VA and VT, restricted to traffic originating at the named origin and destined to points in the named destination states, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Outboard Marine Corporation, 100 Sea Horse Dr., Waukegan, IL 60085. SEND PORTEST TO: Carroll Russell, I.C.C., Suite 620, 10 North 14th Street, Omaha, NE 68102.

MC 141602 (Sub-6TA), filed: December 18, 1978. Applicant: AUTO & TRUCK FORWARDING, INC., 29303 Pacific Street, Hayward, CA 94544. Representative: Wilmer B. Hill, 805 McLachlen Bank Building, 666 Eleventh Street, NW, Washington, DC 20001. *Trucks, truck tractors, and truck chassis, in initial movements, in driveaway and truckaway service,* from the plant site of Mack Western at Hayward, CA to points in the United States (including AK but excluding HI) for 180 days. Applicant has filed an underlying ETA seeking up to 90 days of operating authority. SUPPORTING SHIPPER(S): Mack Western, 21021 Corsair Blvd., Hayward, CA 94545. SEND PROTESTS TO: Mr. A. J. Rodriguez, I.C.C., 211 Main St., Suite 500, San Francisco, CA 94105.

MC 142559 (Sub-81TA), filed December 18, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland Ohio 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, Ohio 43215, (614) 228-1541. *Bicycle, bicycle parts* and *accessories* except commodities in bulk) between the Commercial Zones of Boston, MA; Secaucus, NJ; Miami, FL; Bensenville, IL; New Orleans, LA; Long Beach, CA; Houston, TX; Buffalo, NY; and Westwood, MA, on the one hand, and, on the other, points in the United States; for 180 days. SUPPORTING

SHIPPER(S): Raleigh Industries, 1168 Commonwealth Ave., Boston, MA 02134. SEND PROTESTS TO: Mary Wehner, I.C.C., 731 Federal Office Bldg., 1240 East Ninth Street, Cleveland, OH 44199.

MC 142772 (Sub-3TA), filed December 26, 1978. Applicant: HRDLICKA ENTERPRISES, INC., Route 7, Box 59, Chippewa Falls, WI 54729. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. *Building materials, viz, building and roofing slabs, tiles and panels and related materials, parts, supplies and accessories,* from Cornell, WI to points in IL, IN, KY, OH and the lower peninsula of MI, for 180 days. SUPPORTING SHIPPER(S): Cornell Corporation, 808 South 3rd Street, Cornell, WI 54732. SEND PROTESTS TO: Delores A. Poe, Trans. Asst., I.C.C., 414 Federal Bldg., 110 South 4th Street, U. S. Courthouse, Minneapolis, MN 55401.

MC 143478 (Sub-8TA), filed December 27, 1978. Applicant: G. P. THOMPSON ENTERPRISES, INC., P. O. Box 146, Midway, AL 36053. Representative: Terry P. Wilson, 420 South Lawrence Street, Montgomery, AL 36104. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in or used by restaurant chains* (except commodities in bulk), between Jacksonville, FL, on the one hand and on the other, points in AL, AR, FL, GA, KY, LA, MS, NC, SC, TN and VA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Henry's Poultry Co., Inc., 2116 W. Beaver Street, Jacksonville, FL 32209. SEND PROTESTS TO: Mabel E. Holston, Trans. Asst., I.C.C., Rm. 1616-2121 Bldg., Birmingham, AL 35203.

MC 143594 (Sub-3TA), filed December 18, 1978. Applicant: NATIONAL BULK TRANSPORT, INC., P.O. Box 5078, Atlanta, GA 30302. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Liquid chemicals,* in bulk, in tank vehicles, from Hamilton County, TN to points in the United States, for 180 days. Supporting shipper: Velsicol Chemical Corporation, 4902 Central Avenue, Chattanooga, TN 37410. W. R. Grace & Co., Davidson Chemical Division, 10 E. Baltimore St., Baltimore, MD 21202. SEND PROTESTS TO: Sara K. Davis, I.C.C., 1252 W. Peachtree St., N. W., Rm. 300, Atlanta, GA 30309.

MC 143775 (Sub-47TA), filed December 20, 1978. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, Arizona 85302. Representative: Michael R. Burke, 6601 West Orangewood, Glendale, Arizona 85302. *Paper, in rolls, and paper bags,* from the facilities of Equitable Bag Company at Orange, TX., and its commercial zone, to NY, NJ, PA, WASHINGTON, DC., IL, MN, AZ, AND CA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Equitable Bag Company, Orange TX, 77630. SEND PROTESTS TO: Andrew V. Baylor, I.C.C., Rm. 2020 Federal Bldg., 230 N. First Ave., Phoenix, AZ 85025.

MC 143775 (Sub-48TA), filed December 20, 1978. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, AZ. 85302. Representative: Michael R. Burke, 6601 West Orangewood, Glendale, AZ. 85302. *(1) (a) Adhesives, sealants, solvents, stains, and wood preservatives, and (b) accessories, equipment, materials and supplies used in the installation maintenance, and distribution of floors, floor coverings, walls and wall covering, in vehicles equipped with mechanical refrigeration,* From the facilities of Roberts Consolidated Industries, in Los Angeles County, California, to points in the United States (except Alaska, California, and Hawaii), for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Roberts Consolidated Industries, 600 N. Baldwin Park Blvd., City of Industry, CA 91749. SEND PROTESTS TO: Andrew V. Baylor, I.C.C., Rm. 2020 Federal Bldg., 230 N. First Ave. Phoenix, AZ 85025.

MC 144027 (Sub-6TA), filed December 27, 1978. Applicant: WARD CARTAGE AND WAREHOUSING, INC., Route No. 4, Glasgow, KY 42141. Representative: Walter Harwood, Attorney, P.O. Box 15214, Nashville, TN 37215. *Wooden or metal curtain rods, with or without fixtures; hooks, iron or steel* from the facilities of Scotscraft, Inc., at or near Scottsville, KY, to the facilities of Kirsch Co., at or near Tampa and Miami, FL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper Scotscraft, Inc., Gallatin Road, Scottsville, KY. Send protests to Linda Sypher, I.C.C., 426 U.S. Post Office Building, 602 West Broadway, Louisville, KY 40202.

MC 144844 (Sub-3TA), filed December 18, 1978. Applicant: OZARK TRANSPORTATION, INC., P.O. Box 203, Greenville, MO 63944. Representative: Joseph Winter, 29 South LaSalle Street, Chicago, IL 60603. *Lumber and lumber products, and wood and wood products,* from points in Wayne, Iron, Reynolds and Madison Counties, MO to points in IL on and north of U.S. Hwy 50 (except Aurora, Morris, Kankakee, Champaign, Chicago, and Clay, and their Commercial Zones), Fort Wayne, Indianapolis, Schneider, Seymour, South Bend and Mt. Vernon, IN, and Milwaukee, Richland Center and Union Grove, WI, for 180 days. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): There are approximately three (3) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: P.E. Binder, ICC, Rm 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 145023 (Sub-No. 2TA), filed December 18, 1978. Applicant: C. O. BRUCE & SON, INC. Route 1, Blum, TX 76627. Representative: Billy R. Reid, P.O. Box 8335, Fort Worth, TX 76112. *Lumber and lumber products,* from points CA, OR, and WA to points in AR, LA, OK, and TX, for 180 days. There are approximately (5) statement of support attached to this application which may be examined at the I.C.C., in Wash. D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Martha A. Powell, Trans. Asst., I.C.C., Rm. 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 145406 (Sub-5TA), filed December 1, 1978. Applicant: MIDWEST EXPRESS, INC., 380 E. Fourth Street, Dubuque, Iowa 52001. Representative: Richard A. Westley, Attorney, 4506 Regent Street, Suite 100, Madison, WI 53705. *Meat, meat products,* and *meat by-products* from the facilities of Packerland Packing Co., Inc., located at or near Green Bay, Eau Claire, and Chippewa Falls, WI to points in CA for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: PACKERLAND PACKING CO., INC., P.O. Box 1184, Green Bay, WI 54305. Send Protests To: Herbert W. Allen, I.C.C., 518 Federal Bldg., Des Moines, IA 50309.

MC 145503 (Sub-1TA), filed December 28, 1978. Applicant: ART ANDERSON, INC., P.O. Box 138, Oakford, IL 62673. Representative: Edward D. McNamara, Jr., 907 South 4th Street, Springfield, IL 62703. *Nonpressure nitrogen fertilizer solution,* from Clinton, IA, to Oakford, Monica and Amboy, IL, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Robert F. Reif Traffic Manager, Hawkeye Chemical Co., Box 899, Clinton, IA. SEND PROTESTS TO: Charles D. Little DS, ICC, 414 Federal Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 145506 (Sub-1TA), filed December 27, 1978. Applicant: ODOM TRUCKING CO., INC., Route 4, Box 165, Eufaula, AL 36027. Representa-

tive: W. K. Martin, Capell, Howard, Knabe & Cobbs, P.O. Box 2069, Montgomery, AL 36103. *Meat, meat products, meat by-products and articles distributed by meat-packing houses as described in Sections A and C of Appendix I to the report in Motor Carrier Certificates, 61 M.C.C. 209 and 766,* (except hides and skins and commodities in bulk), from the facilities of John Morrell & Co., at or near Montgomery, AL, to points and places in the United States, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): John Morrell & Co., 208 South LaSalle Street, Chicago, IL 60604. SEND PROTESTS TO: Mabel E. Holston Transp. Asst., ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 145764 (Sub-1TA), filed December 27, 1978. Applicant: C & E TRANSPORT, INC., 1600 Morton, Elkhart, IN 46514. Representative: Robert A. Kriscunas, Scopelitis & Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. *Salt,* in dump vehicles, From Chicago, IL and St. Joseph, MI to points in Indiana and Michigan, RESTRICTED to traffic originating at the plant site and terminal facilities of DOMTAR Industries, Inc. for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: DOMTAR Industries, Inc., Sifto Salt Div., 9950 W. Lawrence Ave., Schiller Park, IL 60176. Send protests to: Justus H. Gray, I.C.C., 343 West Wayne St., Suite 113, Fort Wayne, IN 46802.

MC 145871TA, filed December 12, 1978. Applicant: MICHAEL EARLE McBAIN, dba CENTRAL COURIER SERVICE, 1547 Raccoon Court, Ventura, CA 93003. Representative: Michael Earle McBain (same as above). *General commodities,* weighing 500 pounds or less, between Los Angeles, Ventura, and Santa Barbara Counties, CA, on shipments having a prior or subsequent movement by air, sea or rail, for 180 days. SUPPORTING SHIPPER(S): Schlumberger Offshore Services, 5700 Ralston 306B, Ventura, CA 93003. SEND PROTESTS TO: Irene Carlos, ICC, Room 1321 Federal Building, 300 North Los Angeles St., Los Angeles, CA 90012.

MC 145894 TA, filed December 18, 1978. Applicant: EQUIPMENT SUPPLIES, INC., 7736 West 62nd Place, Summit, IL 60501. Representative: Tom Stock (same as above). *General commodities* (except those of unusual value Class A and B explosives, household goods, as defined by the Commission, commodities in bulk, and those requiring special equipment), in steamship and/or rail trailers and demountable containers, with or without chassis, between the rail and steamship facilities in the Chicago Commercial Zone as defined by the Commission, and points and places in the states of IL, IN, IA, Lower Pennisula of MI, WI, for 180 days. There are approximately (6) statement of support attached to this application which may be examined at the I.C.C., in Wash, D.C., or copies thereof which may be examined a the field office named below. SEND PROTESTS TO: Lois Stahl, Trans. Asst., I.C.C., Everett McKinley Dirksen Bldg., 219 South Dearborn St., Chicago, IL 60604.

MC 145915 TA, filed December 19, 1978. Applicant: EAGLE TRANSPORT, INC., P.O. Box 189, Montpelier, ID 83254. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. *Oil Drilling Mud Compounds* from Montpelier, ID to points in the UT Counties of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summitt, Weber and Wasatch and the WY Counties of Lincoln, Sublette, Sweetwater, Teton and Vinta. Restricted to shipments originating at the named origin and destined to points in the named destination territories, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): IMCO Services, P.O. Box 726, Vernal, UT 84078. SEND PROTESTS TO: Barney L. Hardin, I.C.C., Suite 110, 1471 shoreline Dr., Boise, ID 83706.

MC 145916 TA, filed December 18, 1978. Applicant: ZELL G. HENDERSON D/B/A THE SPA HAULER, 1283 High St., Auburn, CA 95603. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108. *Uncrated spas and hot tubs, with a density of less than three (3) pounds per cubic foot,* from points in CA to points in U.S. (except Alaska and Hawaii), for 180 days. an underlying ETA seeks 90 days authority. There are approximately (6) statement of support attached to this application which may be examined at the I.C.C., in Wash, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: W.J. Huetig, I.C.C., 203 Federal Bldg., 705 North Plaza St., Carson City, NV 89701.

MC 145945 (Sub 1 TA), filed December 19, 1978. Applicant: WILLIS LEASING CORPORATION, 3175 Wall Avenue, Ogden, UT 84401. Representative: Irene Warr, 430 Judge Building, Salt Lake City, Utah 84111. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Tires and tread rubber,* from Findlay, OH and Texarkana, TX to CO, UT, WY, and ID, under a continuing contract or contracts with Dick Morrison Tire Company, Inc. and Superior Tire Service, Inc., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Dick Morrison Tire Company, Inc., 49 East 9th South Street, Salt Lake City, UT 84111 (Robert B. Morrison, President). Superior Tire Service, Inc., 280 North Vernal Ave., Vernal, UT 84078. (K. H. Sowards, President). SEND PROTESTS TO: L. D. Helfer, I.C.C., 5301 Federal Bldg., Salt Lake City, UT 84138.

By the Commission.

H. G. HOMME, JR.,
Secretary.

[FR Doc. 79-3242 Filed 1-30-79; 8:45 am]

[7035-01-M]

[Notice No. 14]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 19, 1979.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

NOTE.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

MOTOR CARRIERS OF PROPERTY

MC 26825 (Sub-19TA), filed December 26, 1978. Applicant: ANDREWS VAN LINES, INC., Seventh & Park Ave., Box 1609, Norfolk, NE 68701. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. *Ready-to-eat cereals* (except commodities in bulk), from Omaha, NE to Oakland and Los Angeles, CA; Phoenix, AZ; Denver, CO; Toledo and Cleveland, OH; Pittsburgh, Wilkes-Barre, and Scranton, PA; Buffalo and New York, NY; Lawrence, MA; Elizabeth and Jersey City, NJ; Charlotte, NC; and Jacksonville, Miami and Tampa, FL. for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: U.S. Mills, Inc., 4201 N. 28th Ave., Omaha, NE 68111. Send protests to: Mr. Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620 Union Pacific Plaza Bldg., 110 N. 14th St., Omaha, NE 68102.

MC 34027 (Sub-12TA), filed December 7, 1978. Applicant: GEETINGS, INC., P.O. Box 82, Pella, IA 50219. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Wood windows, sliding glass doors, wood folding doors, and partitions,* from Pella, IA to St. Louis, MO., for 180 days. AN underlying ETA seeks 90 days authority. Send protests to: Herbert Allen, District Supervisor, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309. Supporting shippers: PELLA ROLSCREEN COMPANY, Pella, IA. 50219.

MC 51146 (Sub-305TA), filed December 15, 1978. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa; OK 74151. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. (1) *Petroleum, petroleum products, vehicle body sealer and/or sound deadener compounds,* (except in bulk, in tank vehicles) *and filters* from points in Warren County, MS to points in and east of ND, SD, NE, CO, OK, and TX; and (2) *Petroleum, petroleum products, vehicle body sealer and/or sound deadener compounds, filters, equipment, materials, and supplies* used in the manufacture, sale, and distribution of the commodities named in (1) above (except in bulk, in tank vehicles) from points in AL, GA, IL, IN, KY, NY, OH, OK, PA, RI, SC, VA, and WV to points in Warren county, MS. Restricted in Parts (1) and (2) above to shipments originating at or destined to the facilities of Quaker State Oil Refining Corporation located in Warren County, MS., for 180 days. SUPPORTING SHIPPER(S): Quaker State Oil Refining Corp., P.O. Box 989, Oil City, PA 16301. SEND PROTESTS TO: Connie Stanley Transp. Asst., Room 240 Old Post Office & Court House Bldg., 215 N.W., 3rd, Oklahoma City, OK 73102.

MC 75320 (Sub-206TA), filed: December 26, 1978. Applicant: CAMPBELL SIXTY-SIX EXPRESS, INC., P.O. Box 807, Springfield, Missouri 65801. Representative: John A. Crawford, 17th Floor, Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. (1) *Rubber and rubber products* from the facilities of Denman Rubber Manufacturing Co. at or near Leavittsburg, OH to points in AL, AR, IA, KS, LA, MS, MO, NE, OK, TN, and TX, and (2) *Materials, equipment and supplies* used in the manufacture of rubber and rubber products, except commodities in bulk, from the points listed in Paragraph (1) above to the facilities of Denman Rubber Manufacturing Co. at or near Leavittsburg, OH, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Denman Rubber Mfg., Company, Diehl Road, Leavittsburg, OH 44430. SEND PROTESTS TO: John V. Barry DS, ICC, 600 Federal Bldg., 911 Walnut Street, Kansas City, MO 64106.

MC 82492, (Sub-212TA), filed December 26, 1978. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., 2109 Olmstead Road, P.O. Box 2853, Kalamazoo, Michigan 49003. Representative: Dewey R. Marselle (Same Address as Applicant). *Chemicals,* except in bulk, From the facilities of National Starch & Chemical Corporation at or near Meredosia, IL, to points in NY in and west of Broome, Cortland, Onondaga and Oswego Counties, and points in OH, KY, TN, MO, KS, NE, MN, IA, WI, IL, IN, and MI., for 180 days. SUPPORTING SHIPPER(S): National Starch & Chemical Corporation, 10 Finderne Avenue, Bridgewater, NJ 08807. SEND PROTESTS TO: C. R. Flemming DS, ICC, 225 Federal Bldg., Lansing, MI 48933.

MC 100327 (Sub-9TA), filed December 14, 1978. Applicant: LONGUEIL TRANSPORTATION, INC., 144 Shaker Road, P.O. Box 473, East Longmeadow, MA 01028. Representative: David M. Marshall, Esq., Marshall and Marshall, 101 State Street—Suite 304, Springfield, MA 01103. *Passengers,* in special operations, beginning and ending at points in Springfield, MA and extending to the plant and facilities of Castle & Cooke Inc., Mushroom Division, East Windsor, CT. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Castle & Cooke Inc., Mushroom Division, 96 Newberry Road, East Windsor, CT 06088. Send protests to: David M. Miller, District Supervisor, Interstate Commerce Commission, 338 Federal Building and U.S. Courthouse, 436 Dwight Street, Springfield, MA 01103.

MC 100327 (Sub-10TA), filed December 14, 1978. Applicant: LONGUEIL TRANSPORTATION, INC., 144 Shaker Road, P.O. Box 473, East Longmeadow, MA 01028. Representative: David M. Marshall, Esq., Marshall and Marshall, 101 State Street—Suite 304, Springfield, MA 01103. *Passengers,* in special operations, between the facilities of Springfield Goodwill Industries, Inc. in Springfield, MA on the one hand, and, on the other, points in Hartford County, CT. for 180 days. Supporting Shipper: Springfield Goodwill Industries, Inc., 285 Dorset Street, Springfield, MA 01108. Send protests to David M. Miller, District Supervisor, Interstate Commerce Commission, 338 Federal Building and U.S. Courthouse, 436 Dwight Street, Springfield, MA 01103.

MC 103051 (Sub-467TA), filed December 27, 1978. Applicant: FLEET TRANSPORT COMPANY, INC., 934-44th Ave., N., Nashville, TN 37209. Representative: Russell E. Stone, P.O. Box 90408, Nashville, TN 37209. *VEGETABLE OIL,* in bulk, in tank vehicles, from Chattanooga, TN to Waverly, IA for 180 days. Supporting shipper: Swift & Company, 115 W. Jackson Blvd., Chicago, IL, 60604. Send protests to: Joe J. Tate, district Supervisor, Interstate Commerce Commission, Suite A-422, Federal Bldg., 801 Broadway, Nashville, TN, 37203. An underlying ETA seeks 90 days authority.

MC 106398 (Sub-855TA), filed December 26, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, Oklahoma 74103. Representative: Irvin Tull, Traffic Manager, 525 South Main, Tulsa, Oklahoma 74103. *Concrete wire reinforced planks or slabs, and wood and cement planks and slabs,* from the facilities of Martin Fireproofing Georgia, Inc. at Elberton, GA to all points in CT, DE, DC, IL, MD, MA, NJ, NY, OH, PA, VA and WV. for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Martin Fireproofing Georgia, Inc., P.O. Box 768, Elberton, GA 30635. SEND PROTESTS TO: Connie Stanley Transp. Asst., ICC, Room 240 Old Post Office & Court House Bldg., 215 NW., 3rd, Oklahoma City, OK 73102.

MC 106400 (Sub-116TA), filed December 14, 1978. Applicant: KAW TRANSPORT COMPANY, P.O. Box 12628, North Kansas City, MO 64116. Representative: Harold D. Holwick, P.O. Box 12628, North Kansas City, MO 64116. *Hydrofluoric acid,* (in bulk, in tank vehicles), From St. Joseph,

MO., to LaPorte, IN., St. Paul, MN, and Fulton, NY., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Amchem Products, Inc., Ambler, PA 19002. SEND PROTESTS TO: Vernon V. Coble DS, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 107010 (Sub-66TA), filed December 26, 1978. Applicant: BULK CARRIERS, INC., P.O. Box 423, Auburn, NE 68305. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Propane,* (in bulk, in tank vehicles), From the Mid America Pipeline Terminal at or near Greenwood, NE to points in SD, for 180 days. SUPPORTING SHIPPER(S): Farmland Industries, Inc., Charles D. Rosas, Supervisor-Transportation Service, 3315 North Oak Trafficway, Kansas City, MO 64116. SEND PROTESTS TO: Max H. Johnston DS, 285 Federal Building & U.S. Courthouse, 100 Centennial Mall North, Lincoln, NE 68508.

MC 109238 (Sub-7TA), filed December 29, 1978. Applicant: DeHART MOTOR LINES, INC., P.O. Box 368, Highway 64-70 West, Conover, NC 28613. Representative: Joe W. Flowers, P.O. Box 368, Conover NC 28613, *Plastic materials and articles,* (except in bulk, in tank vehicles), from New York, NY and its commercial zone as defined by the Commission to Spartanburg, Roebuck, Anderson, Smoaks and Greenville, SC, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIP>PER(S): Cardan Plastic Products Corp., 181 S. Franklin Avenue, Valley Stream, NY. SEND PROTESTS TO: Terrell Price DS, 800 Briar Creek Road, Room CC 516, Mart Office Building, Charlotte, NC 28205.

MC 109238 (Sub-8TA), filed December 29, 1978. Applicant: DeHART MOTOR LINES, INC., Highway 64-70 West, Conover, NC 28613. Representative: Joe W. Flowers, Highway 64-70 West, Conover, NC 28613. *Merchandise* such as dealt in by wholesale and retail department store chains, from New York, NY to Raleigh and Fuquay Varina, NC, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): (1) Super Dollar Stores, Inc., P.O. Box 12398, Research Triangle Park, NC 27709. (2) Variety Wholesalers, Inc., P.O. Box 12398, Research Triangle Park, NC 27709. SEND PROTESTS TO: Terrell Price DS, 800 Briar Creek Road, Room CC 516, Mart Office Building, Charlotte, NC 28205.

MC 109238 (Sub-9TA), filed December 29, 1978. Applicant: DeHART MOTOR LINES, INC., Highway 64-70 West, Conover, NC 28613. Representative: Joe W. Flowers, Highway 64-70 West, Conover, NC 28613. *Floor coverings and related articles* used in the installation and maintenance thereof, in packages, between Vails Gate, NY and Raleigh, NC, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): R. L. Dresser, Inc., P.O. Box 17083, Raleigh, NC 27619. SEND PROTESTS TO: Terrell Price DS, 800 Briar Creek Road, Room CC 516, Mart Office Building, Charlotte, NC 28205.

MC 109238 (Sub-10TA), filed December 29, 1978. Applicant: DeHART MOTOR LINES, INC., Highway 64-70 West, Conover, NC 28613. Representative: Joe W. Flowers, Highway 64-70 West, Conover, NC 28613. *Compounds, cleaning, scouring, washing, bleaching, buffing or polishing, soap base, deodorizing, disinfecting, fabric or textile softening, and rust preventive lube oils and greases, plastic bags NOI, filters NOI, and paints, stains or varnishes in strait or mixed shipments T/L,* from Avenel, NJ to points in NC and SC, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Economics Laboratory, Inc., 235 Blair Road, Avenel, NJ 07001. SEND PROTESTS TO: Terrell Price DS, 800 Briar Road, Room CC 516, Mart Office Building, Charlotte, NC 28205.

MC 109692 (Sub-77TA), filed December 12, 1978. Applicant: GRAIN BELT TRANSPORTATION COMPANY, Route 13, Kansas City, MO 64161. Representative: Warren H. Sapp, P.O. Box 16047, Kansas City, MO 64112. *Hides,* from the facilities of Iowa Beef Processors, Inc. at or near Dakota City, NE, Denison, IA, and Emporia, KS to points in IL, IN, KY, MI, MN, MO, TN, TX, WV and WI, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Iowa Beef Processors, Inc., Dakota City, NE 68731. SEND PROTESTS TO: Vernon V. Coble DS, ICC, 600 Federal Bldg., 911 Walnut Street, Kansas City, MO 64106.

MC 112304 (Sub-161TA), filed December 28, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: Fred Schmits (Same address as applicant). *Aluminum and aluminum articles,* from the facilities of Kaiser Aluminum & Chemical Corporation at or near Ravenswood, WV, to points in and east of Minnesota, Iowa, Missouri, Kansas, Oklahoma, and TX, for 180 days. SUPPORTING SHIPPER(S): Kaiser Aluminum & Chemical Corporation, R. E. Nowell, Manager, Transportation Services, P.O. Box 98, Ravenswood, WV 26164. SEND PROTESTS TO: Paul J. Lowry DS, ICC, 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

MC 113908 (Sub-457TA), filed December 15, 1978. Applicant: ERICKSON TRANSPORT, P.O. Box 3180, Springfield, MD 65804. Representative: Bill Whitehead (Same address as applicant). *Wine, wine products, wine spirits high proof,* (in bulk), from points in CA., to Altus, AR, and the commerical zone thereof, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Wiederkehr Wine Cellars, Inc., Altus, AR. SEND PROTESTS TO: John V. Barry DS, ICC, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 114211 (Sub-389TA), filed December 6, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, 210 Beck Street, Waterloo, IA 50704. Representative: Adelor J. Warren, P.O. Box 420, Waterloo, IA 50704. *Irrigation systems,* from Denver, CO, to points in the U.S., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Aquanomic Irrigation Systems, 4905 Nome Street, Denver, CO 80239. SEND PROTESTS TO: Herbert W. Allen DS, ICC, 518 Federal Building, Des Moines, IA 50309.

MC 114735 (Sub-94TA), filed December 27, 1978. Applicant: WYNNE TRANSPORT SERVICE, INC., 2222 North 11th Street, Omaha, NE 68110. Representative: Donald F. Swerczek (Same address as applicant). *Propane,* (in bulk, in tank vehicles), from the Mid America Pipeline Terminal at or near Greenwood, NE, to points in SD, for 180 days. SUPPORTING SHIPPER(S): Farmland Industries, Inc., Charles D. Rosas, Supervisor-Transportation Service, 3315 North Oak Trafficway, Kansas City, MO 64116. SEND PROTESTS TO: Carroll Russell DS, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 117119 (Sub-708TA), filed December 14, 1978. Applicant: Willis Shaw Frozen Express, Inc., P.O. Box 188, Elm Springs, AR 72728. Representative: M. M. Geffon, P.O. Box 156, Mt. Laurel, NJ 06054. *Frozen Foods* (except in bulk) from Wethersfield and Hartford, CT to Anaheim, CA; Dallas, TX; and Bonner Springs, KS for 180 days. SUPPORTING SHIPPER(S): Foodways National, Inc., 1000 Silas Deane Highway, Wethersfield, CT 06109. SEND PROTESTS TO: William H. Land, Jr., DS, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, AR 72201.

MC 118535 (Sub-129TA), filed December 26, 1978. Applicant: TIONA TRUCK LINE, INC., 111 South Prospect, Butler, MO 64730. Representative: Tom Ventura, 111 South Prospect, Butler, MO 64730. *Canned and preserved foodstuffs,* from the facilities of Heinz U.S.A., Division of H. J. Heinz

Co., at or near Iowa City, IA, to points in MO, and points in IL, on and south of Interstate 70, and restricted to traffic originating at the named facilities and destined to the named states, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Heinz U.S.A., Div. of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230. SEND PROTESTS TO: John V. Barry DS, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 119800 (Sub-1 TA), filed December 8, 1978. Applicant: McELROY TRANSPORT CO., INC., P.O. Box 742, Wynnewood, OK 73098. Representative: T. M. Brown, P.O. Box 1540, Edmond, OK 73034. *Fuel oil,* in bulk, in tank vehicles, from Fort Worth, TX, to the facilities of Pennsylvania Glass Sand Corporation at or near Mill Creek, OK for 180 days, an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Pennsylvania Glass Sand Corporation, Berkley Springs, WV 25411. Send protests to Martha A. Powell, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 121060 (Sub-83 TA), filed December 28, 1978. Applicant: ARROW TRUCK LINES, INC., 1220 West 3rd Street, P.O. Box 1416, Birmingham, AL 35201. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. *Aluminum and aluminum articles,* from Belton, SC, to points in Pennslyvania, New York, New Jersey, Indiana, Ohio, Michigan, Alabama, and GA., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Wells Aluminum Southeast, Inc., P.O. Box 627, Belton, SC 29627. SEND PROTESTS TO: Mabel E. Holston, Transp. Asst., ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 124141 (Sub-8 TA), filed December 28, 1978. Applicant: JULIAN MARTIN, INC., Highway 25 South, P.O. Box 3348, Batesville, Arkansas 72501. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Boulevard, McLean, Virginia 22101. *Rough dimension stock lumber,* in vehicles equipped with temperature control, from the facilities of Batesville Casket Co., Inc. at Vicksburg, MS, to the facilities of Batesville Casket Co., Inc. at Nashua, NH, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER: Batesville Casket Co., Inc., Rt. 6, Box 42, Vicksburg, MS 39180. SEND PROTESTS TO: William H. Land, Jr., DS, 3108 Federal Building, Little Rock, AR 72201.

MC 124673 (Sub-27 TA), filed December 27, 1978. Applicant: FEED TRANSPORTS, INC., P.O. Box 2167, Pullman Road, South, Amarillo, TX 79105. Representative: Gail P. Johnson, P.O. Box 2167, Amarillo, TX 79105. *Animal feed ingredients,* (in bulk and in bags), from Lubbock, TX., to points in Arkansas, Kansas, Missouri, and NE., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Progressive Grain Processing Corp., 711 E. 46th Street, Lubbock, TX. SEND PROTESTS TO: Haskell E. Ballard DS, ICC, Box F-13206 Federal Building, Amarillo, TX 79101.

MC 125335 (Sub-45TA), filed December 15, 1978. Applicant: GOOD-WAY, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, PETERSON, BOWMAN, LARSEN & SWANSON, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. (1) *Petroleum, petroleum products, vehicle body sealer and/or sound deadener compounds* (except in bulk, in tank vehicles), and filters from points in Warren County, MS, to points in FL, GA, IL, IA, KS, MO, NE, NJ, NY, OK, PA, TN, TX, and WI; and (2) petroleum, petroleum products, vehicle body sealer and/or sound deadener compounds, filters, materials, supplies, and equipment as are used in the manufacture, sale, and distribution of the commodities named in part (1), above, (except in bulk, in tank vehicles), from points in IL, NY, and PA to points to Warren County, MS. Restricted in parts (1) and (2), above, to shipments originating at or destined to the facilities of Quaker State Oil Refining Corporation, located in Warren County, MS, for 180 days. Supporting shipper: Quaker State Oil Refining Corporation, J. D. Campbell, General Traffic Manager, P.O. Box 989, Oil City, PA 16301. Send protests to: Charles Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Harrisburg, PA 17108.

MC 125335 (Sub-46TA), filed December 15, 1978. Applicant: GOOD-WAY, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, PETERSON, BOWMAN, LARSEN & SWANSON, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. *Meats, meat products, meat by-products, and articles distributed by meat packinghouses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Iowa Beef Processors, Inc., at or near Dakota City, NE, and Sioux City, IA, to points in the States of CT, DE, ME, MD, MA, NH, NY, NJ, PA, RI, VT, VA, WV, and DC, for 180 days. Supporting shipper: Iowa Beef Processors, Inc., Glen C. Echelbarger, Rate Analyst, P.O. Box 515, Dakota City, NE 68731. Send protests to: Charles Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Harrisburg, PA 17108.

MC 133219 (Sub-25TA), filed December 14, 1978. Applicant: NEBRASKA BULK TRANSPORTS, INC., P.O. Box 215, Bennet, NE 68317. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Soybean oil,* in bulk, in tank vehicles, from the facilities of Cargill, Inc. at or near Wichita, KS, to Port of Catoosa, OK. Restricted to commodities having a subsequent movement by water, for 180 days. An underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Cargill, Inc., P.O. Box 2696, Wichita, KS 67214. Send protests to: Max H. Johnston, District Supervisor, Interstate Commerce Commission, 285 Federal Building, 100 Centennial Mall North, Lincoln, NE 68508.

MC 135797 (Sub-170TA), filed December 28, 1978. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 200, Lowell, AR 72745. Representative: Paul R. Bergant, Esq., P.O. Box 200, Lowell, AR 72745. *Tools, forgings, tool boxes and packing containers,* (1) Between East Windsor, CT; Springdale, AR and Gastonia, NC; and (2) From East Windsor, CT to Glen Burnie, MD and (3) From Colorado Springs, CO to East Windsor, CT; Springdale, AR; and Gastonia, NC. Restricted to traffic originating at or destined to the facilities of the Moore Company, Inc., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): The Moore Company, Inc., Thompson Rd., East Windsor, CT 06088. SEND PROTESTS TO: William H. Land, Jr., DS, ICC, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, AR 72201.

MC 138686 (Sub-4TA), filed December 28, 1978. Applicant: L.C.W. TRUCKING, INC., P.O. Box 718, 119 East Chavez Street, Edinburg, TX 78539. Representative: L. C. Waller, P.O. Box 718, Edinburg, TX 78539. *Doors, door frames and mouldings,* from ports of entry on the United States-Mexico Border at or near El Paso, TX, restricted to traffic moving in foreign commerce destined to San Antonio, Houston, and Pasadena, TX, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting Shipper(s): Ponderosa, Produce, Inc., P.O. Box 5231, El Paso, TX 79953. Send protests to: Richard H. Dawkins DS, ICC, Room B-400 Federal Building, 727 E. Durango Street, San Antonio, TX 78206.

MC 138875 (Sub-121TA), filed December 15, 1978. Applicant: SHOEMAKER TRUCKING COMPANY, an Idaho corporation, 11900 Franklin

Road, Boise, Idaho 83705. Representative: F. L. Sigloh (as above). *Laminated wooden beams,* from the facilities of Glu-Laminated Wood Systems, Inc., located at or near Magna, UT to points in AZ, CA and NV., for 180 days. Supporting Shipper(s): John T. Lever, Jr., President, Glu-Laminated Wood Systems, Inc., 3909 South 8000 West, Magna, UT 84044. Send protests to: Barney L. Hardin, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 110, 1471 Shoreline Drive, Boise, Idaho 83706.

MC 138882 (Sub-184 TA), filed December 27, 1978. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Canned and bottled foodstuffs,* from the facilities of Bruce Foods Corp., at Cade and Lozes, LA., to points in Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee and MS., from the facilities of Bruce Foods Corp., at Wilson, NC, to points in Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee, Mississippi, and LA., for 180 days. An underlying ETA seeks up to 90 days authority. Supporting Shipper(s): Bruce Foods Corporation, P.O. Drawer 1030, New Iberia, LA 70560. Send protests to: Mabel E. Holston Transp. Asst., ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 140193 (Sub-3TA), filed December 12, 1978. Applicant: RICH GRANT, INC., 910 West 24th Street, Ogden, UT 84401. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. Authority sought to operate as a *contract carrier* by motor vehicle, over irregular routes, transporting: *cheese, cheese products and synthetic cheese,* from MN and WI to the facilities of L. D. Schreiber Cheese Company, Inc., at or near Logan, UT, under a continuing contract or contracts with L. D. Schreiber Cheese Company, Inc., for 180 days. Supporting shipper: L. D. Schreiber Cheese Co., Inc., 425 Pine St., P.O. Box 610, Green Bay, WI 54305. Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State Street, Salt Lake City, UT 84138. An underlying ETA seeks up to 90 days authority.

MC 140563 (Sub-17TA), filed December 21, 1978. Applicant: W. T. MYLES TRANSPORTATION CO., P.O. Box 321, Conley, GA 30027. Applicant's representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. (1) *Fibrous glass products and materials; mineral wool, mineral wool products and materials insulated air ducts, insulating products and materials; glass fibre rovings, yarn and strands, glass fibre mats and mattings; flexible air ducts* (except commodities in bulk), and (2) *Materials, equipment and supplies* used in the manufacture of commodities named in (1) above, (except in bulk), between the facilities of CertainTeed Corporation located at or near Kansas City, KS, on the one hand, and, on the other, points in AL, AR, GA, IN, KY, LA, MD, MI, MS, NJ, NY, OH, PA, TN and VA, for 180 days. An underlying ETA seeking up to 90 days of operating authority. Supporting shipper: CertainTeed Corporation, Insulation Group, P.O. Box 860, Valley Forge, PA 19482. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street, N.W., Room 300, Atlanta, GA 30309.

MC 141084 (Sub-12TA), filed October 4, 1978, and published in the FEDERAL REGISTER issue of November 21, 1978, and republished as corrected this issue. Applicant: NATIONAL FREIGHT LINES, INC., 13032 Arroyo Avenue, P.O. Box 1031, San Fernando, CA 91341. Representative: Bill D. Gardner, 13023 Arroyo, P.O. Box 1031, San Fernando, CA 91341. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Railway car parts and accessories,* from Chicago, IL; Portage, IN; St. Louis, MO; Buffalo, DePew, Lackawanna and Watertown, NY; Columbus, OH; Wilmerding, PA; Fort Worth and Longview, TX., to Portland, OR., under a continuing contract, or contracts, with FMC Corporation, for 180 days. Supporting shipper(s): FMC Corporation, 4700 N.W. Front Avenue, Portland, Oreg. 97208. Send protests to: Irene Carlos Transp. Asst., ICC, 300 N. Los Angeles Street, Room 1321, Los Angeles, CA 90012. The purpose of this republication is to include Fort Worth and Longview, TX in the origin states and add PA., to Wilmerding, which was omitted previously in the territorial description.

MC 141273 (Sub-6TA), filed December 14, 1978. Applicant: CARL NEESAM, 228 W. Chestnut Street, Pardeeville, Wisconsin 53954. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison, Wisconsin 53705. *Feed* and *feed ingredients, grain, soybean* and *seed products* and *by-products,* except commodities in bulk in tank vehicles, from the facilities of Archer Daniels Midland Company, at or near Red Wing, MN, to points in IN for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Archer Daniels Midland Company, P.O. Box 1470, Decatur, Illinois 62525. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 142059 (Sub-57), filed December 27, 1978. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Road, Joliet, Illinois 60436. Representative: Jack Riley, 1830 Mound Road, Joliet, Illinois 60436. *Lumber,* from the ports of entry along the International Boundary line between the United States and Canada located on the Detroit, St. Clair and Niagra Rivers to points in IL, IN, KY, MD, MI, NY, OH, PA, TN, VA, WV and DC. Restricted to transportation of shipments originating at the facilities of Green Forest Lumber Ltd. at Chatham and Windsor, Ontario, Canada for 180 days. Supporting shipper: Green Forest Lumber Ltd., 250 Merton Street, Toronto, Ontario, Canada. Send protests to: Mrs. Lois Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Chicago, Illinois 60604.

MC 142484 (Sub-5TA), filed December 27, 1978. Applicant: STRINGFELLOW TRANSPORTATION COMPANY, INC., 724 Third Avenue North, Birmingham, AL 35203. Representative: Robert E. Tate, P.O. Box 517, Evergeen, AL 36401. *Authority sought to operate as a contract carrier,* by motor vehicle, over irregular routes, transporting: *Plastic pipe and fittings,* from Henderson, KY, to points in Illinois, Indiana, Michigan and OH, under a continuing contract or contracts, with Cresline Plastic Pipe Co., Inc., for 180 days. SUPPORTING SHIPPER(S): Cresline Plastic Pipe Co., Inc., 851 South U.S. 41, Henderson, KY 42420. SEND PROTESTS TO: Mabel E. Holston, Transp. Asst., ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 142559 (Sub-75TA), filed December 14, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, Ohio 44114. Representative: John P. McMahon, George, Greek, King, McMahon & McConnaughey, 100 East Broad Street, Columbus, Ohio 43215. *Television picture tubes, parts, materials, equipment* and *supplies* used in the manufacture thereof, except commodities in bulk, from the Commercial Zone of Scranton, PA to the Commercial Zones of Chicago and Evanston, IL, for 180 days. SUPPORTING SHIPPER(S): RCA Corporation, Route 38, Cherry Hill, NJ 08101. SEND PROTESTS TO: Mary Wehner, DS, ICC, 731 Federal Office Building,

1240 East Ninth Street, Cleveland, OH 44199.

MC 142559 (Sub-80TA), filed December 14, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, Ohio 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, Ohio 43215. *Soap and cleaning compounds; fuel oil conditioners; ice control compounds; specialty cleaners and chemicals; automotive cleaners and waxes; fuel and oil additives; and household deodorants and disinfectants (except commodities in bulk); and (2) materials, equipment and supplies used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk)* between Barberton, OH, on the one hand, and, on the other, points in the United States (except AK and HI), for 180 days. SUPPORTING SHIPPER(S): Malco, Products, 361 Fairview Avenue, Barberton, OH. SEND PROTESTS TO: Mary Wehner, DS, ICC, 731 Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 143179 (Sub-10TA), filed November 24, 1978. Applicant: CNM CONTRACT CARRIERS, INC., 400 North 10th Street, Council Bluffs, IA 51501. Representative: Foster L. Kent (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic foam products and fiberbond laminated to plastic foam*, from Minneapolis, MN to Chicago, IL; Kokomo, IN; Minot, ND; Oklahoma City and Weatherford, OK; Omaha, NE; and points in WI., under a continuing contract or contracts, with American Converters, Inc., and Federal Package Division, for 180 days. SUPPORTING SHIPPER(S): (1) Jay Markstrom, Secretary/Treasurer, American Converters, Inc., 2705 University Avenue, N.E., Minneapolis, MN 55418. (2) James A. Thole, National Accounts Manager, Lydall, Inc., Federal Package Division, 3401 Nevada Avenue N, Minneapolis, MN 55427. SEND PROTESTS TO: Carroll Russell, DS, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 144726 (Sub-2TA), filed December 15, 1978. Applicant: K.K.W. TRUCKING, INC., 516 West 140th Street, Gardena, CA 90243. Representative: David R. Parker, 717 17th Street, Suite 2600, Denver, CO 80202. *New furniture and commodities which are dealt in by department stores*, from points in Los Angeles, Orange, San Bernardino and Riverside Counties, CA to Phoenix, Tucson and Yuma, AZ; and Las Vegas and Reno, NV, for 180 days. Restriction: Restricted to shipments originating at or destined to the facilities of J. C. Penney Company, Inc. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper; J. C. Penney Company, Inc., 1301 Avenue of the Americas, New York, NY 10019. Send protests to: Ms. Irene Carlos, Transportation Assistant, Interstate Commerce Commission, 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 144827 (Sub-12TA), filed October 27, 1978 and published in the FEDERAL REGISTER issue of December 5, 1978, and republished as corrected this issue. Applicant: DELTA MOTOR FREIGHT, INC., 2877 Farrisview, Memphis, TN 38118. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Air conditioning and heating units* (except commodities which because of size or weight require the use of special equipment), from Davidson County, TN, to points in AL, AR, CT, IL, IN, MI, LA, MS, NJ, NY, OH, OK, PA, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Heil Quaker Corporation, 1714 Heil Quaker Blvd., La Vergne, TN 37086. Send protests to: Floyd A. Johnson, DS, ICC, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103. The purpose of this republication is to include LA, in the territorial description which was omitted previously in the summary.

MC 144897 (Sub-2TA), filed December 26, 1978. Applicant: SUN FREIGHTWAYS, INC., 500 East 50th Street, Lubbock, TX 79417. Representative: John C. Sims, P.O. Box 10236, Lubbock, TX 79408. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Amarillo, TX and Clovis, NM: From Amarillo, TX, over U.S. Highway 87 to Canyon, TX, then over U.S. Highway 60 to Clovis, NM and return, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): There are approximately (36) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Haskell E. Ballard DS, ICC, Box F-13206 Federal Building, Washington, DC 20423.

MC 145152 (Sub-29TA), filed December 28, 1978. Applicant: BIG THREE TRANSPORTATION, INC., P.O. Box 706, Springdale, AR 72764. Representative: Don Garrison, P.O. Box 159, Rogers, AR 72756. *Canned goods*, from the facilities of Oconomowoc Canning Company, at or near Poynette, WI, to points in Alabama, Arkansas, California, Colorado, Florida, Georgia, Kentucky, Mississippi, North Carolina, Ohio, Pennsylvania, South Carolina and TN; for 180 days. Supporting shipper(s): Oconomowoc Canning Company, Kent Road, Poynette, WI 53955. Send protests to: William H. Land, Jr., DS, ICC, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 145648 (Sub-1TA), filed November 13, 1978. Applicant: DUDLEY TRUCKING, INC., P.O. Box 1651, Tacoma, WA 98401. Representative: Michael B. Crutcher, 2000 IBM Building, Seattle, WA 98101. *Iron and steel articles and pipe*, Between Portland, OR and Missoula, MT., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Atlas Iron Works, Inc., 4600 N.E., 138th, Portland, OR 97230. SEND PROTESTS TO: Hugh H. Chaffee DS, ICC, 858 Federal Building, 915 2nd Avenue, Seattle, WA 98174.

MC 145832 (Sub-1TA), filed December 14, 1978. Applicant: INDUSTRIAL CONTAINER TRANSPORT, INC., 196 Industrial Road, P.O. Box 185, Leominster, MA 01453. Representative: David M. Marshall, Esq., Marshall & Marshall, 101 State Street, Suite 304, Springfield, MA 01103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *plastic and plastic articles, and supplies and materials* used in their manufacture and distribution (except in bulk), between the facilities of Plastican, Inc. located at or near Leominster, MA on the one hand, and, on the other, the District of Columbia, Athens, Atlanta, Cairo, Conyers, Decatur, Lithonia, Macon, Marietta, and Savannah, GA, Champagne and points in Cook and Du Page Counties, IL, Fort Wayne, Indianapolis, Terre Haute and Warsau, IN, Louisiana, KY, Canton, Charlotte, Greensboro, Raleigh, and Winston-Salem, NC, Akron, Barberton, Canton, Cincinnati, Cleveland, Columbus, Dayton, Middlefield, Oak Hill and Toledo, OH, Charleston, Columbia, Greenville, Simpsonville and Sumter, SC, Richmond and Winchester, VA, points in CT, DE, MD, MI on the lower peninsula, NH, NJ, NY, PA, RI, VT and WI east of the Wisconsin River and points in Dade, Pasco, Orange, Broward, Polk, Hillsborough, Brevard, Osceola, Indian River, Duval and St. Lucie Counties, FL under a continuing contract or contracts with Plastican, Inc. for 180 days. Supporting Shipper: Plastican, Inc., 196 Industrial Road, P.O. Box 1185, Leominster, MA 01453. Send protests to: David M.

Miller, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 338 Federal Bldg. and U.S. Courthouse, 436 Dwight St., Springfield, MA. 01103. ETA for 30 days plus 2 extensions was granted on December 11, 1978.

MC 145865 (Sub-1TA), December 27, 1978. Applicant: METONGA COMPANY, INC., 913 N. Hazeldell Avenue, Crandon, Wisconsin 54520. Representative: Nancy J. Johnson, Attorney, 4506 Regent Street, Suite 100, Madison, Wisconsin 53705: *Nitro carbo nitrate oxidizer*, in bags from the facilities of Atlas Powder Company located at or near White Pine, MI to the Town of Freedom, Outagamine County, WI for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Atlas Powder Company, Park Central III, 12700 Park Central Place, Suite 1700, Dallas, Texas 75251. Send Protests To: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

MC 145889 (Sub-1TA), December 15, 1978. Applicant: CRICKET EXPRESS, INC., P.O. Box 187, Hastings, NE 68901. Representative: Gailyn L. Larsen, Peterson, Bowman, Larsen & Swanson, 521 So. 14th Street, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Hides, skins and pieces thereof*, from the facilities of Dubuque Packing Company, at or near Mankato, KS, to the facilities of Hastings Hide, Inc., in Clay County, NE, for 180 days, an underlying ETA seeking up to 90 days operating authority. Supporting shipper: Hastings Hide, Inc., William E. James, President, P.O. Box 2008, Hastings, NE. Send protests to: Max Johnston, District Supervisor, Interstate Commerce Commission, 285 Federal Building and U.S. Court House, 100 Centennial Mall North, Lincoln, NE 68508.

By the Commission.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-3243 Filed 1-30-79; 8:45 am]

sunshine act meetings

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).

CONTENTS

	Items
Civil Aeronautics Board	1
Commodity Futures Trading Commission	2
Consumer Product Safety Commission	3, 4, 5, 6
Federal Communications Commission	7
Federal Energy Regulatory Commission	8
Federal Maritime Commission	9, 10
Federal Mine Safety and Health Review Commission	11
Foreign Claims Settlement Commission	12
National Transportation Safety Board	13
Nuclear Regulatory Commission	14
Railroad Retirement Board	15
Tennessee Valley Authority	16
United States Railway Commission	17

[6320-01-M]

[M-191 Amdt. 3]

CIVIL AERONAUTICS BOARD.

Notice of addition and closure of item to the January 24, 1979 agenda.

TIME AND DATE: 10 a.m., (after regular Board Meeting), January 24, 1979.

PLACE: Room 1011, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 14. Dockets 33887, 33984, and 34314, Joint Application of Pan American World Airways, Inc. and Saudi Arabian Airlines, Corp. for approval of a blocked space agreement; application of Saudi Arabian Airlines Corp. for issuance of a foreign air carrier permit; application of Saudi Arabian Airlines Corp. for an exemption from section 402 to permit it to inaugurate service between New York City and Dhahran, Saudi Arabia, on February 1, 1979, (memo 8431-A, BIA, OGC).

STATUS: Closed.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: On January 22 the Board received a letter from the Department of State giving its views on the foreign policy implications involved in the applications. Because the applicants wish to begin the proposed service on February 1 and because of the recency of the Departments letter, the following Board Members have voted that agency business requires the addition of Item 14 to the January 24, 1979 agenda, and that no earlier announcement of this addition was possible:

Chairman Marvin S. Cohen
Member Richard J. O'Melia
Member Elizabeth E. Bailey
Member Gloria Schaffer

This memo concerns strategy and positions that have taken and may be taken by the United States in negotiations with Saudi Arabia. Public disclosures, particularly to foreign governments, of opinions, evaluations, and strategies relating to the issues could seriously compromise the ability of the United States Delegation to achieve agreements which would be in the best interest of the United State. Accordingly, the following Members have voted that the meeting on this subject would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 5552b(c)(9)(B) and 14 CFR Section 310b.5(9)(B) and that any meeting on this item should be closed:

Chairman Marvin S. Cohen
Member Richard J. O'Melia
Member Elizabeth E. Bailey
Member Gloria Schaffer

PERSONS EXPECTED TO ATTEND

Board Members: Chairman Marvin S. Cohen; Member Richard J. O'Melia; Member Elizabeth E. Bailey; and Member Gloria Schaffer.

Assistants to Board Members: Mr. Sanford Rederer; Mr. David M. Kirstein; Mr. Stephen H. Lachter; and Mr. Elias Rodriguez.

Office of the Managing Director: Mr. John R. Hancock.

Bureau of International Affairs: Mr. Rosario J. Scibilia; Mr. David A. Levitt; and Mr. Donald L. Litton.

Office of the General Counsel: Mr. Philip J. Bakes, Jr., and Mr. Peter B. Schwarzkopf.

Bureau of Pricing and Domestic Aviation: Mr. Michael E. Levine and Ms. Barbara A. Clark.

Office of Economic Analysis: Mr. Robert H. Frank.

Bureau of Consumer Protection: Mr. Reuben B. Robertson and Ms. Patricia Kennedy.

Office of the Secretary: Mrs. Phyllis T. Kaylor; Ms. Deborah A. Lee; and Ms. Louise Patrick.

GENERAL COUNSEL CERTIFICATION

I certify that this meeting may be closed to the public under 5 U.S.C. 5552b(c)(9)(B) and 14 CFR Section 310b.5(9)(B) and that this meeting may be closed to public observation.

[S-197-79 Filed 1-29-79; 10:31 am]

[6351-01-M]

2

COMMODITY FUTURES TRADING COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 44, No. 19, Friday, January 26, 1979, p. 5565.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., January 30, 1979.

CHANGES IN THE MEETING: Delete from the agenda: Publication of Futures Prices by the Exchanges (Part 16).

[S-204-79 Filed 1-29-79; 1:11 pm]

[6355-01-M]

3

CONSUMER PRODUCT SAFETY COMMISSION.

TIME AND DATE: 10 a.m., Commission meeting, Wednesday, January 31, and 9:30 a.m., Thursday, February 1, 1979.

LOCATION: Third floor hearing room, 1111 18th Street NW., Washington, D.C.

REVISED AGENDA

STATUS: Open to the public.

ITEMS TO BE DISCUSSED: Mid-year report—The staff will present its mid-fiscal year report on CPSC priorities and activities, as set forth in the Commission's fiscal year 1979 operating plan.

(Agenda approved January 19, 1979. The Commission revised the times of the meetings as of January 26, 1979. The Wednesday meeting will begin at 10; the Thursday meeting will begin at 9:30.)

FOR ADDITIONAL INFORMATION:

Sheldon Butts, Assistant Secretary, 1111 18th Street NW., Washington, D.C. 20207, 202-634-7700.

[S-200-79 Filed 1-29-79; 12:37 pm]

[6355-01-M]

4

CONSUMER PRODUCT SAFETY COMMISSION.

DATE AND TIME: 10 a.m., Wednesday, February 7, 1979.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the public.

ITEMS TO BE DISCUSSED:

1. BRIEFING ON SUBSTANTIAL PRODUCT HAZARD PROCEDURES AND DELEGATION

The staff will brief the Commission on procedures it follows for handling possible substantial product hazards under section 15 of the Consumer Product Safety Act. The staff has recommended that it be allowed more authority to close routine matters, and has suggested changes in the procedures which would allow it to present industry-proposed corrective action plans to the Commission in a more timely manner. (Briefing previously scheduled for January 24.)

2. BRIEFING ON CELLULOSE INSULATION STANDARD (515D)

The staff will brief the Commission on proposed amendments which would amend the Interim Standard for Cellulose Insulation based on GSA standard HH-I-515C. The proposed amendments would include flame-resistance and corrosiveness requirements of GSA standard HH-I-515D. The Commission will meet to decide on the amendments February 12.

FOR ADDITIONAL INFORMATION:

Sheldon Butts, Assistant Secretary, 1111 18th M Street NW., Washington, D.C. 20207, 202-634-7700.

Agenda approved January 26, 1979.

[S-201-79 Filed 1-29-79; 12:37 pm]

[6355-01-M]

5

CONSUMER PRODUCT SAFETY COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, February 8, 1979.

LOCATION: Third floor hearing room, 1111 18th Street NW., Washington, D.C.

STATUS: Open to the public.

ITEM TO BE DISCUSSED: *Upholstered furniture flammability*—At this meeting, the staff will seek further guidance on upholstered furniture flammability.

FOR INFORMATION, CONTACT:

Sheldon Butts, Assistant Secretary, 1111 18th Street NW., Washington, D.C. 20207, 202-634-7700.

[S-202-79 Filed 1-29-79; 12:37 pm]

[6355-01-M]

6

CONSUMER PRODUCT SAFETY COMMISSION.

TIME AND DATE: 2 p.m., Monday, February 12, 1979.

LOCATION: Third floor hearing room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the public.

ITEM TO BE DISCUSSED: *Cellulose insulation standard (5150)*—The Commission will consider proposed amendments which would amend the Interim Standard for Cellulose Insulation based on GSA standard HH-I-515C. The proposed amendments would include flame-resistance and corrosiveness requirements of GSA standard HH-I-515D. The staff briefed the Commission on the amendments at the February 7 Briefing.

FOR INFORMATION, CONTACT:

Sheldon Butts, Assistant Secretary, 1111 18th Street NW., Washington, D.C. 20207, 202-634-7700.

Agenda approved January 26, 1979.

[S-203-79 Filed 1-29-79; 12:37 pm]

[6712-01-M]

7

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, January 25, 1979.

PLACE: Room 856, 1919 M Street N.W., Washington, D.C.

STATUS: Special open commission meeting.

CHANGES IN THE MEETING: The following items have been deleted:

AGENDA, ITEM NUMBER, AND SUBJECT

Common Carrier—2—Provision of domestic facilities to International Record Carriers by A.T. & T. (CC Docket No. 21499).

Common Carrier—4—Application of French Telegraph Cable Co. seeking authority to establish facilities for the provision of its authorized international services from the gateways of San Francisco and Washington, D.C., in addition to its New York gateway.

Additional information concerning these items may be obtained from the FCC Public Information Office, telephone number 202-632-7260.

Issued: January 25, 1979.

[S-199-79 Filed 1-29-79; 10:13 am]

[6740-02-M]

8

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published January 29, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., January 31, 1979.

CHANGE IN THE MEETING: The following items have been added:

ITEM NUMBER, DOCKET NUMBER AND COMPANY

CI-4. RI78-18, Natural Gas Pipeline Co. of America.

M-2. RM79- , certain sales of natural gas by Intrastate Pipelines.

M-3. Interim rule on section 314 of NGPA, offers and right of first refusal.

M-4. RM79- , treatment of certain production related costs for gas to be transported through the Alaska Natural Gas Transportation System.

KENNETH F. PLUMB, *Secretary.*

[S-198-79 Filed 1-29-79; 10:13 am]

[6730-01-M]

9

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 25, 1979, 44 FR 5254.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., January 31, 1979.

CHANGE IN THE MEETING: Addition of the following item to the open session:

6. Trailer Marine Transport Corporation, FMC—F No. 5, and Puerto Rico Maritime Shipping Authority, FMC—F No. 7—Reduced Rates on Bakery Goods and Furniture From South Atlantic Ports to Puerto Rico.

[S-211-79 Filed 1-29-79; 3:08 pm]

[6730—1-M]

10

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 24, 1979, 44 FR 5056.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:30 a.m., January 29, 1979.

CHANGE IN THE MEETING: Change in the status from open to partially open and partially closed.

[S-210-79 Filed 1-29-79; 3:08 pm]

[6735-01-M]

11

JANUARY 29, 1979.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., February 1, 1979.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hold oral argument on the following proceeding in addition to those proceedings cited in the January 24, 1979 notice:

Inland Steel Coal Co. v. Secretary of Labor, Mine Safety and Health Administrator, Docket No. IBMA 77-66, VINC 77-164.

It was determined by unanimous vote of the Commissioners that Commission business required that this matter be added and that no earlier announcement of this action was possible.

CONTACT PERSON FOR MORE INFORMATION:

Joanne Kelley, 202-653-5632.

[S-208-79 Filed 1-29-79; 2:47 pm]

[6770-01-M]

12

[E.C.S.C. Meeting Notice No. 1-79]

FOREIGN CLAIMS SETTLEMENT COMMISSION.

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE, TIME, AND SUBJECT MATTER

Tuesday, February 6, 1979 at 10:30 a.m.—Consideration of decisions involving claims of American Citizens against the German Democratic Republic.

Wednesday, February 7, 1979 at 10:30 a.m.—Canceled.

Wednesday, February 14, 1979 at 10:30 a.m.—Consideration of decisions involving claims of American Citizens against the German Democratic Republic.

Wednesday, February 21, 1979 at 10:30 a.m.—Consideration of decisions involving claims of American Citizens against the German Democratic Republic.

Wednesday, February 28, 1979 at 10:30 a.m.—Consideration of decisions involving claims of American Citizens against the German Democratic Republic.

Monday, February 26, 1979, at 2:30 p.m.—Oral hearings on objections to decisions issued under the German Democratic Republic Claims Program: G-0200—Estate of Helen Dietrich, deceased, Roy Dietrich, Executor and G-0510—Elsa Frieda Conklin.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111-20th Street, N.W.; Washington, D.C. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Executive Director, Foreign Claims Settlement Commission, 1111-20th Street, N.W., Washington, D.C. 20579. Telephone: 202-653-6155.

Dated at Washington, D.C., on January 24, 1979.

FRANCIS T. MASTERSON,
Executive Director.

[S-206-79 Filed 1-29-79; 2:31 pm]

[4910-58-M]

13

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Wednesday, February 7, 1979.

PLACE: NTSB board room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: Open.

MATTER TO BE CONSIDERED: *Discussion* of the responsibilities of the Chairman under the Independent Safety Board Act with respect to personnel, administrative, and resource matters.

CONTACT PERSON FOR MORE INFORMATION:

Sharon Flemming, 202-472-6022.

[S-209-79 Filed 1-29-79; 3:01 pm]

[7590-01-M]

14

NUCLEAR REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

TIME AND DATE: January 29 and February 1, 1979.

PLACE: Commissioners' conference room, 1717 H Street NW., Washington, D.C.

STATUS: Open (changes).

MATTERS TO BE CONSIDERED:

Monday, January 29:

3 p.m.: 1. The item titled discussion of decision in S-3 rulemaking (approximately 1½ hours, public meeting), has been *postponed* to Thursday, February 1 at 2 p.m. It is replaced by discussion of proposed authorization testimony (approximately 1½ hours, public meeting) (Continued from January 25).

Thursday, February 1

2 p.m.: 1. The item titled discussion of proposed authorization testimony (approximately 1½ hours, public meeting), is *replaced* by the meeting titled discussion of decision in S-3 rulemaking (approximately 1½ hours, public meeting) which was postponed from January 29.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee 202-634-1410.

ROGER M. TWEED,
Office of the Secretary.

[S-207-79 Filed 1-29-79; 2:35 pm]

[7905-01-M]

15

RAILROAD RETIREMENT BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 4556, January 22, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., January 30, 1979.

CHANGES IN THE MEETING: Additional items to be considered at closed meeting:

(7) Appeal of Howard D. Farley under the Railroad Unemployment Insurance Act.

(8) Appeal of John S. Gaul under the Railroad Unemployment Insurance Act.

(9) Appeal from referee's denial of disability annuity application, Robert M. Jones.

[S-196-79; Filed 1-29-79; 10:31 am]

[8120-01-M]

16

TENNESSEE VALLEY AUTHORITY.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 5798, January 29, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m., Wednesday, January 31, 1979.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: Conference room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tenn.

STATUS: Open.

CHANGES IN MATTERS TO BE CONSIDERED: The following item is added to the previously announced agenda:

A—PERSONNEL ACTIONS.

3. Resolution relating to arbitrators' decisions concerning pay and frings benefits for salary policy employees resulting from the twenty-seventh annual salary negotiations.

CONTACT PERSON FOR MORE INFORMATION:

Lee Sheppeard, Assistant Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-566-1401.

SUPPLEMENTARY INFORMATION:

TVA BOARD ACTION

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting be changed to include the additional item shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below.

Approved:

S. DAVID FREEMAN,
RICHARD M. FREEMAN.

Disapproved:————————.

JANUARY 26, 1979.

[S-195-79 Filed 1-29-79; 10:13 am]

[8240-01-M]

17

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: 9 a.m., February 1, 1979.

PLACE: Board room, room 2-500, fifth floor, 955 L'Enfant Plaza North, S.W., Washington, D.C. 20595.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 44, No. 19, page 5568, Friday, January 26, 1979.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

CHANGES IN THE MEETING ARE AS FOLLOWS:

Portions Closed To the Public (9 a.m.)

1. Review of Delaware and Hudson Railway Co. proprietary and financial information for monitoring and investment purposes.
2. Litigation report.
3. Review of ConRail proprietary and financial information for monitoring and investment purposes.
4. Consideration of internal personnel matters.

Portions Open To the Public (1 p.m.)

5. Approval of minutes of the January 4, 1979 Board of Directors meeting and the December 15, 1978 meeting of the Executive Committee of the Board of Directors.
6. Annual report.
7. Status of joint USRA/NERCOM study.
8. Status of ConRail alternatives social economic impact studies.
9. Consideration of ConRail request for waiver to financing agreement for merger of Raritan River into ConRail.
10. Consideration of ConRail drawdown request for February 1979.
11. Consideration of D. & H. requests.
12. Contract actions (extensions and approvals).

CONTACT PERSON FOR MORE INFORMATION:

Alex Bilanow, 202-426-4250.

[S-205-79 Filed 1-29-79; 2:50 pm]

Federal Register

WEDNESDAY, JANUARY 31, 1979
PART II

ENVIRONMENTAL PROTECTION AGENCY

■

PRIMARY NONFERROUS SMELTER ORDERS

Proposal of National Rules

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 57]

[FRL 1000-5]

PRIMARY NONFERROUS SMELTER ORDERS

Proposal of National Rules

AGENCY: U.S. Environemntal Protection Agency.

ACTION: Proposed rules.

SUMMARY: The rules proposed today would establish the substantive requirements of initial primary nonferrous smelter orders (NSOs) issued under new section 119 of the Clean Air Act and the procedures to be used in issuing those NSOs. Under section 119, NSOs may be granted to eligible smelters by states, with EPA approval, or by EPA. Any smelter receiving an NSO is permitted to defer compliance with the sulfur dioxide emission limitation to which it is subject under an applicable state implementation plan (SIP). Initial NSOs may extend through January 1, 1983; second NSOs, extending through January 1, 1988, may also subsequently be granted, but are not covered by this proposal.

The NSO program that would be established by the proposed rules consists of several elements. First, the rules specify the criteria that the Administrator will use to decide whether a smelter is eligible for an NSO. Under the proposal, a smelter would be found eligible if the Administrator determined, based on the financial information submitted as part of the owner's application, that the smelter could not afford the equipment which would allow it to meet its SIP emission limit. Second, the rules provide for the establishment of certain interim requirements to ensure that the smelter's emissions will not result in violations of the national ambient air quality standards (NAAQS) for sulfur dioxide (SO_2). These requirements include the use of dispersion-dependent techniques (tall stacks and supplementary control systems), the evaluation and control of fugitive emissions, the assumption of legal liability by a smelter for violations of the NAAQS for sulfur dioxide in the areas affected by its emissions, and related monitoring and reporting requirements. The rules also limit the smelter's total sulfur dioxide emissions by requiring the efficient use of an interim level of continuous emission reduction technology, and establish procedures and criteria for a waiver of that requirement for any smelters now without such controls which would be forced to close by the imposition of the interim control requirement.

Smelters receiving NSOs would also be required to conduct or participate in research and development projects designed to develop improved means for meeting SIP requirements. Finally, the regulations would provide for the temporary suspension of SIP requirements during the processing of timely NSO applications.

DATES: Public comment is invited. Written public comments should be postmarked no later than April 1, 1979. Those who wish to make oral comments at the public hearings should, at least ten days before the hearing, contact Ms. Judith Larsen at (202) 755-2583.

Informal public hearings will be held on these proposed rules on March 6 and 7, 1979, in Tucson, Arizona; March 9, 1979, in Seattle, Washington; and on March 15, 1979, in Arlington, Virginia.

The record of each public hearing will be held open for thirty days following the completion of that hearing for submission of rebuttal and supplementary information. Interested persons are reminded that section 307(d)(7)(B) of the Act provides that objections to proposed rules must be raised with reasonable specificity by public comments for those objections to be cognizable during judicial review. In the view of EPA, this requires comments of a technical nature to be accompanied by sufficiently detailed supporting documentation to permit the Agency's technical staff to evaluate the comments in detail. This is particularly important where the information necessary to evaluate the comments properly is in the control of the commenters. Smelter owners and others are therefore encouraged to submit any detailed analyses of technical issues they believe may assist EPA is responding to their concerns.

ADDRESSES: Informal public hearings will be held at the following places:

Address and Date

First Floor Hearing Room, New Court Building, 111 West Congress Street, Tucson, Arizona—March 6 and 7.

Conference Room 12a, U.S. Environmental Protection, Agency, 1200 6th Avenue, Seattle, Washington—March 9.

Conference Room, Hospitality House, 200 Jefferson Davis Highway, Arlington, Virginia—March 15.

Written comments should be addressed to:

Director, Division of Stationary Source, Enforcement (EN-341), Attn: Ms. Judith Larsen, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

The documents on which this proposal is based are contained in docket Number DSSE-78-1. All comments received during the comment period will be promptly added to the docket, and all documents upon which the final rules are based will be included in the docket. The docket will be open for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Firday at:

U.S. Environmental Protection Agency, Central Docket Section, Room 2903B, Waterside Mall, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Ms. Judith Larsen, Division of Stationary Source Enforcement (EN-341), 401 M St., SW., Washington, D.C.20460, Telephone: 202-755-2583.

SUPPLEMENTARY INFORMATION: The remainder of this notice discusses the background of this rulemaking, and the basis, purpose, and contents of the regulations. The text of the proposed regulations follows this discussion.

I. Background

Under Title I of the Clean Air Act, EPA has set national ambient air quality standards (NAAQS) for certain pollutants ("criteria pollutants") including sulfur dioxide. Title I also requires the NAAQS to be met through the establishment of state implementation plans (SIPs) governing emission sources of these pollutants.

Emissions of sulfur dioxide by industrial sources generally fall into two categories: Stack emissions, and fugitive emissions. Fugitive emissions are generally defined as those released through leaks or at transfer points. Because stack emissions are responsible for the great majority of sulfur dioxide emissions, control efforts have traditionally been directed primarily at stack emissions.

The effects of stack emissions on ambient air quality can theoretically be mitigated in either of two ways: constant emission reduction, or dispersion techniques. Constant emission reduction techniques diminish the overall atmospheric loading of pollutants through the use of technologies or raw materials (including fuels) that prevent pollutants from being generated or that remove pollutants from waste gas on a continuous basis.

Dispersion techniques, on the other hand, do not reduce total emissions into the atmosphere on a continuous basis. Dispersion techniques consist of tall stacks, which disperse emissions over a wide geographic area, and of supplementary or intermittent control systems (SCS or ICS), by which emissions are varied (dispersed over time) depending on meteorological conditions. Neither technique necessarily reduces the emission of pollutants either in total or on a constant basis.

Fugitive emissions, in contrast to stack emissions, are emitted at low elevations and cause or contribute to ambient violations primarily in the immediate vicinity of the source. The primary means of controlling fugitive emissions are by preventing their escape (*e.g.*, by plugging leaks), and by capturing the emissions through hooding and comparable techniques and venting them up a stack.

A. CONTROL OF STACK EMISSIONS IN SIP'S

To assure the attainment and maintenance of the NAAQS, the Clean Air Act of 1970 directed the States to formulate implementation plans for the control of each criteria pollutant. States were to develop a combination of emission limitations and other measures, such that the total mix of emission limitations and other measures would result in the attainment and maintenance of standards. Section 110(a)(2)(B); *Train* v. *NRDC*, 421 U.S. 60 (1975).

If several sources in an area contribute to nonattainment of standards, a State may allocate the burdens of control among those sources, as it chooses, as long as the total reduction of emissions is sufficient to attain and maintain ambient standards. As part of the allocation decision, a State may, if it chooses, consider whether it is economically and technologically feasible for a particular source to comply with a given control requirement, such as an emission limitation in the case of industrial stack emissions. If a State determines that economic and/or technological infeasibility would prevent a source from complying with a proposed emission limitation, it may elect to impose a more stringent emission limitation or other control measure on another source and relax the emission limitation on the source for which compliance is believed infeasible; provided that the total mix of control requirements assures attainment of the NAAQS. If a single source's stack emissions are responsible for the entire emissions of a given pollutant in an area, a State must establish an emission limitation for the source that will result in attainment and maintenance of standards, regardless of the economic or technological feasibility of controls for the source. In such a case only that source's emissions are available for control, and there is no possible "mix" to lessen the burden on that source.

Once the emission limitations and other measures necessary to assure attainment and maintenance of standards are established by the State, compliance with those requirements is mandatory. Challenges to the emission limitations based on alleged technological or economic infeasibility are foreclosed if not successfully made at the State level. *Union Electric* v. *EPA*, 427 U.S. 246 (1976).

Two major questions have been raised in litigation concerning control of stack emissions: (1) What can an industrial source do if no existing technology can control its generation of pollutants or remove pollutants from its gas stream on a continuous basis, or if the technology or fuel exists but the source cannot afford it? (2) May dispersion techniques be used in lieu of constant controls to attain and maintain ambient standards?

1. *Technological and Economic Feasibility.* In early litigation, industrial sources claimed that EPA was required to determine if pollution control measures were technologically and economically feasible before approving or promulgating SIP provisions which required their use. These sources contended that Congress did not intend to compel or permit the imposition of requirements that could not be met because of technological or economic constraints. See, *e.g.*, *Buckeye Power, Inc.* v. *EPA*, 481 F.2d 162 (C.A. 6, 1973); *Appalachian Power Co.* v. *EPA*, 477 F.2d 495 (C.A. 4, 1973); *South Terminal Corp.* v. *EPA*, 504 F.2d 646 (C.A. 1, 1974); *NRDC* v. *EPA*, 507 F.2d 905 (C.A. 9, 1974).

The Supreme Court resolved this issue in *Union Electric* v. *EPA*, 427 U.S. 246 (1976). The Court held that in evaluating state implementation plans pursuant to section 110(a)(2), EPA was to determine only whether emission limitations and other measures in the plan would, if complied with, result in the attainment and maintenance of national ambient air quality standards. The Court recognized that failure to consider the technological or economic feasibility of emission limitations and other control measures could lead to the shutdown of certain sources. It concluded, however, that Congress had intended the requirements of SIPs to be technology-forcing, and had intended ambient standards to be attained through scheduled compliance with those requirements, regardless of their feasibility at the time they were established. As long as the plan provided for the standards to be achieved as expeditiously as practicable and in accordance with the other requirements of section 110(a)(2), the Court held that the Administrator must approve the plan, even if a source might have to curtail or terminate production as a result.

Thus, to the extent that control of emissions is necessary to attain the NAAQS, technological and economic feasibility cannot limit the degree of control required in the plan.

2. *Dispersion Techniques.* a. *The Stack Height Guideline.* In addition to the issue of technological and economic feasibility, much of the early litigation focused on the means of controlling stack emissions. A number of sources claimed that they should be permitted to meet standards through the use of tall stacks and other dispersion techniques in lieu of emission limitations requiring constant controls.

This litigation resulted in several opinions interpreting the 1970 Act and holding that Congress had intended that ambient standards be met through constant emission reduction, rather than dispersion techniques. *NRDC v. EPA*, 489 F.2d 390 (C.A. 5, 1974); *Big Rivers, et al. v. EPA*, 523 F.2d 16 (C.A. 6, 1975); *Kennecott Copper Corp. v. EPA (Kennecott I)*, 526 F.2d 1149 (C.A. 9, 1975); *Mision Industrial v. EPA*, 547 F. 2d 123 (C.A. 1, 1976). The cases indicated, however, that use of dispersion as a control technique was acceptable if constant control technology were shown to be unavailable.

EPA published its interpretation of these cases in the *Stack Height Increase Guideline*, 41 F.R. 7450, February 18, 1976. The Guideline defined situations in which sources could receive credit in SIPs for stack height increases. The effect of crediting increases was to reduce the degree of emission limitation required by these sources to attain and maintain ambient standards.

Under the *Guideline*, certain existing sources were permitted to use tall stacks to meet ambient standards for SIP purposes on either a temporary or a permanent basis. In general, the *Guideline* allowed "interim use" of a tall stack for control of stack emissions under section 110 for smelters and older power plants if they could demonstrate that installation of best available control technology (BACT) was economically unreasonable or technically inappropriate, and if they instead employed reasonably available control technology (RACT). While the *Guideline* required that the unreasonableness of applying BACT be demonstrated on a case-by-case basis, it did recognize the likelihood that BACT would be found economically unreasonable for many existing smelters.

The *Guideline* also provided for the determination of what constituted reasonably available control technology for a qualifying source, based on specified factors. For eligible smelters, RACT consisted of at least the control of "strong" gas streams (those rich in sulfur dioxide) through the use of sulfuric acid plants. Under the *Guideline*, this limited level of control was permissible only after a determination that additional control, including associated process changes, was not economically and technologically feasible. The RACT determination was also subject to re-evaluation whenever eco-

nomic or technological circumstances improved. The *Guideline* did not permit any source to operate wholly without constant controls, since EPA believed that to be precluded by the Act.

Under the interim program described by the *Guideline*, an isolated source such as a smelter was permitted to use a supplementary control system (SCS) in conjunction with RACT to meet ambient standards. An isolated source could use SCS only if it agreed to assume legal liability for any violations of the NAAQS in the area affected by its emissions (the "designated liability area" or "DLA"). The source's proposed SCS, which was used to curtail emissions when ambient air quality monitoring data and meteorological information indicated the possibility of NAAQS violations, was required to be enforceable and reliable for preventing such violations.[1]

b. *Congressional Action.* While Congress was aware of the *Stack Height Increase Guideline* when it enacted the Clean Air Act Amendments of 1977, that legislation embodies a somewhat different approach. Though similar in many respects to the *Guideline*, the Amendments reject a number of the policies described in the *Guideline*, and limit the use of dispersion techniques more narrowly than either the *Guideline* of the court decisions.

The new treatment of dispersion techniques is reflected in sections 110, 123 and 302 of the amended Act. Under section 110(a)(2)(B), a state implementation plan must include emission limitations and such other measures as are necessary to assure attainment and maintenance of standards. Section 302(k) defines an emission limitation as requiring continuous emission reduction technology. Under section 123, the degree of emission limitation (constant control) required of any source in a plan under section 110 may not be reduced to any extent by the unauthorized use of any "dispersion technique."[2] Taken together, in sharp contrast to the earlier *Guideline*, these sections wholly prohibit the use of unauthorized dispersion techniques in SIPs to meet ambient standards.[3] Consequently, such dispersion techniques cannot be included in a control strategy demonstration submitted as part of the SIP.

Congress did, however, permit limited and temporary use of dispersion techniques in two specific situations for purposes of attaining and maintaining ambient standards, but not as a means of complying with SIP emission limitations. First, administrative enforcement orders issued under section 113(d) may provide for the use of dispersion as an interim control measure if a source is unable to comply with an SIP requirement, the source is notified that it is subject to noncompliance penalties after July 1, 1979, and the source meets the other conditions of section 113(d). Second, section 119, under which these rules are proposed, permits the interim use of dispersion by a nonferrous smelter if it can demonstrate that it is eligible for a primary nonferrous smelter order (NSO).

Apart from the limited circumstances of sections 113(d) and 119, which defer compliance with SIP emission limitations but do not alter those requirements, and the narrow exceptions of section 123, dispersion techniques cannot be employed in lieu of constant controls for any purpose under the Act. Implementation plans submitted under section 110(a)(2) therefore must provide that the necessary degree of emission limitation be achieved solely by constant control measures. Under *Union Electric*, this requirement exists regardless of the technological or economic feasibility of such controls.

B. CONGRESSIONAL TREATMENT OF SULFUR DIOXIDE CONTROL AT SMELTERS

While the 1977 Amendments sharply restrict the permissible uses of dispersion in SIPs, they also grant special relief to the nonferrous metals industry. Section 119 of the Act establishes a new enforcement mechanism called a "primary nonferrous smelter order" (NSO), under which a smelter may temporarily defer compliance with its SIP sulfur dioxide emission limitation and instead meet ambient standards through the use of dispersion techniques.

The NSO program is similar to the program for smelters announced in the *Stack Height Guideline*, with certain important differences. As was the case under the *Guideline*, a smelter is eligible for the program if it cannot afford the control equipment (and associated process changes, where relevant) necessary to comply with its SIP emission limitation. Eligibility is to be determined on a case-by-case basis by the Administrator. Unlike the *Guideline*, section 119 specifies a definite date by which a smelter must comply with the SIP requirements: January 1, 1983, unless the smelter receives a second NSO, in which case the latest possible compliance date is January 1, 1988.

Section 119 also requires the use of certain interim control measures that are essentially the same as under the *Guideline*. Dispersion may be used to meet ambient standards, together with interim constant controls to reduce total sulfur dioxide emissions into the atmosphere. With respect to constant controls, the statute makes mandatory what had been EPA policy under the *Guideline*: Smelters which already treat their strong sulfur dioxide gas streams with sulfuric acid plants (or other constant control systems), and which use dispersion to meet ambient standards, cannot be required to install additional constant control systems, such as scrubbers, during the term of the first NSO unless EPA determines that such additional constant control systems are adequately demonstrated to be reasonably available. Unlike prior policy under the *Guideline*, however, a smelter which has no constant controls may receive a waiver of the interim constant control requirement if the cost of installing such controls would necessitate closure of the smelter. Section 119 also retains the requirement that a smelter conduct or participate in a research program to develop improved means of meeting its SIP emission limitation.

The requirements for the use of supplementary controls under section 119 are also similar to those imposed under the *Guideline*. The systems must be reliable and enforceable, and smelters will be required to assume legal liability for violations of NAAQS for sulfur dioxide in designated liability area (DLAs).

Finally, NSOs under section 119 will require the control of fugitive emissions of sulfur dioxide, where necessary. The fugitive emission control measures that may be required are part of the interim measures necessary to prevent violations of the NAAQS during the term of NSOs; fugitive emission control requirements were also imposed in SIPs containing the earlier program under the *Guideline*, although they were not discussed in the *Guideline*.

---

[1] The use of a tall stack and RACT by smelters was also conditioned on the conduct of a research program to develop improved means of meeting the SIP emission limitation. This requirement was upheld by the U.S. Court of Appeals for the Ninth Circuit in *Kennecott I*, cited above.

[2] Section 123 defines dispersion technique as a stack height which exceeds good engineering practice or any intermittent or supplemental control of air pollutants varying with atmospheric conditions. Regulations implementing section 123 were proposed by EPA on January 12, 1979, at 44 FR 2608.

[3] Section 123 does authorize sources currently using dispersion techniques to receive full credit for their dispersive effects in determining the required degree of SIP emission limitation, if the stack height was in existence or the dispersion technique implemented prior to the passage of the Clean Air Act of 1970. With one minor exception, only sources which qualify for this credit or whose stacks do not exceed good engineering practice stack height may have the effect of the dispersion technique considered in establishing the degree of emission limitations required in the applicable SIP.

II. CONTENTS OF THE REGULATIONS

A. DEVELOPMENT

Immediately following the enactment of section 119 on August 7, 1977 as part of the Clean Air Act Amendments of 1977, EPA began to draft provisions to implement the section. In February, 1978, the Agency circulated a preliminary version of those provisions in the form of draft guidance to state agencies and EPA regional offices. EPA solicited comments on the draft guidance from interested parties. Comments were received from three state agencies, seven companies operating primary nonferrous smelters, and two environmental public interest groups. In addition, EPA staff members met with representatives of five companies to discuss their comments and to improve EPA's understanding of the technical problems involved. Several of the companies subsequently supplied data relating to these issues.

EPA has considered the comments and information received in response to the draft guidance. As a result, significant alterations have been made in today's proposal, including a decision to propose the provisions as regulations. EPA remains very interested in receiving more such information in response to this proposal. All comments received will be considered in the promulgation of the final regulations.

B. FORMAT AND SCOPE

The proposed regulations would comprise a new Part 57 of Title 40 of the Code of Federal Regulations. Subparts A through H, proposed today, would contain provisions governing the eligibility of smelters for initial NSOs, the procedures through which NSOs may be issued by EPA or the states, and the required contents of each NSO.

Instead of imposing highly specific requirements, many of the provisions are framed in general terms to permit flexible responses to the particular conditions at each smelter. EPA believes this approach accommodates differences in conditions at the various smelters and increases the opportunity for the use of expertise developed by the state agencies currently regulating these smelters and of further information developed by EPA. These regulations will govern EPA in formulating NSOs for individual smelters and in determining whether NSOs issued by state agencies are approvable under section 119.

EPA has received inquiries from operators of certain molybdenum smelters about the applicability of section 119 to their facilities. Although the proposed regulations specifically address only copper, lead and zinc smelters, the Administrator has not yet determined whether or not Congress intended section 119 to be confined to those facilities. EPA solicits comments on this question, and on what specific changes should be made in the proposed regulations to accommodate other kinds of smelters.

The proposed regulations also contain provisions for issuing NSOs to those few smelters which were subject to the interim SIP provisions described in the *Guideline* and discussed above. Under the proposed regulations, certain interim SIP provisions may be incorporated into an NSO, even if they do not conform precisely to the corresponding provisions otherwise required by the Part 57 regulations. This provision is designed to facilitate transition from SIP requirements already in effect to corresponding NSO requirements without disrupting ongoing compliance with the substance of those requirements, and without penalizing good faith efforts to comply with those requirements. Reliance upon existing SIP provisions would be found by the Administrator where the provisions had been promulgated before the smelter owner's NSO application, where the smelter was in substantial compliance with the required increments of progress. The only SIP requirements covered by this proposed provision would be those which were substantially equivalent to the corresponding NSO provisions otherwise required by Part 57.

The Administrator believes this provision is authorized by section 406 of Pub. L. 95-95, which preserved the effectiveness of existing SIP requirements until modified by EPA, and by sections 119 and 301 of the Clean Air Act. The Administrator also believes the provision is an appropriate exercise of his discretion, in the absence of any specific legislative guidance as to the means of effecting the transition from SIPs to NSOs for the few affected smelters. EPA solicits comment on these provisions.

C. SUBSTANCE OF THE REGULATIONS

1. *Subpart B: The Application.* The provisions of Subpart B establish NSO application procedures and specify the information the smelter owner must provide. Time limitations are placed on various steps in the process to assure prompt issuance of NSOs and to comply with the requirements of section 119.

The application for an NSO would be initiated by a letter of intent submitted by the smelter owner to the state or to EPA, at the owner's election. If a letter of intent is submitted within two weeks after the effective date of these regulations (or of SIP emission limitations promulgated subsequently, as applicable), the smelter would not be required to comply with its SIP sulfur dioxide emission limitation during the time needed to formulate a complete application. This suspension of the emission limitation would also continue for the period necessary to complete action on a timely application. EPA believes that this is consistent with the general intent of Congress that smelters have an opportunity to apply for NSOs as an alternative to compliance with their SIP emission limitations. The limitations on the duration of the suspensions are designed to limit the time during which no enforceable control measures are in effect to the minimum necessary.

Two kinds of information must be submitted as part of the application: Technical and financial. The technical information is primarily that operating information necessary for the state or EPA to formulate the interim measures required by section 119. The financial information, which is to be submitted directly to EPA headquarters by all applicants, is specified in Appendix A to the proposed regulations. The financial information specified in Appendix A will be used to determine, as required by section 119(b)(3), whether the smelter can afford the technology necessary for it to meet its SIP emission limit.

This detailed information is necessary to enable EPA to apply uniform economic criteria to all smelters and to accurately determine the position of an individual smelter in its overall corporate structure. This financial information, which is being required under sections 119 and 114 of the Act, will be subject to confidential treatment as provided by 40 CFR Part 2.

Using this financial information, the Administrator will determine whether the smelter involved can afford the technology needed to comply with its SIP emission limit. The Administrator has tentatively determined that the following technology is adequately demonstrated for the primary nonferrous smelter industry: (a) The acid plant and associated process technology underlying EPA's new source performance standards for copper, lead, and zinc smelters (40 CFR Part 60, Subparts P, Q, and R); and (b) magnesium oxide sulfur dioxide concentration, limestone scrubbing, and the Cominco ammonia scrubbing system. The Administrator is also considering designating the Flakt-Bolliden sodium citrate concentration system as adequately demonstrated. The Administrator's judgments regarding the scrubbing and concentration systems listed here are primarily based on the actual use of the systems at copper, lead, and zinc smelters in various parts of the world, including Canada, Europe, and Japan. The rulemaking docket contains technical support for

the determinations, and EPA solicits comments on the determinations and supporting material.

In applying for an NSO, a smelter owner will be required to show that under the financial test specified in Appendix A, it cannot afford the use of any of the systems listed above which are applicable to the smelter and which would allow it to comply with its SIP emission limit.

In comments on the draft guidance, a great deal of attention was devoted to the principal economic test suggested for determining whether a smelter can afford to meet its SIP emission limit. That test would have been used to determine eligibility both for an NSO and for a waiver of the interim constant control requirement (on the grounds that permanent closure would result from the imposition of that requirement). A smelter would have been found eligible under the test if, under projected costs, revenues, and operating conditions, the sum of the present value of its future net cash flow (after making the pollution control expenditure) and its terminal value was less than the current salvage value of the smelter.

The effect of this "opportunity cost" test is to simulate the response of a prudent operator to the requirement that the pollution control equipment be installed. If the smelter owner could realize a greater net return on its capital by making the incremental investment elsewhere, a prudent owner using accepted financial principles of decision would choose that alternative investment over the expenditure necessary to continue operating the smelter. Under these circumstances, the cost of the pollution control would be deemed greater than the smelter could afford, and the smelter found eligible.

The Agency initially adopted this test because it believed section 119 was intended to avoid the widespread plant closures that certain members of the industry argued would occur if they were forced to comply with the full constant control requirements of the Act. The industry contended, however, that the test afforded less relief than Congress intended. Some members of the industry also argued that Congress intended that an NSO be granted to any smelter unable to meet its SIP emission limitation simply through the use of existing acid plants, even if the smelter could afford the controls necessary to meet its SIP emission limitation.

The Administrator believes that section 119(b)(3) requires him to determine whether an applicant smelter owner can afford the technology which would enable the smelter to meet its SIP emission limit. While the administrator has stated in the past and continues to believe that such expenditures may prove to be beyond the means of a large portion of the smelting industry at this time, he also believes that the statute requires him to determine what technology is adequately demonstrated to be reasonably available to each applicant smelter on the basis of its own financial position. The Administrator does not believe that an industry-wide determination would be consistent with the intent of Congress, particularly in light of the widely varying financial positions and air quality circumstances of the various nonferrous smelters in the industry.

The Administrator has concluded, however, that the financial test originally suggested may not have provided adequate assurance that all those smelters which Congress would have deemed unable to afford the necessary additional sulfur dioxide control expenditures would be found eligible for NSOs. The opportunity cost test has therefore been modified to provide that assurance.

The eligibility test proposed today, a "net income test," is similar to the opportunity cost test in that it is based on a cash flow analysis, a standard tool of financial analysis. The significant difference is that the net income test permits the smelter to deduct depreciation on its productive assets from its future net cash flow before determining whether it can afford the pollution control expenditure. This in effect reserves an additional portion of the smelter's income for its discretionary use, beyond those future expenditures already taken into account in performing the cash flow analysis.

The Administrator believes that this test fairly implements the intent of Congress that smelters unable to afford the equipment necessary to comply with SIP emission limits be eligible for NSOs, while identifying those facilities on a case-by-case factual basis.

The proposed test is to be applied by an applicant to the smelter's projected position over the period 1979–1985, inclusive. This period was chosen as representative of the smelter's financial position after the installation of controls. In making the projections, the applicant may take into account all reasonably foreseeable expenditures, including other environmental and occupational pollution control costs. Specific assumptions as to what controls will be required are supplied in Appendix A. These assumptions are based on existing requirements and the Agency's best estimates of future requirements. Projected indices for various relevant economic factors, including metals prices, will be supplied by EPA. These factors are identified in Appendix A, and the indices and their bases are available in the rulemaking docket.

Finally, Subpart B requires smelter operators to submit, as part of their applications, draft NSO provisions that comply with the requirements of the regulations. These drafts may be used by the issuing agencies in fashioning NSO provisions.

2. *Subpart C: Constant Control and Related Requirements.* Section 119(d)(1) requires the use of certain interim measures by a smelter during the pendency of an NSO. One measure specifically required is the use of continuous emission reduction technology. Under section 119(d)(4), a smelter which already uses some constant control technology and a supplementary control system cannot be required to use additional constant control systems during its first NSO unless the Administrator determines that they are adequately demonstrated to be reasonably available. The smelter's existing control systems, however, must be well designed, operated, and maintained, and must fully treat the "strong streams" produced by the smelter's process equipment.

The interim constant control requirement is implemented through Subpart C of the proposed regulations. The primary requirement is that the smelter operate its constant controls at their maximum feasible efficiency, that the process and control equipment be maintained in the way best designed to ensure such operation, and that process operations by scheduled and coordinated to facilitate treatment of process gas streams to the maximum extent possible.

a. *Interim Emission Limitations.* Each NSO must also implement the maximum feasible efficiency requirement through a limitation on the concentration of sulfur dioxide in the effluent or tail gas emitted by the control system over a specified averaging period.

Many of the comments on the draft guidance focused on the level at which the concentration limit would be set and the averaging or measuring period over which compliance with that limit would be calculated. The thrust of those comments was that smelter acid plants are highly idiosyncratic, that their efficiencies and performance vary widely both among acid plants and at any given plant from time to time, principally as a function of original plant design and of fluctuation in the concentration and volume of process gases reaching the acid plants, and that the method of setting performance levels suggested in the draft guidance did not adequately account for these factors. The result, according to many of the comments, would have been significant expenditures for acid

plant upgrading, or significant production curtailments, or both.

EPA has considered these comments and the available data in formulating the proposed regulations. The proposed requirements, in the Agency's judgment, now fully account for the problems in attaching enforceable numerical standards to smelter acid plant performance. Specifically, the required concentration limits and averaging periods are to take into account, on a case-by-case basis, both acid plant design and fluctuations in the strength and volume of process off-gases. The regulations would also permit the smelter operator to demonstrate the need for a different averaging period.

The maximum feasible efficiency provision will not require general upgrading of acid plants as a matter of course, but only the correction of serious design or operating deficiencies in control systems. Significant upgrading of control equipment which was properly designed to continuously process the gas it actually receives, and which is properly operated and maintained, should not be necessary. Serious deficiencies are those resulting in significant decreases in the overall efficiency or availability of the control system. A primary example of a serious acid plant deficiency is the use of heat exchangers and associated equipment inadequate to sustain efficient, autothermal operation over the range of gas strengths and volumes routinely generated by the smelter's process equipment. This and other conditions which result in unduly low efficiency or frequent bypassing of the control equipment are not consistent with the requirement of section 119 that NSOs provide for the use of properly designed technology to continuously reduce emissions.

The regulations would also require each NSO to contain a total plant-wide emission limitation governing the total sulfur dioxide emissions from the smelter's stacks. This limit would be calculated at a level which would permit the smelter to operate at its full production capacity, assuming that its control system is operated at the prescribed performance level. The purpose of the plant-wide limit is to prevent the use of dispersion as a substitute for constant control of emissions resulting from capacity expansions. Because the plant-wide limit is calculated at actual capacity, it will not require any production curtailment.

Compliance with the control system performance requirement is to be determined through continuous monitoring. Continuous monitoring; as well as the use of relatively short-term averaging periods, is necessary to ensure the proper operation and maintenance of control equipment (and related process equipment) on a continuous basis.

Compliance with the plant-wide emission limit is not required to be determined on a short-term basis, since the limit is not designed primarily as a check on short-term conditions. For the same reason, the regulations do not require the use of continuous stack monitors to determine compliance with this limit.

b. *Excess Emissions.* The provisions of Subpart C also govern the conditions under which emissions in excess of an interim emission limit or the bypassing of a control system consititute violations of an NSO. These provisions require the reporting of all excess emissions, but do not treat those which the smelter operator is able to demonstrate as resulting from genuine malfunctions, and as to which the operator took appropriate remedial action, as violations of the NSO. This exemption is consistent with the recent decision of the Ninth Circuit Court of Appeals in *Marathon Oil Co. v. EPA*, 564 F.2d 1253 (1977).

In general, any sudden and unavoidable breakdown in process or control equipment is considered a malfunction and not a violation of the NSO. The definition of malfunction (which appears in Subpart A) is intended to account for all genuine, unforeseeable equipment problems which result in excess emissions from the control system. The definition also expressly recognizes that an unavoidable problem can appear suddenly, but be most appropriately repaired a number of days later. Control or process equipment startups and shut-downs resulting from malfunctions are also covered by the exemption. The malfunction provisions are, however, designed to promote improved operation and maintenance procedures by refusing to exempt as malfunctions those breakdowns that could have been foreseen and avoided by the use of such procedures.

The malfunction exemption does not apply where the malfunction results from a serious design deficiency which the smelter owner has failed to correct as required under the NSO. This means, for example, that where an acid plant at a lead smelter is inadequately designed to routinely handle relatively frequent shut-downs of the sintering machine, the acid plant must be upgraded as required to correct that serious deficiency. Excess acid plant emissions that could be prevented by the required upgrading would therefore not be considered the result of sintering machine malfunctions.

The proposed regulations also treat as violations of the NSO any excess emissions occurring during bypassing of control equipment, unless the bypassing is necessitated by a malfunction. Except as discussed below, the provisions therefore effectively prohibit bypassing during periods when the acid plant is shut down for scheduled maintenance, and when more process off-gas is reaching the plant than it is designed to handle.

The corresponding provisions in the draft guidance were the subject of considerable comment. A number or companies argued that it was unreasonable to require the smelter to shut down during scheduled maintenance, with the resulting production loss, simply because its control equipment was unavailable, in view of the fact that ambient standards are to be protected through the use of SCS anyway.

The Administrator disagrees. First, scheduled maintenance, for the purposes of NSOs, is only that maintenance which needs to be performed on a routine basis, on a reasonably periodic or predictable schedule. The best example of scheduled maintenance is screening of catalyst in an acid plant converter. Maintenance necessitated by the detection of an actual, impending, or developing (unforeseeable) equipment failure will usually be treated as malfunction-related, rather than scheduled. The malfunction provisions thus encompass many of the circumstances which the companies identified as shut-downs for scheduled maintenance. Indeed, data submitted by Asarco, Inc. in support of its argument indicate that ony 1.58 percent of the total (1977) copper production at its Hayden, Arizona smelter would have been "lost" if the smelter had been shut down during what, under these provisions, would be regarded as scheduled maintenance.

Moreover, many smelters already schedule periodic shut-downs for maintenance purposes. The Agency believes that careful scheduling of acid plant maintenance cycles would allow a substantial part of that maintenance to be performed during these previously scheduled smelter shutdowns. Furthermore, knowledge that the smelter is scheduled to be shut down for maintenance allows the operator to plan in advance for its projected inventory needs during the shutdown. This advance planning results not in loss of production, but simply in its rescheduling. The administrator also notes that the use of SCS, which the operators seek, also entails production rescheduling, and has apparently proved feasible.

Second, the Administrator believes that permitting planned operation under NSOs without the use of any constant controls during periods of scheduled maintenance is inconsistent with the requirements of section 119 and the intent of Congress. In requir-

ing the use of an interim level of constant controls, Congress has implicitly placed control equipment on a par with production equipment: each is integral to the operation of the facility. Just as a smelter cannot operate without its production equipment, and schedules, a shut-down for the periodic maintenance of that equipment, the smelter likewise cannot operate without another integral system, its continuous emission reduction equipment. In short, to permit regular, scheduled periods of uncontrolled emissions is not consistent with the requirement for operation with *continuous* controls.

The fact that SCS will be the primary means of protecting ambient standards under an NSO does not alter this conclusion. In requiring the interim use of constant controls, Congress intended to limit the total amount of sulfur dioxide emitted into the atmosphere and transported beyond the immediate vicinity of the smelter. Indeed, this goal led the Administrator to consider the possible need to also ban bypassing during malfunctions, except where injury to people or serious property damage might otherwise result. While that approach was considered, the Agency has concluded that in light of the unpredictable nature of malfunctions, and of the much larger possible production rescheduling or loss associated with requiring shut-downs during repairs of malfunctions, such a requirement is not compelled by the interim constant control requirement of section 119.

Because bypassing during scheduled maintenance would greatly increase the total volume of sulfur dioxide emitted by a smelter permitting such bypassing is incompatible with the goal of limiting overall emissions to the level associated with the operation of interim constant controls at maximum feasible efficiency. In order to provide the maximum flexibility consistent with this goal, however, the proposed regulations would allow bypassing during scheduled maintenance to the extent that additional controls, installed at a smelter under the research and development provisions of its NSO, remove an equivalent amount of sulfur dioxide from the smelter's emissions. Specifically, the new controls would be required to offset on a net (annual) basis the sulfur dioxide emissions occurring during bypassing for scheduled maintenance during that (annual) period. The provision would allow such bypasing throughout the term of the NSO, but would treat emissions occurring before the new controls began operating as violations of the NSO if the new controls failed to operate with the approximate effectiveness originally represented in the NSO application.

The Administrator also believes that permitting bypassing during periods when a control system is receiving more process off-gas than it is designed to handle ("excess gas") is inappropriate, in light of both the Congressional intent underlying section 119 and the consequences of prohibiting such bypassing. In enacting the interim constant control requirement of section 119(d)(1), Congress clearly intended that, as a minimum, all "strong" streams be treated by those controls. Bypassing strong streams around control equipment (in the absence of a malfunction), however, in effect exempts a portion of those streams from the interim constant control requirement.

Moreover, the information available to the Agency does not indicate that a large amount of production curtailment would result from this prohibition. Most smelters, in fact, employ control equipment adequate to handle the gas volume actually generated under current operating procedures, and achieve satisfactory production results under those conditions. Even for those few smelters where current operating procedures result in the generation of excess process gas, this prohibition is not expected to entail large production losses. Information submitted by Asarco, for example, indicates that excess gas bypassing was used for only about one percent of the 1977 production at its Hayden smelter. This percentage could be further reduced, EPA believes, by improved scheduling of operations and, in some cases, by improved maintenance to minimize inleakage of air into the ducts carrying the process gas to the acid plant (thus both reducing total gas volume and improving acid plant performance by preventing dilution). Finally, any smelter in this situation also has the option of upgrading its control equipment to handle the gas actually generated by the process equipment at the smelter.

3. *Subpart D: Supplementary Control System Requirements.* Section 119 permits smelters receiving NSOs to meet ambient standards through the use of dispersion as an interim alternative to the full use of constant controls required by their SIP emission limitations. The pre-eminent requirement for the use of dispersion under section 119 is that the system chosen be enforceable, reliable, and adequate to ensure that the smelter's emissions do not result in violations of the NAAQS in the area affected by those emissions. The statute contains a broad grant of discretion to the Administrator to require that NSOs contain whatever interim measures are necessary to achieve these goals.

Subpart D implements this Congressional directive by requiring that each smelter prevent all violations of NAAQS in the area affected by its emissions (its "designated liability area" or "DLA") through the use of an approved supplementary control system (SCS). The proposed regulations specify the elements necessary for an approvable SCS, but, as a result of comments by state agencies and the industry, provide more flexibility to the issuing agencies in determining the adequacy of a particular system than did the draft guidance. The State of Arizona, for example, has had considerable experience in regulating the use of SCS by smelters, and the proposed regulations are designed to permit the full use of the expertise available in the air pollution control agencies of such states. The regulations are also intended to permit the smelter operators, who have the most actual knowledge of and experience in the use of these systems, to participate fully in the formulation of SCS operating requirements for their smelters.

a. *Ambient and Meteorological Data.* Under the proposed regulations, each SCS would be required to contain several elements. First, the system would have to be able to continuously monitor ambient air quality at all points of expected high concentrations of sulfur dioxide. The siting of monitors would be based on factors specified in the regulations. Based in part on the experience of Arizona, at least seven fixed monitors and one mobile monitor would ordinarily be required.

Each SCS must also be able to predict meteorological conditions which are likely to result in high ambient concentrations of sulfur dioxide, rather than simply relying on monitors to warn of those concentrations as they actually occur. This kind of "open-loop" operation is necessary, in the Administrator's opinion, to give the advance warning necessary to ensure that emission curtailments will be effected in time to prevent violations of ambient standards. Because emission curtailment take some time to complete, and take additional time before their effects on ambient air quality are fully felt, reliance on ambient monitors alone ("closed-loop" operation) would not always provide adequate lead time.

The nature and precision of the specific meteorological capability required to assure adequate lead time will, however, depend largely on site-specific factors, and in some cases National Weather Service information alone may be adequate. The Administrator has therefore decided not to specify in detail in advance the required components of the predictive element of supplementary control systems; likewise, the number and qualifications of the personnel receiving and

interpreting meteorological information has not been specified. Both, however, must be adequate for fully reliable open-loop operation.

b. *Curtailment Criteria and Operating Manual.* Advance specification of when, how, and by how much emissions will be curtailed to avoid violations of the NAAQS is essential to a successful SCS. The regulations require that curtailment criteria, procedures, and plans be stated in an SCS operating manual, and make the failure to curtail emissions as called for in the manual a violation of the NSO.

A number of smelter operators commented that adherence to curtailment procedures and criteria specified in a manual was impractical, since in their view all the combinations of air quality and meteorology that might arise could not be listed. A number of operators also argued that requiring adherence to the manual left inadequate scope for the exercise of judgment by the SCS operating personnel.

The Administrator believes that neither of these problems is likely to arise under the proposed regulations. The principal variable affecting the need for curtailment is meteorology, both current and predicted. The Agency recognizes that it is not possible to list in advance all of the specific characteristics of each meteorological regime that may occur in the vicinity of a given smelter, and does not intend that the SCS manuals do so. What is intended is that the manuals contain the criteria to be used in evaluating specific meteorological information, including the thresholds, ranges, and combinations of meteorological values which will trigger curtailments.

EPA also recognizes that prediction of incipient meteorological conditions requires the exercise of judgment, and does not intend to preclude reliance on competent and qualified personnel to evaluate the significance of meteorological information as it is acquired. The Agency does intend, however, that this judgment be constrained by a requirement to prevent all violations of ambient standards, and that the procedures contained in the manual be designed accordingly. The regulations therefore would make the failure to curtail emissions when and to the extent indicated by the criteria in the manual, applied to actual conditions, a violation of the NSO. The proposed regulations provide, however, for modification of the manual in light of actual experience. Failure to adhere to certain other procedures in the manual, such as schedules for calibration and maintenance of SCS equipment, would also constitute a violation of the NSO.

c. *Designated Liability Areas; Overlapping DLAs.* The curtailment criteria and SCS manual are required to account for all conditions which could result in violations of NAAQS in the smelter's designated liability area (DLA). The DLA is that area within which the smelter's uncontrolled emissions at maximum production rates may cause or contribute to violations of NAAQS for sulfur dioxide under any probable meteorological conditions. The proposed regulations provide presumptive boundaries for DLAs, depending on the smelter's rate of emissions. The boundaries in the table, which are based on general modelling performed by EPA, may be replaced by any boundaries a smelter owner can demonstrate to include the area affected by the smelter's emissions under all probable meteorological conditions.

As a condition of receiving an NSO, the smelter owner would also be required to consent to legal liability for all violations of the NAAQS for sulfur dioxide within the smelter's DLA. The Administrator believes that SCS can be a reliable and enforceable means of preventing violations of ambient standards only if the smelter operator is clearly responsible for all violations of ambient standards in the areas affected by the smelter's emissions. This approach, which was anticipated by Congress, has been endorsed by the Ninth Circuit Court of Appeals in *Buriker Hill Co. v. EPA*, 572 F.2d 1286 (1977).

A major assumption underlying the use of SCS by a given source is that periodic emission reductions by that source will have sufficient impact on ambient air quality to protect the NAAQS. SCS can therefore ordinarily be permitted only when the source is the primary emitter of sulfur dioxide in the area. Otherwise, there can be no assurance that a particular emission curtailment by the source will be adequate to avoid violations of the standards.

In comments on the draft guidance, a number of companies pointed out that other sources of sulfur dioxide would be located within the designated liability areas of some smelters, and that in some instances the DLAs of two or more smelters might overlap. These companies argued that it would be unfair to make a smelter liable for a violation not caused by its own failure to curtail emissions as called for by its SCS manual. While the Agency recognizes the validity of these comments, it also believes that if the SCS-DLA mechanism is to provide an enforceable and reliable means of preventing violations of the NAAQS, a strong presumption of liability must attach whenever a violation occurs in a smelter's DLA.

The proposed regulations, however, accomodate the companies' concerns to the extent feasible. First, a smelter's curtailment decisions would have to take into account the "permissible emissions" of any other sulfur dioxide sources with the DLA (other than other smelters subject to NSOs, which are treated separately). The "permissible emissions" of other sources would be those allowed under the applicable Clean Air Act emission standard. The regulations would also permit a smelter operator to rebut the presumption of liability for a particular violation of ambient standards in its DLA by showing that the violation was caused by emissions of another source in excess of that source's permissible emissions level. The burden of this showing would be entirely on the smelter.

The regulations also deal with the difficult problem of overlapping DLAs of smelters under NSOs. Smelters with overlapping DLAs would be required to submit joint plans for emission curtailment adequate to ensure that standards will not be violated as a result of their combined emissions. These smelters could, but would not have to, operate a joint SCS. The joint submission would also have to include provisons conclusively allocating liability in the event of a violation in the area of overlap. Any smelter under an NSO would also be required to revise its SCS and submit a joint plan with any other smelter that subsequently applies for an NSO and that would have an overlapping DLA. These measures are consistent with the Congressional intent that NSOs not necessarily be granted simply on a first come, first served basis, and that NSOs take into account the effect of all significant sulfur dioxide sources in an area. The Administrator also regards the provisions governing DLAs having more than one sulfur dioxide source as necessary to make SCS and other NSO interim measures reliable and enforceable.

d. *SCS Development Plan.* The proposed regualtions require each smelter to include in its NSO application a description of its existing SCS (if any) and a specific plan and timetable for developing an approved system. The NSO would require the smelter to operate any existing SCS and to immediately assume liability for violations at existing monitoring sites. It would also incorporate an approved version of the SCS development plan. Once the smelter has completed and demonstrated the reliability of its full system, the NSO would be amended to include the relevant characteristics of the system. The NSO could also be amemded at any time to incorporate improved operating procedures, change in the SCS manual, or other system requirements.

e. *Reporting, Recordkeeping, and Monitoring.* Finally, the proposed regulations would establish certain re-

porting and recordkeeping requirements in connection with the SCS operations, and would require the installation and operation of continuous sulfur dioxide monitors on a smelter's main stack. The primary purpose of the continuous monitoring requirement is to facilitate the development of improved SCS curtailment criteria by using specific quantitative emission data to construct more accurate models of the effect of the smelter's emissions.

While the Agency is aware that some companies do not believe that the equipment now available for the continuous monitoring of stack gas volumetric flow rate is reliable enough for purposes of compliance determinations, the usefulness of the information for modelling purposes would remain substantial even if periodic problems do initially occur. Moreover, the increased use of these monitors should result in improvements in their performance as additional experience is gained by smelter operators and equipment vendors.

4. *Subpart E: Fugitive Emission Control Requirements.* The use of supplementary controls to prevent violations of ambient standards can be successful only if SCS emission curtailments, which at most smelters involve only stack emissions, reduce ambient concentrations at all necessary points in a smelter's DLA. At many smelters, however, fugitive emissions, which escape into the air at low elevations from various points in the smelting process, can cause violations of ambient standards by themselves or in combination with stack emissions. Because the primary impact of fugitive emissions is usually closer to the smelter than that of stack emissions, the use of an SCS designed to control stack emissions often fails to prevent violations of ambient standards due to fugitive emissions.

Subpart E requires the use of interim measures to deal with this problem. Unlike the draft quidance, these provisions do not necessarily require the immediate installation of equipment to prevent the escape of fugitive emissions and to capture and vent them when they do escape from process points. In discussions and comments on the draft quidance, several companies stated that certain smelters control their fugitive emissions adequately by designing their SCS to curtail emissions when necessary to prevent violations due to fugitive emissions, or through a combination of SCS and engineering measures.

The Administrator remains doubtful that SCS can be reliably used to curtail fugitive emissions, because their diverse emission points make it much more difficult to model and anticipate their effects, and because their less direct relation to processing rates makes the extent and magnitude of necessary processing curtailments more uncertain. The Agency nevertheless believes it reasonable to permit smelters to attempt to demonstrate the reliability of such systems before requiring the use of additional engineering measures (*e.g.*, further hooding) to reduce fugitive emissions. EPA also believes that because a smelter's fugitive emission problem involves a number of site-specific factors, further study of the nature and magnitude of the problem at particular smelters may be justified before a final decision is made on necessary control measures.

Under the proposed regulations, all smelters receiving NSOs would ultimately be required to use whatever measures are necessary to prevent ambient violations resulting wholly or in significant part from fugitive emissions. Any smelter which is unable to show at the time of its application for an NSO that its fugitive emissions have no significant effect on ambient air quality in its DLA would be required to conduct a study of the problem. The study would consist primarily of at least six months of ambient monitoring around the smelter to determine the cause and effect of fugitive emissions of sulfur dioxide, total suspended particulates, arsenic, and lead. The inclusion of these other pollutants in the study is necessary, in the Administrator's judgment, to enable EPA and state agencies to devise or evaluate control strategies for fugitive emissions of sulfur dioxide that will be consistent and compatible with existing or probable EPA and OSHA requirements for the control of process and fugitive emissions of all of these pollutants.[4]

At the conclusion of the study, the NSO will be amended to require whatever control measures are necessary to assure the protection of NAAQS for sulfur dioxide. Those measures may include additional supplementary controls if the smelter can demonstrate that such controls are reliable, enforceable, and adequate to protect standards, and that their use will not interfere with the operation of the primary SCS. Where additional SCS is permitted, the regulations would require the system to be developed, tested, and approved substantially as under Subpart D. Engineering measures would also be required in addition to or in lieu of additional SCS where necessary.

5. *Subpart F: Research and Development.* Section 119(d)(1)(C)(ii) of the Act explicitly requires each smelter to agree, as a condition of receiving an NSO, to commit reasonable resources to a research and development program designed to produce more effective means of meeting its SIP emission limitation. This requirement is implemented through the regulations proposed as Subpart F.

Initially, the Agency had intended to use a formula to determine the adequacy of the resources a particular smelter proposed to devote to research and development. The purpose of using a formula was to ensure that the companies committed resources adequate to produce meaningful projects, and to relate the necessary resources to a smelter's financial position and progress in sulfur dioxide control. One preliminary formula appeared in the draft guidance. Further investigation, however, has not yielded any formula that the Agency feels is really suitable for this purpose. Instead, each applicant would be required to propose a specific project. The proposed regulations contain the basic criteria that EPA will use in deciding whether that proposed project is adequate to satisfy the requirements of section 119.

The proposed criteria reflect several goals. Of first importance is that taken together, projects conducted under NSOs (as well as independently) should result in technology that will allow all smelters to meet their emission limitations as soon as possible, but in no event later than by January 1, 1978, when second NSOs must expire. The regulations therefore provide for the advance approval of projects by EPA, and for the continuing monitoring of their results. In the Administrator's judgment, given the common technological factors throughout the industry nationally, coordination of the project approval and monitoring process on a national basis is essential to maximizing the effectiveness of the limited reasearch and development resources available.

Among the factors the Administrator will consider in assessing any proposed project are: (a) The likelihood that the project will result in more effective means of emission limitation applicable to the smelter and to the industry; (b) the adequacy of the proposed funding both for conducting the project and in comparison to pollution control research expenditure levels in other industries; (c) the probability that the project will improve environmental and occupational control of pollutants other than sulfur dioxide;

[4] The need for additional information on the fugitive emissions of nonferrous smelters is discussed further in an Advance Notice of Proposed Rulemaking (43 FR 46275; October 5, 1978) accompanying EPA's promulgation of national ambient air quality standards for lead (43 FR 46246). Any requirements for air quality monitoring established under NSOs pursuant to the final version of the regulations discussed in the text will be coordinated with corresponding requirements established under the rules suggested in the ANPR.

(d) the possible effects of the project on energy conservation; and (e) other non-air quality health and environmental effects. In assessing the adequacy of funding of a particular project, EPA will also take into account the current level of sulfur dioxide control at the smelter as well as the resources of the corporation operating the smelter.

The Administrator will approve only those projects that appear to carry a reasonable likelihood of producing significant pollution control gains for the smelter or the industry. While the Agency recognizes that the success of a project cannot be predicted in advance, it also believes that without a seriousness of purpose and an adequate financial commitment, success will not occur. It will therefore ordinarily be necessary to propose projects involving at least pilot-scale operations occurring during the first NSO in order to secure project approval. Where appropriate, the Administrator consequently intends to approve company-wide projects, and joint projects that are consistent with antitrust law.

EPA encourages smelter operators to conduct a broad range of projects, including add-on controls, process changes which will produce more treatable gas streams, and new and improved production technology which is low in generation of pollution. The Agency would not, however, regard existing expenditures in the area of process changes undertaken primarily for production-related or economic reasons as satisfying the research requirement. To satisfy the requirement, intensified or expanded efforts would be required.

Finally, the information to be sumitted to EPA under this subpart is being required in part under the authority of section 114 of the Act. It will therefore be protected under Agency regulations governing confidentiality (40 CFR Part 2).

6. *Subpart G: Compliance Schedules.* The proposed regulations require that compliance with each NSO provision be achieved as expeditiously as practicable. Subpart G sets forth the maximum intervals the Agency believes are consistent with this requirement. These timetables are based on the "worst case" assumption that the smelter will not begin to comply with the NSO requirements until the effective date of its NSO. In virtually all cases, however, compliance can be achieved at a considerably faster rate.

7. *Subpart H: Waiver of Interim Constant Control Requirements.* Section 119 permits EPA or a state to grant a waiver from the interim constant control requirement of Subpart C to any smelter which had no constant controls as of the date of enactment of the 1977 Amendments (August 7, 1977) and for which the cost of such interim controls would "necessitate" closure of the smelter for at least one year. Subpart H contains the procedures and criteria governing the granting of a waiver. A request for a waiver must be contained in the smelter operator's NSO application.

The economic criteria used in the proposed regulations to determine the effect of requiring the installation of an acid plant or other control system are recognized financial tests. Short term closure would be viewed as necessary if information supplied in accordance with Appendix A indicates that the smelter's average variable costs at all relevant levels of production (after installation of interim controls) would exceed the weighted average price of smelter output for one year or more. As discussed in connection with Subpart B, permanent closure would be regarded as necessary if the sum of the present value of the smelter's net cash flow plus its terminal value would be less (after installation of controls) than the smelter's liquidation (salvage) value. The Administrator would grant, or would recommend that a state grant, a waiver of the interim constant control requirement to any smelter meeting either of these tests.

Subpart H also contains the procedures which the Administrator would use in conducting the adjudicatory proceeding required by section 119 in reaching his determination as to the effect of the interim constant control requirement on the smelter. Under section 119, the Administrator must hold that hearing within ninety days of receipt of the request. Consequently, these regulations are intended to expedite both pre-hearing procedures and final decisions on waiver requests, while providing applicants and other interested persons a full opportunity to present pertinent information and views.

The procedures proposed here are comparable to procedures proposed by EPA on April 25, 1978 (43 FR 17484) for use in actions on applications for modified permits under section 301(h) of the Clean Water Act. The proposal is based on the "initial licensing" provisions of the Administrative Procedure Act ("APA"), 5 U.S.C. 551 *et seq.* Those provisions govern agency proceedings involving the initial grant of a license or variance where decision-making is likely to involve policy determinations of the type normally made in rulemaking and the decision-making is not conducted in an accusatory context. The statute defines a "license" to include "the whole or part of" any "statutory exemption." Initial licensing would therefore include the initial decision on the granting of such an exemption.

Under the APA, initial licensing proceedings are meant to be substantially less adversary than other formal adjudications, such as administrative penalty assessments and license revocations. In initial licensing, no "separation of functions" requirement forbidding contact between agency trial staff and ultimate decision-makers is imposed (5 U.S.C. 557(b)(1)). In addition, agencies may require that all or part of the evidence be submitted in written form (5 U.S.C. 556(d)). There is no requirement that the presiding administrative law judge prepare an initial decision; instead, any "responsible member" of the agency staff may prepare it. The legislative history of the APA indicates that these exemptions were provided for initial licensing because the decisions involved were thought to be "like rulemaking" in that they would be complex, non-accusatory, and policy-dominated. Because they do not involve accusing anyone of wrong-doing, there is no reason for "separation of functions" within the agency or for an initial decision by a statutorily independent individual. The complexity of the determinations, moreover, requires that the agency be able to draw on its staff experts freely without being hampered by such artificial barriers when they serve no purpose. *The Administrative Procedure Act—A Legislative History,* S. Doc. No. 248, 79th Cong., 2d Sess. 204, 229, 262, 361 (1946).

EPA believes that initial licensing procedures are well-suited to the interim constant control waiver decision. Waiver decisions will involve decision-making on complicated financial issues. They will not be of an "accusatory" or condemnatory nature, but will entail applying the policy of the statute in concrete situations. The policy nature of the waiver determination, moreover, is substantially similar to the initial NSO eligibility determination, which is governed by the informal rulemaking procedures of the APA. In addition, EPA believes procedures such as these are necessary to enable the Administrator to meet the time limit prescribed by Congress.

EPA has attempted to use the initial licensing procedures not only to expedite the decision-making, but also to adapt the administrative evidentiary proceedings to the non-adversary nature of the waiver determination. When a waiver request is received, the Agency will prepare a tentative determination on the request. A hearing will be held on the tentative determination if requested by the smelter operator or other interested parties, and if certain threshold requirements are met. No EPA trial staff will be designated for the hearings. Instead, a panel of agency employees with expert knowledge of, or responsibility for, the

subjects involved will be present at the hearing and will question the parties, subject to over-all control of the proceeding by an Administrative Law Judge or by a Presidential appointee representing the Administrator. The hearing will be divided into a "legislative" phase at which the parties can present their views and arguments to the panel and be questioned by it, and an "adjudicative" phase at which formal cross-examination can be ordered if certain threshold requirements are met.

After the hearing, the panel will prepare a recommended decision which may be appealed to or reviewed *sua sponte* by the Administrator. In developing his final decision, the Administrator is free to consult with panel members as well as other EPA technical staff. EPA believes this type of procedure not only complies with the literal requirements of the initial licensing provisions of the APA, but also that it better serves the policy of those provisions than would the automatic early use of adjudicative cross-examination procedures.

The Agency also wishes to emphasize that because the proceedings involved here concern highly sensitive financial information, provisions for preserving the confidentiality of that information to the fullest extent consistent with the requirements of section 119 are included in the proposed regulations. In a proceeding conducted under these procedures, parties other than the smelter operator requesting the waiver would not have access to all the detailed financial data used by the Agency in preparing its tentative determination. While this may make it somewhat more difficult for other persons to evaluate the tentative determination, three factors have led the Administrator to conclude that the proposal strikes a reasonable balance between providing opportunities for such parties to affect the ultimate waiver decisions and the confidentiality interests of the companies.

First, the Agency recognizes the sensitivity of some of the financial information involved, and believes that at least some protection of that information is necessary and appropriate. Second, much of the manner in which that information will be evaluated is set forth in Subpart H and Appendix A of today's proposal. Interested parties can therefore also participate in EPA's decisionmaking with respect to waivers at the present rulemaking stage. The Agency urges interested persons to examine those provisions closely, and to indicate in comments whether they believe the treatment afforded by Appendix A and the tests found in proposed section 57.802(f) of the regulations is consistent with the intent of Congress. Finally, while the specific information on which some portions of the tentative determinations are based may be held confidential, the policy determinations on the significance of that information, as well as the qualitative nature of the information where appropriate, will be stated. Taken together, the Administrator believes that the opportunity for public participation represented by this rulemaking and the actual waiver proceedings will enable members of the public to present their views effectively, while recognizing the companies' legitimate interests in preserving the confidentiality of sensitive information.

NOTE.—The Environmental Protection Agency has determined that this notice does not propose a significant regulation requiring a regulatory analysis under Executive Order 12044.

(Secs. 114, 119, and 301 of the Clean Air Act, as amended (42 U.S.C. 7414, 7419, and 7601), and sec. 406 of Pub. L. 95-95.)

Dated: January 22, 1979.

DOUGLAS M. COSTLE,
Administrator.

The Administrator proposes to establish a new Part 57 in Title 40 of the Code of Federal Regulations, to read as follows:

PART 57—PRIMARY NONFERROUS SMELTER ORDERS

Subpart A—General

Sec.
57.101 Purpose and Scope.
57.102 Eligibility.
57.103 Definitions.
57.104 Amendment of the NSO.
57.105 Submittal of Required Plans, Proposals, and Reports.
57.106 Expiration Date.
57.107 The State Agency's Transmittal to EPA.
57.108 Comparable Existing SIP Provisions.

Subpart B—The Application

57.201 Where to Apply.
57.202 How to Apply.
57.203 Contents of the Application.

Subpart C—Constant Controls and Related Requirements

57.301 General Requirements.
57.302 Performance Level of Interim Control.
57.303 Total Plant-wide Emission Level.
57.304 Bypass, Excess Emissions and Malfunctions.
57.305 Compliance Monitoring and Reporting.

Subpart D—Supplementary Control System Requirements

57.401 General Requirements.
57.402 Elements of the Supplementary Control System.
57.403 Consent to Liability.
57.404 Measurements, Records and Reports.
57.405 Formulation, Approval and Implementation of Requirements.

Subpart E—Fugitive Emission Evaluation and Control

Sec.
57.501 General Requirement.
57.502 Evaluation.
57.503 Control Measures.

Subpart F—Research and Development Requirements

57.601 General Requirements.
57.602 Approval of Proposal.
57.603 Criteria for Approval.
57.604 Evaluation of Projects.
57.605 Consent.
57.606 Confidentiality.

Subpart G—Compliance Schedule Requirements

57.701 General Requirements.
57.702 Compliance with Constant Control Emission Limitation.
57.703 Compliance with the Supplementary Control System Requirements.

Subpart H—Waiver of Interim Requirement for Use of Continuous Emission Reduction Technology

57.801 Purpose and Scope.
57.802 Request for Waiver.
57.803 Issuance of Tentative Determination; Notice.
57.804 Request for Hearing; Request to Participate in Hearing.
57.805 Submission of Written Comments of Tentative Determination.
57.806 Presiding Officer.
57.807 Hearing.
57.808 Opportunity for Cross-Examination.
57.809 Ex Parte Contacts.
57.810 Filing of Briefs, Proposed Findings, and Proposed Recommendations.
57.811 Recommended Decision.
57.812 Appeal from or Review of Recommended Decision.
57.813 Final Decision.
57.814 Administrative Record.

Appendix A—Primary Nonferrous Smelter Order (NSO) Application.

AUTHORITY: Sections 114, 119, and 301 of the Clean Air Act, as amended, 42 U.S.C. 7414, 7419, and 7601, and section 406 of Pub. L. 95-95.

Subpart A—General

§ 57.101 Purpose and scope.

The regulations in Subparts A through H govern:

(a) The eligibility of smelters for a first Primary Nonferrous Smelter Order (NSO) under section 119 of the Clean Air Act;

(b) The procedures through which a first NSO can be issued; and

(c) The required contents of each first NSO. Subparts I *et seq.*, will contain NSOs in effect for individual smelters.

§ 57.102 Eligibility.

A primary nonferrous smelter is eligible for an NSO if it meets the following conditions:

(a) The smelter was in existence and operating on August 7, 1977;

(b) The smelter is subject to an approved or promulgated sulfur dioxide (SO_2) State Implementation Plan (SIP) emission limitation which is adequate to ensure that National Ambient Air Quality Standards (NAAQS) for SO_2 are achieved without the use of

any unauthorized dispersion techniques; and

(c) The Administrator determines, based on a showing by the smelter owner, that there is no applicable control technology which has been adequately demonstrated to be reasonably available to that smelter which would enable it to comply with its SIP emission limitation for SO_2.

§ 57.103 Definitions.

"Act" means the Clean Air Act, as amended.

"Active use" refers to an SO_2 constant control system installed at a smelter before August 7, 1977 and not totally removed from regular service by that date.

"Adequate SO_2 emission limitation" means a SIP emission limitation which was approved or promulgated by EPA as adequate to attain and maintain the NAAQs without the use of any unauthorized dispersion technique.

"Administrative Law Judge" means an administrative law judge appointed under 5 U.S.C. 3105 (see also 5 CFR Part 930, as amended by 37 FR 16787), and is synonymous with the term "Hearing Examiner" as formerly used in Title 5 of the United States Code.

"Administrator" means the Administrator of the United States Environmental Protection Agency, or the Administrator's authorized representative.

"Ambient air" shall have the meaning given by 40 CFR 50.1(e), as that definition appears upon promulgation of this subpart, or as hereafter amended.

"Ambient air quality" unless otherwise specified, refers only to concentrations of sulfur dioxide in the ambient air.

"An approved measure" refers to one contained in an NSO which is in effect.

"Assistant Administrator for Air and Waste Management" means the Assistant Administrator for Air and Waste Management of the United States Environmental Protection Agency.

"Assistant Administrator for Enforcement" means the Assistant Administrator for Enforcement of the United States Environmental Protection Agency.

"Constant controls and continuous emission reduction technology" mean a system which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.

"Effective date of an NSO" means the effective date listed in the FEDERAL REGISTER publication of EPA's issuance or approval of an NSO.

"EPA" means the Administrator of the United States Environmental Protection Agency, or the Administrator's authorized representative.

"Fugitive emissions" means any air pollutants emitted to the atmosphere from any locations at the smelter other than final stack emission points.

"Issuance" of an NSO means the final transmittal of the NSO pursuant to § 57.107(a) by an issuing agency (other than EPA) to EPA for approval, or the publication of an NSO issued by EPA in the Federal Register.

"Issuing agency", unless otherwise specifically indicated, includes both EPA and the state or local air pollution control agency to which a smelter's owner has applied for an NSO, or which has issued the NSO. Any showings or demonstrations required to be made under this part to the issuing agency are subject to independent determinations by EPA.

"Judicial Officer" means an attorney who is a permanent or temporary employee of the United States Environmental Protection Agency.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions. A malfunction can exist only for the minimum time necessary to implement corrective measures.

"Maximum production capacity" means either the maximum demonstrated rate at which a smelter has produced its principal metallic final product under the process equipment configuration and operating procedures.

"NAAQS" and "National Ambient Air Quality Standards", unless otherwise specified, refer only to the National Primary and Secondary Ambient Air Quality Standards for sulfur dioxide prevailing on or before August 7, 1977, or a rate which the smelter is able to demonstrate by calculation is attainable with existing process equipment.

"Scheduled maintenance" means any routine, periodic procedure necessary to maintain the integrity or reliability of emissions control performance, regardless of how often the procedure must be employed. It includes the screening or replacement of catalyst, the re-tubing of heat exchangers in sulfuric acid plants, and the routine repair and cleaning of gas cleaning equipment.

"Smelter owner" includes the owner or operator of the smelter.

"Supplementary control system" (SCS) means any technique for limiting the concentration of a pollutant in the ambient air by varying the emissions of that pollutant according to atmospheric conditions. For the purposes of this part, the term supplementary control system does not include any dispersion technique based solely on the use of a stack the height of which exceeds good engineering practice (as determined under regulations implementing section 123 of the Act).

"Unauthorized dispersion technique" refers to any dispersion technique which, under section 123 of the Act and the regulations promulgated pursuant to that section, may not be used to reduce the degree of emission limitation otherwise required in the applicable SIP.

§ 57.104 Amendment of the NSO.

An NSO shall be amended whenever necessary for compliance with the requirements and purposes of this part. A state or local issuing agency may propose to amend any NSO it has issued. Any amendment proposed by a State or local issuing agency shall be subject to approval by EPA to the same extent as was the original NSO. Any smelter owner may apply to the agency which originally issued its NSO for an amendment of the NSO at any time. Such an application shall be accompanied by whatever documentation is required by that agency (or EPA) to support the requested amendment. This section shall not apply to termination or revocation of NSOs, or to a requirement for the use of additional systems of continuous emission reduction technology.

§ 57.105 Submittal of required plans, proposals, and reports.

The failure of a smelter owner to submit any plan, report, document or proposal as required by its NSO or by this part shall constitute a violation of its NSO.

§ 57.106 Expiration date.

Each NSO shall state its expiration date. No NSO shall expire later than January 1, 1983.

§ 57.107 The State Agency's Transmittal to EPA.

(a) *Content and bases of the State or local agency's NSO.* Issuance of an NSO by a State or local agency shall be completed by the State's transmittal to the appropriate EPA Regional Office of:

(1) The text of the NSO;

(2) The application submitted by the smelter owner, any correspondence between the issuing agency and the applicant relating to the NSO, and any material submitted in support of the application;

(3) A concise statement of the State or local agency's findings and their bases; and

(4) Any documentation prepared by or for the issuing agency in support of the NSO.

(b) *The State or local agency's enforcement plan.* The transmittal under paragraph (a) of this section shall be accompanied by a description of the State's plans for monitoring compliance with and enforcement of the NSO. The transmittal shall also include a description of the resources which will be used to implement those plans.

§ 57.108 Comparable existing SIP provisions.

Notwithstanding any other provision of this part, an NSO may contain provisions to which the affected smelter is subject under the applicable EPA-approved state implementation plan (SIP) for sulfur dioxide in lieu of the corresponding provisions which would otherwise be required under this part if the Administrator determines that those SIP provisions are substantially equivalent to the corresponding NSO provisions which would otherwise be required, and if the Administrator determines that the smelter is in substantial compliance with those SIP provisions. For the purposes of this section, provisions to which the affected smelter is subject under the applicable EPA-approved State Implementation Plan are those which became effective before the smelter owner applied for the NSO.

Subpart B—The Application

§ 57.201 Where to apply..

Any eligible smelter may apply for an NSO to the appropriate EPA Regional Office or to the appropriate State or local air pollution control agency. In all cases, those parts of the application required to be submitted under § 57.203(b) (eligibility) and § 57.602 (research and development) shall be sent directly to the Director, Division of Stationary Source Enforcement (EN-341), U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Attention: Confidential Information Unit.

§ 57.202 How to apply.

(a) *Letter of intent.* To initiate an application for an NSO, the owner or operator of a smelter shall send a letter of intent to an appropriate air pollution control agency. The letter of intent shall contain a statement of the owner's intent to apply for an NSO, and an agreement to provide any information required under this subpart and Appendix A. The letter of intent shall be signed by a corporate official authorized to make such commitments. Upon receipt by the issuing agency of any letter of intent postmarked within 2 weeks after the effective date of this subpart, or within 2 weeks after the effective date of any SIP emission limitation for sulfur dioxide which is promulgated or approved after the effetive date of this subpart, the federal SIP emission limitation for sulfur dioxide shall be deemed suspended for 90 days.

(b) *Complete application.* (1) No later than 90 days after the letter of intent has been sent, the smelter owner shall submit its completed application pursuant to § 57.201. The 90 day period may be extended once for 30 days at the discretion of the issuing agency. Receipt of all parts of a substantially complete application postmarked within the original or extended application period shall be deemed to continue the suspension of the federal SIP emission limitation for SO_2 until the issuing agency (other than EPA) issues or declines to issue an NSO, or until EPA issues or declines to issue and NSO. This suspension shall in all cases terminate, however, 90 days after receipt of the substantially completed application, unless extended for good cause at the discretion of the Administrator. Whether or not an application is substantially complete shall also be a decision within the Administrator's sole discretion.)

(2) If an issuing agency transmits an NSO to EPA for approval before the expiration of the suspension of the federal SIP emission limitation, the suspension shall continue until EPA approves or disapproves the NSO. Such action shall be taken by EPA within 90 days of receipt of a transmittal under § 57.107.

§ 57.203 Contents of the application.

(a) *Claim of confidentiality.* The smelter owner may make a business confidentiality claim covering all or part of the information in the NSO application in accordance with 40 CFR Part 2, Subpart B (41 FR 36906 *et seq.*, September 1, 1976, as amended by 43 FR 39997 *et seq.*, September 8, 1978). A claim is completely effective only if it is made at the time of application. A claim shall be made by attaching to the information a notice of confidentiality. Information claimed as confidential will be governed by the provisions of 40 CFR Part 2, Subpart B. If no claim accompanies the information, it may be made available to the public without further notice.

(b) *Eligibility information.* Each smelter owner shall make the showing required by § 57.102(c) by completing and submitting Appendix A to this part as a part of its application. The Administrator shall find a smelter eligible; under § 57.102(c) if the information supplied on Appendix A (plus any necessary supplemental information) shows, according to the criteria, procedures, and tests contained in Appendix A, that (after installation of the full constant control equipment required to comply with its emission limitation) the sum of the present value of the smelter's future net cash flow, less depreciation, plus its terminal value would be less than the smelter's liquidation (salvage) value.

(c) *Current operating information.* A complete NSO application shall also contain the following information:

(1) A process flow diagram of the smelter, including current process and instrumentation diagrams for all processes or equipment which may emit or affect the emission of sulfur dioxide; the characteristics of all gas streams emitted from the smelter's process equipment (flow rates, volumes, compositions, and variations over time); and a list of all monitoring data and strip charts, including all data, charts, logs or sheets kept with respect to the operation of any process equipment which may emit or affect the emission of sulfur dioxide;

(2) The smelter's maximum daily production capactiy (as defined in § 57.103 (r)), as of August 7, 1977; the operational rate (in pounds of charge per hour) of each major piece of process equipment when the smelter is operating at that capacity; and the smelter's average and maximum daily production rate for each product, coproduct, or by-product, by year, for the past 3 years;

(3) The optimal conversion efficiency of an acid plant or other sulfur dioxide control system under the normal process operating conditions (excluding malfunctions) most conducive to optimal conversion efficiency;

(4) The average conversion efficiency of any acid plant or other sulfur dioxide control system during normal process operations (excluding malfunctions) by month, during the past 3 years;

(5) The percent of the time the acid plant or other control system was available for service during each month for the past 3 years, excluding down time for scheduled maintenance, and a full explanation of any major or recurring problems with the system during that time;

(6) The frequency and duration of times during the past 3 years when the SO_2 control system was unavailable because of scheduled maintenance of the system;

(7) A description of all scheduled periodic shut-downs of the smelter during the past 3 years, including their purpose, frequency and duration; and the same information with respect to unscheduled shut-downs;

The gas volume, rates, and SO_2 conncentration which the control system was actually designed to accommodate, taking into account any

modifications made after its installation;

(9) The average montly sulfur balance across the process and control equipment, including fugitive emissions, for the past 3 years; and

(10) A description of engineering techniques now in use at the smelter to prevent the release of fugitive emissions into the atmosphere at low elevations.

(d) *The smelter owner's proposals.* The smelter owner shall submit as part of its application draft NSO provisions which would implement the requirements of Subparts C through G of this part. The issuing agency may use these proposals as the basis for any NSO that may be granted, or may modify these proposals in any way it deems necessary in order to comply with the requirements of this part.

(e) *Additional information.* The smelter owner shall designate in its application a corporate officer responsible and authorized to supply supplemental technical and economic information and explanations as required by the issuing agency during the formulation of the NSO. Failure to supply such information and explanations shall constitute a failure to submit a complete application.

(f) *Request for a waiver of constant controls.* Any request for a waiver of the interim constant control requirement of § 57.301 shall be included in the application for an NSO. The application shall contain all information required by this part which is pertinent to a facility that lacks constant controls. The criteria and procedures for granting the waiver are governed by Subpart H and Appendix A of this part.

Subpart C—Constant Controls and Related Requirements

§ 57.301 General requirements.

Each NSO shall require an interim level of sulfur dioxide constant controls to be operated at the smelter, unless a waiver of this requirement has been granted to the owner under Subpart H of this part. Except as otherwise provided in § 57.304, any constant controls in active use as of August 7, 1977, shall be properly operated and maintained at all times. The NSO shall require the following gas streams to be treated by constant controls:

(a) In copper smelters, off-gases from fluidized bed roasters, flash furnaces, NORANDA reactors, electric furnaces, and copper converters;

(b) In lead smelters, off-gases from the front end of the sintering machine and any other sinter gases which are currently re-circulated;

(c) In zinc smelters, off-gases from multi-hearth roasters, flash roasters and fluidized bed roasters; and

(d) In all smelters, any other process streams which were regularly or intermittently treated by constant controls at the smelter as of August 7, 1977.

§ 57.302 Performance level of interim constant controls.

(a) *Maximum feasible efficiency.* Each NSO shall require: that the smelter operate its constant control systems at their maximum feasible efficiency, including any improvements necessary to correct the effects of any serious deficiencies; that the process and control equipment be maintained in the way best designed to ensure such operation; and that process operations be scheduled and coordinated to treat process gas streams to the maximum possible extent. Maximum feasible efficiency shall be expressed in the NSO in the form of a limitation on the concentration of SO_2 in the tail gas of the control system in combination with an appropriate averaging period, as provided below in paragraphs (b) and (c) of this section.

(b) *The limitation level for SO_2 concentration in the control system tail gas.* The level at which the concentration limitation is set shall take into account fluctuations in the strength and volume of process off-gases to the extent that those fluctuations affect the SO_2 content of the tail gas and cannot be avoided by improved scheduling and coordination of process operations. The limitation shall exclude the effect of any increase in emissions caused by process or control equipment malfunction. the limitation shall take into account unavoidable catalyst deterioration in sulfuric acid plants, but may prescribe the frequency of catalyst screening or replacement. The NSO shall also prohibit the smelter owner from using dilution air to meet the limitation.

(c) *Averaging period.* (1) The averaging period shall be derived in combination with the concentration limitation and shall take into account the same factors described in paragraph (b). The averaging periods established under this paragraph should generally not exceed the following:

(i) For sulfuric acid plants on copper smelters, 12 hour running average;

(ii) For sulfuric acid plants on lead smelters, 6 hour running average;

(iii) For sulfuric acid plants on zinc smelters, 2 hour running average;

(iv) For dimethylaniline (DMA) scrubbing units on copper smelters, 2 hour running average.

(2) A different averaging period may be established if the applicant demonstrates that such a period is necessary in order to account for the factors described in paragraph (b) of this section, provided that the period is enforceable and satisfies the criteria of paragraph (a) of this section.

(d) *Improved performance.* (1) The performance level representing maximum feasible efficiency for any existing control system (*e.g.*, a sulfuric acid plant or a DMA scrubber) shall require the correction of the effects of any serious deficiencies in the system. For the purposes of this paragraph, at least the following problems shall constitute serious deficiencies in acid plants:

(i) Heat exchangers and associated equipment inadequate to sustain efficient, autothermal operation over the full range of gas strengths and volumes routinely generated by process equipment;

(ii) Failure to completely fill all available catalyst bed stages with sufficient catalyst;

(iii) Inability of the gas pre-treatment system to prevent unduly frequent plugging or fouling (deterioration) of catalyst or other components of the acid plant; or

(iv) Blower capacity inadequate to permit the treatment of the full volume of gas which the plant could otherwise accommodate, to the extent that this inadequacy results in bypassing of treatable gas around the plant.

(2) Notwithstanding any contrary provisions of § 57.304(c) (malfunction demonstration), no excess emissions (as defined in § 57.304(a)) shall be considered to have resulted from a malfunction if the smelter owner has not upgraded serious deficiencies in the constant control system in compliance with the requirements of § 57.302(d)(1), unless the smelter owner demonstrates under § 57.304(c) that compliance with those requirements would not have affected the magnitude of the emission.

(e) *Multiple control devices.* (1) At any smelter where off-gas streams can be treated by various existing control systems (*e.g.*, multiple acid plants or a DMA scrubber and an acid plant), the NSO shall require the use of those systems in the combination that will result in the maximum feasible net SO_2 removal.

(2) To the extent that compliance with this requirement is demonstrated by the smelter to result in excess emissions during unavoidable start up and shut down of the control systems, those excess emissions shall not constitute violations of the NSO.

§ 57.303 Total plant-wide emission limitation.

(a) *Calculation of the emission limitation.* Each NSO shall contain a requirement limiting the total allowable emissions from the smelter to the level which would have been associated with production at the smelter's maximum production capacity (as defined in § 57.103(r)) as of August 7, 1977. This limitation shall be expressed in

units of mass per time and shall be calculated as the sum of stack emissions from uncontrolled processes, captured fugitive emissions, and emissions from any control systems (operating at the efficiency prescribed under § 57.302). These emission rates may be derived from either direct measurements or appropriately documented mass balance calculations.

(b) *Compliance with the emission limitation.* Each NSO shall require the use of specific, enforceable testing methods and measurement periods for determining compliance with the limitation established under paragraph (a) of this section.

§ 57.304 Bypass, excess emissions and malfunctions.

(a) *Definition of excess emissions.* For the purposes of this subpart, any emissions greater than those permitted by the NSO provisions established under § 57.302 (performance level of interim constant controls) or § 57.303 (plant-wide emission limitation) of this subpart shall constitute excess emissions. Emission of any gas stream identified under § 57.301(a), (b), (c), or (d) of this subpart that is not treated by a sulfur dioxide control system shall also constitute an excess emission under this subpart.

(b) *The excess emission report.* Each NSO shall require the smelter to report all excess emissions to the issuing agency, as provided in § 57.305(b) of this subpart. The report shall include the following:

(1) Identity of the stack or other emission points where the excess emissions occurred;

(2) Magnitude of the excess emissions expressed in the units of each applicable emission limitation, as well as the operating data, documents, and calculations used in determining the magnitude of the excess emissions;

(3) Time and duration of the excess emissions;

(4) Identity of the equipment causing the excess emissions;

(5) Nature and cause of such excess emission;

(6) Steps taken to limit the excess emissions, and when those steps were commenced;

(7) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and to prevent the recurrence of such malfunction; and

(8) At the smelter owner's election, the demonstration specified in paragraph (c) of this section.

(c) *Malfunction demonstration.* Except as provided in § 57.302(e)(2), or in paragraph (d) of this section, any excesss emission shall be a violation of the NSO unless the owner demonstrates in the excess emissions report required under paragraph (b) of this section that the excess emission resulted from a malfunction (or an unavoidable start up and shut down resulting from a malfunction) and that:

(1) The air pollution control systems, process equipment, or processes were at all times maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions;

(2) Repairs were made as expeditiously as practicable, including the use of off-shift labor and overtime;

(3) The amount and duration of the excess emissions were minimized to the maximum extent practicable during periods of such emissions;

(4) The bypass of SO_2 streams (which are otherwise required to be treated) around control systems was limited to the maximum extent practicable; and

(5) The excess emissions were not part of a recurring pattern indicative of serious deficiencies in, or inadequate operation and maintenance of, the process or control equipment.

(d) *Scheduled maintenance exception.* Excess emissions occuring during scheduled maintenance shall not constitute violations of the NSO to the extent that:

(1) The expected additional annual sulfur dioxide removal by any control system (including associated process changes) for which construction had not commenced (as defined in 40 CFR 60.2(g) and (i)) as of August 7, 1977, and which the smelter owner agrees to install and operate under Subpart F, would have offset such excess emissions if the system had been in operation throughout the year in which the maintenance was performed;

(2) The system is installed and operated as provided in the NSO provisions established under Subpart F; and

(3) The system performs at substantially the expected efficiency and reliability subsequent to its initial break-in period.

(e) *EPA emergency authority.* Nothing in this section shall be construed to limit the authority of the Administrator to take any action under section 303 of the Clean Air Act.

§ 57.305 Compliance monitoring and reporting.

(a) *Monitoring.* (1) Each NSO shall require compliance with the control system performance requirements established pursuant to this subpart, to be determined through the use of continuous monitors for measuring SO_2 concentration.

(i) Such monitors must be installed, operated and maintained in accordance with the performance specifications and other requirements contained in Appendix D to 40 CFR Part 52. The monitors must take and record at least one measurement of SO_2 concentration from the effluent of each control system in each 15 minute period.

(ii) The sampling point shall be located at least 8 stack diameters (diameter measured at sampling point) downstream and 2 diameters upstream from any flow disturbance such as a bend, expansion, constriction, or flame, unless another location is approved by the Administrator.

(iii) The sampling point for monitoring emissions shall be in the duct at the centroid of the cross section if the cross sectional area is less than 4.645 m^2 (50 ft^2) or at a point no closer to the wall than 0.914 m (3 ft) if the cross sectional area is 4.645 m^2 (50 ft^2) or more. The monitor sample point shall be in an area of small spatial concentration gradient and shall be representative of the concentration in the duct.

(iv) The measurement system(s) installed and used pursuant to this paragraph shall be subject to the manufacturer's recommended zero adjustment and calibration procedures at least once per 24-hour operating period unless the manufacturer specifies or recommends calibration at shorter intervals, in which case such specifications or recommendations shall be followed. Records of these procedures shall be made which clearly show instrument readings before and after zero adjustment and calibration.

(v) The use of manual source testing methods (equivalent to 40 CFR Part 60, Appendix A) may also be specified as an acceptable additional (but not alternative) method for making compliance determinations.

(2) Each NSO shall require the continuous monitoring of any ducts or flues used to bypass gases, required under this subpart to be treated by constant controls, around the smelter's sulfur dioxide constant control system(s) for ultimate discharge to the atmosphere. Such monitoring shall be adequate to disclose the time of the bypass, its duration, and the approximate volume of gas bypassed.

(b) *Reporting.* (1) Each NSO shall require that the smelter maintain a record of all measurements required under paragraph (a) of this section. Results shall be summarized monthly and shall be submitted to the issuing agency within 15 days after the end of each month. The smelter owner shall retain a record of such measurements for the duration of the NSO and for as long thereafter as may be necessary for the purpose of including such records in an application for a second NSO.

(2) Each NSO shall require that the smelter maintain a record of all measurements and calculations required under § 57.303(b). Results shall be summarized on a monthly basis and

shall be submitted to the issuing agency at 6-month intervals. The smelter owner shall retain a record of such measurements and calculations for the duration of the NSO and for as long thereafter as may be necessary for the purposes of including such information in an application for a second NSO.

(3) The report required under § 57.304(b) shall accompany the report required under paragraph (b)(1) of this section.

Subpart D—Supplementary Control System Requirements

§ 57.401 *General requirement.*

Subject to the provisions of Subpart E, each NSO shall require the smelter owner to prevent all violations of the NAAQS in the smelter's designated liability area (DLA) through the operation of an approved supplementary control system (SCS).

§ 57.402 Elements of the supplementary control system.

Each supplementary control system shall contain the following elements:

(a) *Air quality monitoring network.* An approvable SCS shall include the use of appropriate ambient air quality monitors to continuously measure the concentration of sulfur dioxide in the air in the smelter's DLA.

(1) The monitors shall be located at all points of expected maximum SO_2 concentrations in the smelter's DLA. The determination of the locations where maximum concentrations may occur shall take into account all probable meteoroloical and operating conditions, as well as the presence of other sources of SO_2 significantly affecting SO_2 concentrations in the DLA.

(2) The number and location of sites shall be based on dispersion modeling, measured ambient air quality data, meteorological data and other meteorological information. The system shall include the use of at least 7 fixed monitors unless the issuing agency determines, on the basis of a demonstration by the smelter, that the use of fewer monitors would not limit coverage of points of maximum concentration or otherwise reduce the capability of the smelter owner to prevent all violations of the NAAQS in the smelter's DLA. The system shall also include at least one mobile monitor to be sited as the issuing agency may direct from time to time.

(3) All monitors shall be continuously operated and maintained and shall meet the performance specifications contained in 40 CFR Part 53. The monitors shall be capable of routine real time measurement of maximum expected SO_2 concentrations for the averaging times of SO_2 NAAQS.

(4) The smelter owner shall allow unrestricted access to the issuing agency to inspect, verify calibration of, and obtain data from the monitors.

(b) *Meterological network.* The SCS must have a meteorological assessment capability adequate to identify conditions requiring emission curtailment to prevent possible violations of the NAAQS. The meteorological assessment capability shall provide all forecast and current information necessary for successful use of the system's operational manual, which is required by paragraph (e) of this section.

(c) *Designated liability area.* The system shall be required to prevent all violations of the NAAQS within the smelter's DLA. The DLA of any smelter is the area within which the smelter's uncontrolled emissions may cause or significantly contribute to violations of the NAAQS for SO_2 when the smelter is operating at its maximum production capacity under any probable meteorological conditions. The boundaries of that area shall be specified in the NSO.

(1) The DLA shall ordinarily be a circle with a center point at the smelter's tallest stack and a minimum radius as given in the following table:

RADIUS FOR UNCONTOLLED SO_2 EMISSION RATES

Emission rate in tons per hour	Emission rate in grams per sec.	Radius in kilometers
16 or less	4,000 or less	11
24	6,000	16
32	8,000	24
40	10,000	32
48 or more	12,000 or more	40

Minimum radii may be determined from the table by linear interpolation.

(2) The NSO may provide for a DLA with different boundaries if the smelter owner can demonstrate through the use of appropriate dispersion modeling and ambient air quality monitoring data that the smelter's uncontrolled emissions could not cause or significantly contribute to a violation of the NAAQS beyond the boundaries of such a different area under any probable meteorological conditions.

(3) A violation of the NAAQS in the DLA of any smelter shall constitute a violation of that smelter's NSO, unless the issuing agency determines on the basis of a showing by the smelter owner that:

(i) The smelter owner had taken all emission curtailment action indicated by the SCS operational manual; and

(ii) The violation was caused in significant part by emissions of another source(s) which were in excess of the maximum permissible emissions applicable to such source(s), as defined in paragraph (e)(2) of this section.

(d) *Overlapping designated liability areas.* Notwithstanding any other provisions of this subpart, the following requirements shall apply whenever the designated liability areas of two or more smelters do, or may, overlap:

(1) In the case of any NSO applicant that would have a DLA which would overlap with the DLA of any other smelter that has applied for an NSO or has an NSO in effect, the NSO applicant shall include in its application an enforceable joint plan, agreed to by such other smelter(s). In determining whether a joint plan is required, the NSO applicant shall calculate its DLA according to the table in paragraph (c)(1). The DLA of the other smelter shall be calculated according to the table in paragraph (c)(1) unless the other smelter has an NSO in effect, in which case the boundaries in that NSO shall be used. The enforceable joint plan shall provide for:

(i) Emission curtailment adequate to ensure that the NAAQS will not be violated in any areas of overlapping DLAs; and

(ii) Conclusive prospective allocation of legal liability in the event that the NAAQS are violated in the area of overlapping DLAs.

Such plans may, but need not, include the operation of a joint SCS system. Each NSO shall require adherence by the NSO applicant owner to the joint plan for emission curtailment and allocation of liability, unless the issuing agency determines, pursuant to the provisions of paragraph (c)(2) of this section, that the NSO applicant's DLA does not overlap with that of any other smelter.

(2) In the case of any NSO applicant that would have a DLA which would overlap with the DLA of any other smelter whose owner has not applied for an NSO (and does not have an NSO in effect), the NSO applicant's submittal shall contain a written consent, signed by a corporate official empowered to do so. The consent shall state that if, at any time thereafter, the owner of an other smelter applies for an NSO, and the other smelter's DLA would overlap with the NSO applicant's DLA, the NSO applicant will negotiate and submit an enforceable joint plan for emission curtailment and allocation of liability (as described in paragraph (1)). In determining whether it is necessary to submit such a consent, each smelter's DLA shall be calculated according to the table set forth in paragraph (c)(1) of this section. The consent shall state that a joint plan shall be submitted within 90 days of the issuing agency's notification to the NSO applicant of receipt of the other smelter's letter of intent, unless the issuing agency determines that the DLAs do not overlap. Failure of the NSO applicant to submit such a

plan shall constitute grounds for denial of its NSO application or a violation of an effective NSO, as applicable.

(e) *The SCS operational manual.* Each NSO shall require the smelter to operate in accordance with the provisions of an SCS operational manual approved by the issuing agency. The SCS operational manual shall describe the circumstances under which, the extent to which, and the procedures through which emissions shall be curtailed to prevent violations of the NAAQS in the smelters's DLA. Failure to curtail emissions when and as much as indicated by the manual or to follow the provisons of the manual implementing the requirements of subparagraph (3) of this paragraph shall constitute a violation of the NSO.

(1) The operational manual shall prescribe emission curtailment decisions based on the use of real time information from the air quality monitoring network, dispersion model estimates of the effect of emissions on air quality, and meteorological observations and predictions.

(2) The operational manual shall also provide for emission curtailment to prevent violation of the NAAQS within the smelter's DLA which may be caused in part by emissions from other sources (unless those other sources are smelters subject to NSOs). Such provisions may be designed on the assumption that the emissions from the other sources do not exceed their maximum permissible emissions. As used in this paragraph, maximum permissible emissions for other sources are the highest of (i) SIP emission limitations; (ii) orders in effect under section 113 of the Clean Air Act; or (iii) compliance date extensions under former section 119 of the Clean Air Act (relating to coal conversions).

(3) The SCS operational manual shall include (but not be limited to):

(i) A clear delineation of the authority of the SCS operator to require all other smelter personnel to implement the operator's curtailment decisions;

(ii) The maintenance and calibration procedures and schedules for all SCS equipment;

(iii) A description of the procedures to be followed for the regular acquisition of all meteorological information necessary to operate the system;

(iv) The ambient concentrations and meteorological conditions that will be used as criteria for determining the need for various degrees of emission curtailment;

(v) The meteorlogical variables as to which judgments may be made in applying the criteria stated pursuant to paragraph(e)(3)(iv) of this section;

(vi) The procedures through which and the maximum time period within which a curtailment decision will be made and implemented by the SCS operator;

(vii) The method for immediately evaluating the adequacy of a particular curtailment decision, including the factors to be considered in that evaluation;

(viii) The procedures through which and the time within which additional necessary curtailment will immediately be effected; and

(ix) The procedures to be followed to protect the NAAQS in the event of a mechanical failure in any element of the SCS.

(f) *Continuing review of the SCS.* Each NSO shall require the smelter owner to continously review the design and operation of the SCS to determine what measures may be available for improving the performance of the system. The NSO shall also require the submission of an annual report to the issuing agency detailing the results of this review and specifying measures implemented to prevent the recurrence of any ambient violations.

§ 57.403 Consent to liability.

(a) *The consent.* The NSO shall include a consent, signed by a corporate official empowered to do so, that in any judicial or administrative proceeding to enforce the NSO, the smelter owner will not contest:

(1) Liability for any violation of the NAAQS in the smelter's DLA, except on the grounds that a DLA determination under § 57.402(c)(3) was clearly wrong; or

(2) The conclusive allocation of liability between it and any other smelter(s) for any violation of the NAAQS in an area of overlapping DLAs, pursuant to § 57.402(d).

(b) *Rights not waived by the consent.* This consent shall not be deemed to waive any right(s) to judicial review of any provisions of an NSO that are otherwise available to the smelter owner or operator under section 307(b) of the Clean Air Act.

§ 57.404 Measurements, records, and reports.

(a) *Measurements.* Each NSO shall require the smelter owner to install, operate, and maintain a measurement system(s) for continously monitoring sulfur dioxide emissions and stack gas volumetric flow rates in each stack which could emit 5 percent or more of the smelter's total potential (uncontrolled) hourly sulfur dioxide emissions.

(1) Such monitors shall be installed, operated, and maintained in accordance with the performance specifications and other requirements contained in Appendices D and E to 40 CFR Part 52. The monitors must take and record at least one measurements of sulfur dioxide concentration and stack gas flow rate from the effluent of each affected stack in each fifteen-minute period.

(2) The sampling point shall be located at least eight stack diameters (diameter measured at sampling point) downstream and two diameters upstream from any flow disturbance such as a bend, expansion, constriction, or flame, unless another location is approved by the Administrator.

(3) The sampling point for monitoring emissions shall be in the duct at the centroid of the cross section if the cross sectional area is less than 4.645 m^2 (50 ft^2) or at a point no closer to the wall than 0.914 m (3 ft.) if the cross sectional area is 4.645 m^2 (50 ft^2) or more. The monitor sample point shall be in an area of small spatial concentration gradient and shall provide a sample which is representative of the concentration in the duct.

(4) The measurement system(s) installed and used pursuant to this paragraph shall be subject to the manufacturer's recommended zero adjustment and calibration procedures at least once per 24-hour operating period unless the manufacturer specifies or recommends calibration at shorter intervals, in which case such specifications or recommendations shall be followed. Records of these procedures shall be made which clearly show instrument readings before and after zero adjustment and calibration.

(5) The results of such monitoring shall be submitted in the form and with the frequency specified in the NSO.

(b) *Records.* Each NSO shall require the smelter owner to maintain records of the air quality measurements made, meteorological information acquired, and emission curtailments ordered (including the identity of the persons making such decisions) during the operations of the SCS. These records shall be maintained for the duration of the NSO, and for as long thereafter as may be necessary for purposes of applying for a second NSO, and shall be furnished to the issuing agency upon request.

(c) *Reports.* Each NSO shall require the smelter owner to:

(1) Submit a monthly summary indicating all places and times at which the NAAQS for SO_2 were equalled or violated in the smelter's DLA, and stating the SO_2 concentrations at such times;

(2) Immediately notify EPA and the state agency any time concentrations of SO_2 in the ambient air in the smelter's DLA reaches 0.3 parts per million (800 micrograms/cubic meter), 24-hour average, or exceed the warning stage in any more stringent emergency plan in the applicable state implementation plan; and

(3) Make such other reports as may be specified in the NSO.

§ 57.405 Formulation, approval, and implementation of requirements.

(a) *SCS content of the application.* The requirements of § 57.203(d) shall be satisfied with respect to this subpart as follows:

(1) Each NSO application shall include a complete description of any supplementary control system in operation at the smelter at the time of application and a copy of any SCS operating manual in use with that system.

(2) Each NSO application shall contain proposed NSO provisions for compliance with the requirements of §§ 57.401, 57.402 (c), (d), and (f), 57.403, 57.404, and 57.405(b)(2).

(3) Each NSO application shall include a specific plan for the development of a system fulfilling the requirements of § 57.402 (a), (b), and (e) (covering air quality monitoring network meteorological network, and the SCS operational manual).

(b) *SCS content of the order.* (1) Each NSO shall include an approved version of the plan described in paragraph (a)(3) of this section and shall provide increments of progress towards its completion.

(2) Each NSO shall require the submission of a final report evaluating the performance and adequacy of the SCS developed pursuant to the approved plan. The report shall include:

(i) A detailed description of how the criteria that form the basis for particular curtailment decisions were derived;

(ii) A complete description of each SCS element listed in § 57.402 (a) through (d) (covering monitoring, meteorology, and the DLA), and an explanation of why the elements fulfill the requirements of those sections;

(iii) A reliability study demonstrating that the SCS will prevent violations of the NAAQS in the smelter's DLA at all times. The reliability study shall include a comprehensive analysis of the system's operation during one or more three-month seasonal periods when meteorological conditions creating the most serious risk of NAAQS violations are likely to occur; and

(iv) A copy of the current SCS operational manual.

(c) *Amendment of the NSO.* Each NSO shall be amended, after the submission of the final report required under paragraph (b)(2), to reflect the most current approved elements of the SCS and to fulfill all other requirements of this subpart. Each NSO shall also be subsequently amended (as provided in § 57.104) whenever necessary to reflect improved SCS operating procedures or other system requirements.

Subpart E—Fugitive Emission Evaluation and Control

§ 57.501 General requirement.

Each NSO shall require the smelter owner to use such control measures as may be necessary to ensure that the smelter's fugitive emissions do not result in violations of the NAAQS for SO_2 in the smelter's DLA.

§ 57.502 Evaluation.

(a) *Evaluation at the time of application.* Any smelter owner may demonstrate the impact that fugitive emissions of SO_2 have upon the NAAQS or air quality by means of air quality monitoring data and modeling calculations submitted at the time of application.

(b) *Evaluation during the first 6 months of the NSO.* Any smelter owner who is unable to demonstrate at the time of application for an NSO that the smelter's SO_2 fugitive emissions will not cause or significantly contribute to violations of the NAAQS in the smelter's DLA shall instead submit the design and workplan for a study adequate to assess the actual impact of all of its fugitive emissions upon ambient air quality. The design and workplan of the study shall be approved by the issuing agency and included in the NSO. The study shall commence upon the date when the NSO becomes effective, and an analysis of its results shall be submitted to the issuing agency no later than ten months following that date. The study shall include a 6-month period during which the ambient air shall be monitored to determine the impact of fugitive emissions of sulfur dioxide, arsenic, lead, and total suspended particulates on the ambient air quality in the smelter's DLA.

§ 57.503 Control measures.

The NSO of any smelter subject to the requirements of § 57.502(b) shall be amended as provided in § 57.704(d) to implement the requirement of § 57.501. Measures required to be implemented may include:

(a) *Additional supplementary control.* The use of the supplementary control system, if the additional use of the system does not interfere with the smelter owner's ability to meet the requirements of subpart D; and

(b) *Engineering and maintenance techniques.* The use of engineering and maintenance techniques to detect and prevent leaks and capture and vent fugitive emissions through appropriate stacks. These techniques include but are not limited to:

(1) For reactors, installation and proper operation of primary hoods;

(2) For roasters, installation and proper operation of primary hoods on all hot calcine transfer points;

(3) For furnaces, installation and proper operation of primary hoods on all active matte tap holes, matte launders, slag skim bays, and transfer points;

(4) For converters, installation and proper operation of primary hoods for blowing operations, and where appropriate, secondary hoods for charging and pouring operations;

(5) For sintering machines, installation and proper operation of primary hoods on the sinter bed, all hot sinter ignition points, all concentrate laydown points, and all hot sinter transfer points;

(6) For blast furnaces, installation and proper operation of primary hoods on all active slag and lead bullion furnace tap holes and transfer points;

(7) For dross reverberatory furnaces, installation and proper operation of primary hoods on all active charging and discharging points;

(8) Maintenance of all ducts, flues and stacks in a leak-free condition to the maximum extent possible;

(9) Maintenance of all process equipment under normal operating conditions in such a fashion that out-leakage of fugitive gases will be prevented to the maximum extent possible;

(10) Secondary or tertiary hooding on process equipment where necessary; and

(11) Partial or complete building evacuation as appropriate.

Subpart F—Research and Development Requirements

§ 57.601 General requirement.

Each NSO shall require the smelter to conduct or participate in a specific research and development program designed to develop more effective means of compliance with the sulfur dioxide control requirements of the applicable state implementation plan than presently exist.

§ 57.602 Approval of proposal.

(a) *The smelter owner's proposal.* The smelter owner's NSO application shall include a proposed NSO provision for implementing the requirement of § 57.601, a fully documented supporting analysis of the proposed program, and an evaluation of the consistency of the proposed program with the criteria listed in § 57.603. The application shall also specify:

(1) The design and substantive elements of the research and development program, including the expected amount of time required for their implementation;

(2) The annual expected capital, operating, and other costs of each element in the program;

(3) The smelter's current production processes, pollution control equip-

ment, and emissions which are likely to be affected by the program;

(4) Potential or expected benefits of the program;

(5) The basis upon which the results of the program will be evaluated; and

(6) The names, positions, and qualifications of the individuals responsible for conducting and supervising the project.

(b) *EPA approval.* If the issuing agency will not be EPA, the smelter owner shall also submit to EPA the information specified in paragraph (a) of this section at the same time it submits that information to the issuing agency. Within sixty days of the receipt of the information described in paragraph (a), EPA shall certify to the issuing agency and to the applicant whether or not in the judgment of the Administrator the smelter owner's final proposals are approvable.

(c) *Optional preproposal.* The smelter owner may, at his option, submit to EPA for its approval and comment a preproposal generally describing the project the owner intends to propose under paragraph (a) of this section. A preproposal may be submitted to EPA at any time prior to the submission of a proposal under paragraph (a) of this section. Within twenty-one days of the receipt of a preproposal, EPA shall certify to the applicant (and to any other issuing agency, as applicable) whether or not the project would be approvable. This certification may include comments indicating necessary modifications which would make the project approvable.

§ 57.603 Criteria for approval.

The approvability of any proposed research and development program shall be judged primarily according to the following criteria:

(a) The likelihood that the project will result in the use of more effective means of emission limitation by the smelter within a reasonable period of time;

(b) Whether the proposed funding and staffing of the project appear adequate for its successful completion;

(c) Whether the proposed level of funding for the project is consistent with the research and development expenditure levels found in other industries;

(d) The potential that the project may yield industrywide pollution control benefits;

(e) Whether the project may also improve control of other pollutants of both occupational and environmental significance;

(f) The potential effects of the project on energy conservation; and

(g) Other non-air quality health and environmental considerations.

§ 57.604 Evaluation of projects.

In any case where the proposed research and development project is to be conducted wholly by the smelter owner, the owner's proposal shall include a provision for the employment of a qualified independent engineering firm to evaluate and prepare written reports on each completed significant stage of the program written reports on each completed significant stage of the program conducted wholly or in part by the smelter owner. In any other case, the proposal shall contain a provision for the preparation of such reports by the person conducting any portion of the project. All reports required by this paragraph shall be submitted to EPA and also to the issuing agency if it is not EPA.

§ 57.605 Consent.

Each NSO shall incorporate by reference a binding written consent, signed by a corporate official impowered to do so, requiring the smelter owner to:

(a) Carry out the approved research and development program;

(b) Grant each issuing agency and their contractors access to any information or data employed or generated in the research and development program, including any process, emissions, or financial records which such agency determines are needed to evaluate the technical or economic merits of the program;

(c) Grant physical access to representatives and contractors of each issuing agency to each facility at which such research is conducted;

(d) Grant the representatives and contractors of EPA and the issuing agency reasonable access to the persons conducting the program on behalf of the smelter owner for discussions of progress, interpretation of data and results, and any other similar purposes as deemed necessary by any issuing agency.

§ 57.606 Confidentiality.

The provisions of section 114 of the Act and 40 CFR Part 2 shall govern the confidentiality of any data or information provided to EPA under this subpart.

Subpart G—Compliance Schedule Requirements

§ 57.701 General requirements.

Each NSO shall require the smelter owner to meet all of the requirements of the NSO as expeditiously as practicable. All NSO requirements shall be immediately effective, except to the extent that the owner is able to demonstrate the necessity for additional time. For requirements not immediately effective, the NSO shall provide increments of progress and schedules for compliance. The schedules set forth in this subpart do not represent the most expeditious compliance practicable for any but those smelters which do not currently have the equipment or systems required by this part.

§ 57.702 Compliance with constant control emission limitation.

Where necessary, each NSO shall require the smelter owner to submit to the issuing agency, within 30 days of the effective date of the NSO, a proposed schedule for compliance with the requirements of Subpart C. No final compliance date shall extend beyond 14 months of the effective date of the NSO, except for a smelter having no constant controls installed at the effective date. The schedule shall include the following increments of progress:

(a) The date by which contracts will be let or purchase orders issued to accomplish any necessary performance improvements;

(b) The date for initiating on-site construction or installation of necessary equipment;

(c) The date by which on-site construction or installation of equipment is to be completed;

(d) The date for achievement of final compliance with emission limitations.

§ 57.703 Compliance with the supplementary control system requirements.

(a) *Operation of existing SCS.* Each NSO shall require the immediate operation of any existing supplementary control system and the assumption of liability for violations of the NAAQS at existing monitor sites.

(b) *Compliance schedule where no SCS exists.* Where necessary, the NSO shall also require compliance with the requirements of Subpart D to be achieved according to the following schedule:

(1) Within 6 months after issuance of the NSO the smelter shall install all operating elements of the system, begin operating the system, complete all other measures specified in its approved SCS development plan, and begin compliance with the requirements of § 57.404.

(2) Within 9 months thereafter the smelter shall submit the SCS Report, assume liability for all violations of the NAAQS within its designated liability area, and comply with all other requirements of Subpart D.

§ 57.704 Compliance with fugitive emission evaluation and control requirements.

(a) *Plan for fugitive emission control.* The NSO shall provide that within 60 days after the submission of the report on the fugitive emission control study required by § 57.502(b), the smelter owner shall submit to the

issuing agency for its approval a proposed fugitive emission control plan for compliance with the requirements of §§ 57.501 and 57.503.

(b) *SCS Report.* If the fugitive emission control plan submitted under paragraph (a) of this section proposes to meet the requirements of §§ 57.501 and 57.503 through the additional use of a supplementary control system, the plan shall demonstrate that the use of supplementary controls at that smelter to prevent violations of the NAAQS resulting from fugitive emissions is practicable adequate, reliable, and enforceable. The plan shall also provide that within four months of the issuing agency's approval of the plan, an additional SCS report shall be submitted for the approval of the issuing agency under § 57.405(b)(2) (the SCS report) of this part describing the system to be used to meet the requirements of § 57.501 (general requirements) and § 57.503(a) (fugitive control through use of SCS). That report need not contain a 3-month study as described in § 57.405(b)(2)(iii).

(c) *Schedule for fugitive control through engineering techniques.* If the plan submitted under paragraph (a) of this section proposes to meet the requirement of §§ 57.501 through the use of engineering techniques to prevent the escape of fugitive emissions at low elevations, the proposed increments of progress for the installation and operation of those measures shall be submitted for the issuing agency's approval within 60 days of the approval of the plan by EPA. Those increments of progress shall not exceed the following:

(1) 30 days after the effective date of the NSO, the smelter shall let contracts or issue purchase orders for construction and installation of necessary equipment.

(2) Within four months thereafter, the smelter shall initiate on-site construction or installation.

(3) Within four months thereafter the smelter shall achieve final compliance with the requirements of § 57.501.

(d) *NSO amendment.* The amendments of the NSO required under § 57.503 shall be effected by the issuing agency as follows:

(1) With respect to the additional use of SCS, upon approval or promulgation of the plan submitted under paragraph (a) of this section and upon approval or promulgation of the requirements for the system described in the additional SCS Report under paragraph (b) of this section;

(2) With respect to the additional use of engineering techniques, upon approval or promulgation of the compliance schedule required by paragraph (c) of this section.

Subpart H—Waiver of Interim Requirement for use of Continuous Emission Reduction Technology

§ 57.801 Purpose and scope.

(a) This subpart shall govern all proceedings for the waiver of the interim requirement that each NSO provide for the use of constant controls.

(b) In the absence of specific provisions in this subpart, and where appropriate, questions arising at any stage of the proceeding shall be resolved at the discretion of the Presiding Officer or the Administrator, as appropriate.

§ 57.802 Request for waiver.

(a) *General.* (1) Each smelter owner requesting a waiver shall complete, sign and submit Appendix A to this part. Copies of Appendix A may be obtained from any EPA Regional Administrator, or from the Director, Division of Stationary Source Enforcement (EN-341), United States Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Claims of confidentiality shall be made as provided in § 57.203.

(2) The smelter owner shall append to the completed and signed Appendix A full copies of all documents, test results, studies, reports, scientific literature and assessments required by Appendix A. To the extent that the material consists of generally available published material, the smelter owner may cite to the material in lieu of appending it to Appendix A. The smelter owner shall specifically designate those portions of any documents relied upon and the facts or conclusions in Appendix A to which they relate.

(b) *Effect of submitting incomplete application.* (1) The Administrator, or a person designated by him to review applications for waivers, may advise the smelter owner in writing whenever he determines that additional information is needed in order to make the waiver eligibility determinations required by section 119(d)(2) of the Act. The smelter owner shall promptly supply such information. All additional information requested under this paragraph and filed in the manner required by paragraph (d) shall be deemed part of Appendix A.

(2) Failure to comply with the requirements of paragraphs (a) and (b)(1) of this section shall be grounds for denial of the requested waiver.

(c) *Time for requesting waivers.* Any request for a waiver must be submitted to the Administrator by the smelter owner at the time of the initial application for an NSO from the State or the Administrator, as the case may be.

(d) *Submission of request.* Two copies of Appendix A (plus attachments) shall be filed with the Administrator, addressed as follows:

Director, Division of Stationary Source Enforcement (EN-341), U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Attn: Confidential Information Unit.

(e) *Eligibility.* No smelter shall be eligible for consideration under this subpart unless no constant controls were installed at that smelter as of August 7, 1977.

(f) *Criteria for Decision.* The Administrator shall recommend that a waiver be granted for any eligible smelter as to which he finds, in accordance with the methods and procedures specified in Appendix A, that:

(1) The sum of the present value of the smelter's future net cash flow (after installation of interim constant control equipment) plus its terminal value would be less than the smelter's liquidation (salvage) value; or

(2) The smelter's average variable costs at all relevant levels of production (after installation of interim constant control equipment) would exceed the weighted average price of smelter output for one year or more.

§ 57.803 Issuance of tentative determination; notice.

(a) *Tentative determination.* (1) The EPA staff shall formulate and prepare:

(i) A "Staff Computational Analysis," using the financial information submitted by the smelter owner under § 57.802 to evaluate the economic circumstances of the smelter for which the waiver is sought;

(ii) A tentative determination as to whether an interim requirement for the use of constant controls would be so costly as to necessitate permanent or prolonged temporary cessation of operations at the smelter for which the waiver is requested. The tentative determination shall contain a "Proposed Report and Findings" summarizing the conclusions reached in the Staff Computational Analysis, discussing the estimated cost of interim controls, and assessing the effect upon the smelter of requiring those controls. The tentative determination shall also contain a proposed recommendation that the waiver be granted or denied, based upon the Proposed Report and Findings, and stating any additional considerations supporting the proposed recommendation. This tentative determination shall be a public document.

(2) In preparing the Proposed Report and Findings, the EPA staff shall attempt to the maximum extent feasible to avoid revealing confidential information which, if revealed, might damage the legitimate business interests of the applicant. The preceding sentence notwithstanding, the tentative determination shall be accompanied by a listing of all materials con-

sidered by EPA staff in developing the tentative determination. Subject to the provisions of § 57.814(a), full copies of all such materials shall be included in the administrative record under § 57.814, except that, to the extent the material consists of published material which is generally available, full citations to that material may be given instead.

(b) *Public notice.* Public notice of EPA's tentative determination to grant or deny an application for a waiver shall be given by:

(1) Publication at least once in a daily newspaper of general circulation in the area in which the smelter owner is located; and

(2) Posting in the principal office of the municipality in which the smelter owner is located.

(c) *Individual notice.* Individual notice of EPA's tentative determination to grant or deny an application for a waiver shall be mailed to the smelter owner by certified mail, return receipt requested, and to the air pollution control agency for the State in which the smelter is located.

(d) *Request for individual notice.* EPA shall mail notice of its tentative determination to grant or deny an application for waiver to any person upon request. Each such request shall be submitted to the Administrator in writing, shall state that the request is for individual notice of tentative determination to grant or deny any application for a waiver under section 119(d) of the Clean Air Act, and shall describe the notice or types of notices desired (*e.g.*, all notices, notices for a particular Region, notices for a particular State; notice for a particular city).

(e) *Form of notice.* The notice of tentative determination required to be distributed under paragraphs (b), (c), and (d) of this section shall include, in addition to any other materials, the following:

(1) A summary of the information contained in Appendix A;

(2) The tentative determination prepared under paragraph (a) of this section: *Provided,* That, except in the case of the smelter owner, a summary of the basis for the grant or denial of the waiver may be provided in lieu of the formal determinations required by paragraph (a)(1) of this section;

(3) A brief description of the procedures set forth in § 57.804 for requesting a public hearing on the waiver request, including a statement that such request must be filed within 30 days of the date of the notice;

(4) A statement that written comments on the tentative determination submitted to EPA within 60 days of the date of the notice will be considered by EPA in making a final decision on the application; and

(5) The location of the administrative record and the location at which interested persons may obtain further information on the tentative determination, including a copy of the index to the record, the tentative determination prepared under paragaph (a) of this section, and any other non-confidential record materials.

§ 57.804 Request for hearing; request to participate in hearing.

(a) *Request for hearing.* Within 30 days of the date of publication or receipt of the notice required by § 57.803, any person may request the Administrator to hold a hearing on the tentative determination by submitting a written request containing the following:

(1) Identification of the person requesting the hearing and his interest in the proceeding;

(2) A statement of any objections to the tentative determination; and

(3) A statement of the issues which such person proposes to raise for consideration at such hearing.

(b) *Grant or denial of hearing; notification.* Whenever (1) the Administrator has received a written request satisfying the requirements of paragraph (a) of this section which presents genuine issues as to the effect on the smelter of the requirement for use of constant controls, or (2) the Administrator determines in his discretion that a hearing is necessary or appropriate, the Administrator shall give written notice of his determination to each person requesting such hearing and the smelter owner, and shall provide public notice of his determination in accordance with § 57.803(b). If the Administrator determines that a request filed under paragaph (a) of this section does not comply with the requirements of paragraph (a) or does not present genuine issues, he shall give written notice of his decision to deny a hearing to the person requesting the hearing.

(c) *Form of notice of hearing.* Each notice of hearing disseminated under paragraph (b) of this section shall contain:

(1) A statement of the time and place of the hearing;

(2) A statement identifying the place at which the official record on the application for waiver is located, the hours during which it will be open for public inspection, and the documents contained in the record as of the date of the notice of hearing;

(3) The due date for filing a written request to participate in the hearing under paragraph (d) of this section;

(4) The due date for making written submissions under § 57.805; and

(5) The name, address, and office telephone number of the Hearing Clerk for the hearing.

(d) *Request to participate in hearing.* Each person desiring to participate in any hearing granted under this section, including any person requesting such a hearing, shall file a written request to participate with the Hearing Clerk by the deadline set forth in the notice of hearing. The request shall include:

(1) A brief statement of the interest of the person in the proceeding;

(2) A brief outline of the points to be addressed;

(3) An estimate of the time required; and

(4) If the request is submitted by an organization, a nonbinding list of the persons to take part in the presentation. As soon as practicable, but in no event later than two weeks before the scheduled date of the hearing, the Hearing Clerk shall make available to the public and shall mail to each person who asked to participate in the hearing a hearing schedule.

(e) *Effect of denial of or absence of request for hearing.* If no request for a hearing is made under this section, or if all such requests are denied under paragraph (b) of this section, the tentative determination issued under § 57.803 shall be treated procedurally as if it were a recommended decision issued under § 57.811(b)(2) of this subpart, except that for purposes of §§ 57.812 and 57.813 the term "hearing participant" shall be construed to mean the smelter owner and any person who submitted comments under § 57.803(e)(4).

§ 57.805 Submission of written comments on tentative determination.

(a) *Main comments.* Each person who has filed a request to participate in the hearing shall file with the Hearing Clerk no later than 30 days before the scheduled start of the hearing (or such other date as may be set forth in the notice of hearing) any comments which he has on the request for waiver and EPA's tentative determination, based on information which is or reasonably could have been available to that person at the time.

(b) *Reply comments.* Not later than two weeks after a full transcript of the hearing becomes available (or such other date as may be set forth in the notice of hearing), each person who has filed a request to participate in the hearing shall file with the Hearing Clerk any comments he may have on:

(1) Written comments submitted by other participants pursuant to paragraph (a) of this section;

(2) Written comments submitted in response to the notice of hearing;

(3) Material in the hearing record; and

(4) Material which was not and could not reasonably have been available prior to the deadline for submis-

sion of main comments under paragraph (a) of this section.

(c) *Form of comments.* All comments should be submitted in quadruplicate and shall include any affidavits, studies, tests or other materials relied upon for making any factual statements in the comments.

(d) *Use of comments.* (1) Written comments filed under this section shall constitute the bulk of the evidence submitted at the hearing. Oral statements at the hearing should be brief, and restricted either to points that could not have been made in written comments, or to emphasizing points which are made in the comments, but which the participant believes can be more forcefully urged in the hearing context.

(2) Notwithstanding the foregoing, within two weeks prior to either deadline specified by paragraph (a) of this section for the filing of main comments, any person who has filed a request to participate in the hearing may file a request with the Presiding Officer to submit all or part of his main comments orally at the hearing in lieu of submitting written comments. The Presiding Officer shall, within one week, grant such request if he finds that such person will be prejudiced if he is required to submit such comments in written form.

§ 57.806 Presiding officer.

(a) *Assignment of Presiding Officer.* (1) The Administrator shall, as soon as practicable after the granting of a request for hearing under § 57.803:

(i) Appoint a Presiding Officer to chair the hearing panel, who shall be either the Assistant Administrator for Air and Waste Management or the Assistant Administrator for Enforcement; or

(ii) Request that the Chief Administrative Law Judge assign an Administrative Law Judge as Presiding Officer. The Chief Administrative Law Judge shall thereupon make the assignment.

(2) If all parties to the hearing waive their right to have the Agency or an Administrative Law Judge preside at the hearing, the Administrator shall appoint an EPA employee having the qualifications of a Judicial Officer as defined in § 57.103 to serve as Presiding Officer.

(b) *Powers and duties of Presiding Officer.* It shall be the duty of the Presiding Officer to conduct a fair and impartial hearing, assure that the facts are fully elicited, and avoid delay. The Presiding Officer shall have authority to:

(1) Chair and conduct administrative hearings held under this subpart;

(2) Administer oaths and affirmations;

(3) Receive relevant evidence: *Provided,* That the administrative record, as defined in § 57.814, shall be received in evidence;

(4) Consider and rule upon motions, dispose of procedural requests, and issue all necessary orders;

(5) Hold conferences for the settlement or simplification of the issues or the expediting of the proceedings; and

(6) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial conduct of proceedings under this subpart.

§ 57.807 Hearing.

(a) *Composition of hearing panel.* The Presiding Officer shall preside at the hearing held under this subpart. An EPA panel shall also take part in the hearing. In general, the membership of the panel shall consist of EPA employees having special expertise in areas related to the issues to be addressed at the hearing, including economists and engineers. For this reason, the membership of the panel may change as different issues are presented for discussion.

(b) *Additional hearing participants.* Either before or during the hearing, the Presiding Officer, after consultation with the panel, may request that a person not then scheduled to participate in the hearing (including an EPA employee or a person identified by any scheduled hearing participant as having knowledge concerning the issues raised for discussion at the hearing) make a presentation or make himself available for cross-examination at the hearing.

(c) *Questioning of hearing participants.* The panel members may question any person participating in the hearing. Cross-examination by persons other than panel members shall not be permitted at this stage of the proceeding except where the Presiding Officer determines, after consultation with the panel, that circumstances compel such cross-examination. However, persons in the hearing audience, including other hearing participants, may submit written questions to the Presiding Officer for the Presiding Officer to ask the participants, and the Presiding Officer may, after consultation with the panel, and in his sole discretion, ask these questions.

(d) *Submission of additional material.* Participants in the hearing shall submit for the hearing record such additional material as the hearing panel may request within 10 days following the close of the hearing, or such other period of time as is ordered by the Presiding Officer. Participants may also submit additional information for the hearing record on their own accord within 10 days after the close of the hearing.

(e) *Transcript.* A verbatim transcript shall be made of the hearing.

§ 57.808 Opportunity for cross-examination.

(a) *Request for cross-examination.* After the close of the panel hearing conducted under this part, any participant in that hearing may submit a written request for cross-examination. The request shall be received by EPA within one week after a full transcript of the hearing becomes available and shall specify:

(1) The disputed issue(s) of material fact as to which cross-examination is requested. This shall include an explanation of why the questions at issue are factual, rather than of an analytical or policy nature; the extent to which they are in dispute in the light of the record made thus far; and the extent to which and why they can reasonably be considered material to the decision on the application for a waiver; and

(2) The person(s) the participant desires to cross-examine, and an estimate of the time necessary. This shall include a statement as to why the cross-examination requested can be expected to result in full and true disclosure resolving the issue of material fact involved. (b) *Order granting or denying request for cross-examination.* As expeditiously as practicable after receipt of all requests for cross-examination under paragraph (a) of this section, the Presiding Officer, after consultation with the hearing panel, shall issue an order either granting or denying each such request, which shall be disseminated to all persons requesting cross-examination and all persons to be cross-examined. If any request for cross-examination is granted, the order shall specify:

(1) The issues as to which cross-examination is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons allowed to conduct cross-examination;

(4) Time limits for the examination of witnesses; and

(5) The date, time and place of the supplementary hearing at which cross-examination shall take place. In issuing this ruling, the Presiding Officer may determine that one or more participants have the same or similar interests and that to prevent unduly repetitious cross-examination, they should be required to choose a single representative for purposes of cross-examination. In such a case, the order shall simply assign time for cross-examination by that single representative without identifying the representative further.

(c) *Supplementary hearing.* The Presiding Officer and at least one member of the original hearing panel shall preside at the supplementary hearing. During the course of the hearing, the Presiding Officer shall have authority

to modify any order issued under paragraph (b) of this section. A verbatim transcript shall be made of this hearing.

(d) *Alternatives to cross-examination.* (1) No later than the time set for requesting cross-examination, a hearing participant may request that alternative methods of clarifying the record (such as the submittal of additional written information) be used in lieu of or in addition to cross-examination. The Presiding Officer shall issue an order granting or denying such request at the time he issues (or would have issued) an order under paragraph (b) of this section. If the request is granted, the order shall specify the alternative provided and any other relevant information (*e.g.*, the due date for submitting written information).

(2) In passing on any request for cross-examination submitted under paragraph (a) of this section, the Presiding Officer may, as a precondition to ruling on the merits of such request, require that alternative means of clarifying the record be used whether or not a request to do so has been made under the preceding paragraph. The person requesting cross-examination shall have one week to comment on the results of utilizing such alternative means, following which the Presiding Officer, as soon as practicable, shall issue an order granting or denying such person's request for cross-examination.

§ 57.809 Ex parte contacts.

(a) *General.* (1) At no time after issuance of the tentative determination shall the Administrator, Presiding Officer, or other employee who is or may reasonably be expected to be involved in making a decision on the application for waiver submitted under this part discuss ex parte the merits of proceedings with the smelter owner or any other person outside the Agency or his representative who has filed written comments on the application or tentative determination, requested a hearing, requested to participate in a hearing or participated in a hearing on such application.

(2) Notwithstanding the foregoing, the Administrator, Presiding Officer, or other employee who is or may reasonably be expected to be involved in the decisional process may discuss the merits of the proceedings with any person identified in paragraph (a) of this section if all participants in the proceedings, or their representatives, have been given reasonable notice and opportunity to be present.

(b) *Written communications.* During the pendency of the proceeding, any memorandum or other communication by or on behalf of the smelter owner or any hearing participant addressed to the Administrator, Presiding Officer, or other employee who is or may reasonably be expected to be involved in making a decision on the application for waiver, and relating to the merits thereof, shall be regarded as argument made in the proceeding and shall be served on the smelter owner and all other hearing participants.

(c) *Effect of receipt of ex parte communication.* (1) If the Administrator, Presiding Officer, or other employee who is or may reasonably be expected to be involved in making a decision on the application for waiver receives, or makes or knowingly causes to be made, an oral or written ex parte communication, he shall place in the record:

(i) The written communication, if any;

(ii) A memorandum stating the substance of any oral communication; and

(iii) All written responses and memoranda stating the substance of all oral responses to the materials in paragraph (c) (1) and (2) of this section.

(2) Upon receipt of a communication from a smelter owner, hearing participant, or other interested person outside the Agency, in violation of paragraphs (a) and (b) of this section, the Administrator or Presiding Officer may, to the extent consistent with the interests of justice and the policy of the Act, require such person to show cause why his application, claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

§ 57.810 Filing of briefs, proposed findings, and proposed recommendations.

Unless otherwise ordered by the Presiding Officer, each hearing participant may, within 20 days after reply comments are submitted under § 57.805(b), or if a supplemental hearing for the purpose of cross-examination has been held under § 57.808(c), within 20 days after the transcript of such supplemental hearing becomes available, or if alternative methods of clarifying the record have been used under § 57.808(d), within 20 days after the alternative methods have been employed, file with the Hearing Clerk and serve upon all other hearing participants proposed findings and proposed recommendations to replace in whole or in part the findings and recommendations contained in the tentative determination. Any such person may also file, at the same time, a brief in support of his proposals, together with references to relevant pages of transcript and to relevant exhibits. Within 10 days thereafter each participant may file a reply brief concerning alternative proposals. Oral argument may be held at the discretion of the Presiding Officer on motion of any hearing participant or sua sponte.

§ 57.811 Recommended decision.

As soon as practicable after the conclusion of the hearing, one or more responsible employees of the Agency shall evaluate the record for preparation of recommended decision and shall prepare and file a recommended decision with the Hearing Clerk. The employee(s) preparing the decision will generally be members of the hearing panel and may include the Presiding Officer. Such employee(s) may consult with and receive assistance from any member of the hearing panel in drafting a recommended decision and may also delegate the preparation of the recommended decision to the panel or to any member or members of it. This decision shall contain the same elements as the tentative determination. After the recommended decision has been filed, the Hearing Clerk shall serve a copy of such decision on each hearing participant and upon the Administrator.

§ 57.812 Appeal from or review of recommended decision.

(a) *Exceptions.* (1) Within 20 days after service of the recommended decision, any hearing participant may take exception to any matter set forth in such decision or to any adverse order or ruling of the Presiding Officer prior to or during the hearing to which such participant objected, and may appeal such exceptions to the Administrator by filing them in writing with the Hearing Clerk. Such exceptions shall contain alternative findings and recommendations, together with references to the relevant pages of the record and recommended decision. A copy of each document taking exception to the recommended decision shall be served upon every other hearing participant. Within the same period of time each party filing exceptions shall file with the Administrator and shall serve upon all hearing participants a brief concerning each of the exceptions being appealed. Each brief shall include page references to the relevant portions of the record and to the recommended decision.

(2) Within 10 days of the service of exceptions and briefs under paragraph (a)(1) of this section, any hearing participant may file and serve a reply brief responding to exceptions or arguments raised by any other hearing participant together with references to the relevant portions of the record, recommended decision, or opposing brief. Reply briefs shall not, however, raise additional exceptions.

(b) *Sua sponte review by the Administrator.* Whenever the Administrator determines sua sponte to review a recommended decision, notice of such intention shall be served upon the parties by the Hearing Clerk within 30 days after the date of service of the

recommended decision. Such notice shall include a statement of issues to be briefed by the hearing participants and a time schedule for the service and filing of briefs.

(c) *Scope of appeal or review.* The appeal of the recommended decision shall be limited to the issues raised by the appellant, except when the Administrator determines that additional issues should be briefed or argued. If the Administrator determines that briefing or argument of additional issues is warranted, all hearing participants shall be given reasonable written notice of such determination to permit preparation of adequate argument.

(d) *Argument before the Administrator.* The Administrator may, upon request by a party or sua sponte, set a matter for oral argument. The time and place for such oral argument shall be assigned after giving consideration to the convenience of the parties.

§ 57.813 Final decision.

(a) *After review.* As soon as practicable after all appeal or other review proceedings have been completed, the Administrator shall issue his final decision. Such a final decision shall include the same elements as the recommended decision, as well as any additional reasons supporting his decisions on exceptions filed by hearing participants. The final decision may accept or reject all or part of the recommended decision. The Administrator may consult with the Presiding Officer, members of the hearing panel or any other EPA employee in preparing his final decision. The Hearing Clerk shall file a copy of the decision on all hearing participants.

(b) *In the absence of review.* If no party appeals a recommended decision to the Administrator and if the Administrator does not review it sua sponte, he shall be deemed to have adopted the recommended decision as the final decision of the Agency upon the expiration of the time for filing any exceptions under § 57.812(a).

§ 57.814 Administrative record.

(a) *Establishment of record.* (1) Upon receipt of request for a waiver, an administrative record for that request shall be established, and a Record and Hearing Clerk appointed to supervise the filing of documents in the record and to carry out all other duties assigned to him under this subpart.

(2) All material required to be included in the record shall be a added to the record as soon as feasible after its receipt by EPA. All material in the record shall be appropriately indexed. The Hearing Clerk shall make appropriate arragnements to allow members of the public to copy all nonconfidential record materials during normal EPA business hours.

(3) Confidential record material shall be indexed under paragraph (a)(2) of this section. Confidential record material shall, however, be physically maintained in a separate location from public record material.

(4) Confidential record material shall consist of the following:

(i) Any material submitted pursuant to § 57.802 for which a proper claim of confidentiality has been made under section 114(c) of the Act and 40 CFR Part 2; and

(ii) The Staff Computational Analysis prepared under § 57.803.

(b) *Record for issuing tentative determination.* The administrative record for issuing the tentative determination required by § 57.803 shall consist of the material submitted under § 57.802 and any additional materials supporting the tentative determination.

Record for acting on requests for cross-examination. The administrative record for acting on requests for cross-examination under § 57.808 shall consist of the record for issuing the tentative determination, all comments timely submitted under section §§ 57.803(e)(4) and 57.805, the transcript of the hearing, and any additional material timely submitted under §57.807(d).

(d) *Record for preparation of recommended decision.* The administrative record for preparation of the recommended decision required by § 57.811 shall consist of the record for acting on requests for cross-examination, the transcript of any supplementary hearing held under §57.808(c), any materials timely submitted in lieu of or in addition to cross-examination under 57.808(d), and all briefs, proposed findings of fact and proposed recommendations timely submitted under § 57.810.

(e) *Record for issuance of final decision.* (1) Where no hearing has been held, the administrative record for issuance of the Administrator's final decision shall consist of the record for issuing the tentative determination, any comments timely submitted under § 57.803(e)(4), any briefs or reply briefs timely submitted under § 57.812(a) through (c), and the transcript of any oral argument granted under § 57.812(d).

(2) Where a hearing has been held, the administrative record for issuance of the Administrator's final decision shall consist of the record for preparation of the recommended decision, any briefs or reply briefs submitted under § 57.812(a) through (c), and the transcript of any oral argument granted under § 57.812(d).

§ 57.815 State notification.

The Administrator shall give notice of the final decision in writing to the air pollution control agency of the State in which the smelter is located.

§ 57.816 Effect of negative recommendation.

No waiver of the interim requirement for the use of constant controls shall be granted by the Administrator or a State in the absence of a positive recommendation by the Administrator that such a waiver be granted.

APPENDIX A—PRIMARY NONFERROUS SMELTER ORDER (NSO) APPLICATION

INSTRUCTIONS

1. *General Instructions*

1.1 Purpose of the Application
1.2 NSO Economic Capability Tests
1.3 Confidentiality
1.4 Data Entry
1.5 Use of Exhibits

2. *NSO Financial Reporting Overview*

2.1 Relation to Applicant's Accounting Principles
2.2 Transfer Prices on Affiliated Party Transactions
2.3 Forecasting Requirements
2.4 EPA Furnished Forecast Data
2.5 Applicant Generated Forecasts
2.6 Depreciation

Detailed Instructions for Each Schedule

A.1 Base Case Forecast Summary
A.2 Constant Controls Case Forecast Summary
A.3 Interim Controls Case Forecast Summary
B.1 Consolidated Nonferrous Profit and Loss Summary
B.2 Consolidated Nonferrous Capital Investment Summary
C.1 Smelter Profit and Loss Summary
C.1.a Supplemental Smelter Revenue Data
C.2 Smelter Capital Investment Summary
C.2.a Cash Proceeds From Liquidation
D.1 Base Case Profit and Loss Summary
D.1.a Supplemental Revenue and Cost Forecast Information
D.2 Base Sustaining Capital Investment Summary
E.1 Constant Controls Case Pro-Forma Profit and Loss Summary
E.2 Constant Controls Sustaining Capital Investment Summary
F.1 Interim Controls Case Pro-Forma Profit and Loss Summary
F.2 Interim Controls Sustaining Capital Investment Summary

1. *General Instructions*

1.1 *Purpose of the Application*

This application provides financial reporting schedules and the accompanying instructions for requesting a nonferrous smelter order (NSO). In order to support an NSO request, the applicant must submit operating and financial data specified by the schedules included in this application. Specific instructions for completing each schedule are provided in subsequent sections of the instructions. In general, applicants must provide:

(a) Annual consolidated income statements, balance sheets and supporting data covering the five most recent fiscal years of

operations by the firm controlling a smelter for which the NSO is requested.

(b) A classification of the firm's consolidated financial data into segmented financial reporting summaries that will provide appropriate financial performance indicators by individual operating entity for the firm's mines, concerntrators, smelters, refineries and associated nonferrous operating activities.

(c) Respective "base-case" and adjusted "controls-case" forecasts of operating revenues, operating costs, net income from operations and capital investments for the firm's smelter operations. The "base-case" forecast shall be prepared in terms of anticipated smelter operations without the installation of additional pollution control facilities and the "controls-case" forecast on the basis of anticipated smelter operations after installing additional pollution control facilites required to comply with the smelter's SIP emission limitations.

1.2 *NSO Economic Capability Tests*

Eligibility for an NSO or for a waiver of the interim constant control requirement will be evaluated by the following tests of an applicant's economic capability to undertake additional pollution control expenditures. The test for NSO eligibility employs a present value approach for determining an applicant's economic capability to implement a system of constant control technology that will achieve full compliance with SIP emission limitations. The tests for the waiver of the interim constant control requirements employ variable costing and discounted cash flow standards for evaluating an applicant's economic capability to implement those requirements. The period of analysis for these tests shall be 1979 through 1985, inclusive.

1.2.1 *Net Income Test.* Each applicant must establish that the firm is not economically capable of implementing a system of constant control technology that will achieve full compliance with SIP emission limitation standards.

Inadequate ecomomic capability is defined in this test as an inability to undertake the required installation of new, or modification to existing, constant control facilities without reducing the present value of the smelters net income and terminal value below the smelter's current salvage value under an orderly plan of liquidation.

1.2.2 *Temporary Waiver from Interim Controls.* Applicants that do not have an existing constant controls system may apply for a waiver from requirements for the interim controls. Applicants will be eligible for a temporary waiver from the interim constant control if they can establish pursuant to the reporting procedures in this application that the imposition of such control requirements would economically necessitate closure of the smelter facility for a period of one year or longer. The economic justification for a non-permanent closure under this temporary waiver test is defined as a situation in which the smelter's projected operating revenues for one or more years within the forecast period are inadequate to cover variable operating costs anticipated after installing the required interim control technology. Temporary waivers will be granted for only the period of time over which applicants can establish an inability by the firm to cover its variable operating costs. Interim-control waiver requests based on the smelter's projected inability to earn adequate net income after installation of interim pollution control equipment will be subject to the following "permanent waiver" test.

1.2.3 *Permanent Waiver from Interim Controls.* Applicants without an existing constant controls system will be eligible for a full waiver from the interim use of such controls if they can establish pursuant to the reporting procedure in this application that an imposition of interim control requirements would necessitate permanent closure of the smelter. Economic justification for a permanent closure is defined as a situation in which the present value of future cash flows anticipated from the smelter after installing the required interim control technology are less than the smelter's current salvage value under an orderly plan of liquidation.

1.2.4 *EPA Contact for NSO Inquiries.* Inquiries concerning this portion of the requirements for NSO application should be addressed to: Judith Larsen, Environmental Protection Agency, EN 341, 401 M Street, S.W., Washington D.C. 20460.

1.2.5 *Certification.* The NSO Certification Statement must be signed by an authorized officer of the applicant firm.

1.3 *Confidentiality*

Applicants may request that information contained in this application be treated as confidential. Agency regulations concerning claims of confidentiality of business information are contained in 40 CFR Part 2, Subpart B (41 FR 36902 *et. seq.*, September 1, 1976, as amended by 43 FR 39997 *et. seq.*, September 8, 1978). The regulations provide that a business may, if it desires, assert a business confidentiality claim covering part or all of the information furnished to EPA. The claim must be made at the same time the applicable information is submitted. The manner of asserting such claims is specified in 40 CFR 2.203(b). Information covered by such a claim will be handled by the Agency in accordance with procedures set forth in the Subpart B regulations. No information will be disclosed by EPA as to which a claim of confidentiality has been made except to the extent of and in accordance with 40 CFR Part 2, Subpart B. However, if no claim of confidentiality is made when information is furnished to EPA, the information may be made available to he public without notice to the business.

1.4 *Data Entry*

1.4.1 *Rounding.* All amounts (including both dollar values and physical units) reported in the schedules and exhibits accompanying this application must be rounded to the nearest thousand and expressed in thousands of dollars or units unless otherwise indicated in the instructions.

1.4.2 *Estimates.* Where an applicant's records cannot produce the specific data required by this application, the use of estimates will be allowed if a meaningful estimate can be made without significant distortion of the reported results. Data estimates must be supported by attaching on a separate sheet of paper as part of Exhibit B an explanation identifying where such estimates are used and showing explicitly how the estimates were made.

1.4.3 *Missing Data.* Applicants must provide, where applicable, all operating and financial data requested by this application. Only substantially complete applications can be accepted for processing by the Agency. Questions concerning data entries for which information is not provided by, or cannot reasonably be estimated from, the applicant's existing accounting records should be addressed to the EPA Contact for NSO Inquiries.

1.5 *Use of Exhibits*

In addition to data required by the schedules included in this application, the following information must be attached as exhibits.

1.5.1 *Exhibit A.* Background information on the firm's organizational structure and its associated accounting and financial reporting systems for primary nonferrous activities. This information should include, where applicable, the firm's:

(a) Operating association with and ownership control in consolidated subsidiaries, unconsolidated subsidiaries, joint ventures and other affiliated companies.

(b) Organizational subdivision of its primary nonferrous activities into profit centers, cost centers and/or related financial reporting entities employed to control the operation of its mines, concentrators, smelters, refineries and other associated facilities.

(c) Material and product flows among the smelter subject to this NSO application, other integrated facilities and its affiliated suppliers and/or customers. In the case of integrated facilities, applicants should provide process flow diagrams depicting the operating interrelationships among its mines, concentrators, smelters, refineries and other integrated facilities. For both integrated and nonintegrated facilities, applicants also should describe the proportion contributed to its primary nonferrous activities by material purchases from and product sales to affiliated suppliers and customers.

(d) Annual operating capacity over the five most recent fiscal years for its smelter and associated nonferrous facilities. Operating capacity should be defined in terms of the total quantity of throughput that could have been processed with the available facilities after giving appropriate allowance to normal downtime requirements for maintenance and repairs. Operating capacity data also should consider both capacity balancing requirements among processing steps and annual processing yield rates attainable for each facility.

(e) Weighted average analysis of concentrates processed and tonnage produced annually over each of the five most recent fiscal years by the smelter subject to this application. The operators of integrated facilities also should provide annual data over the five-year period on both the sources of and a weighted average analysis of concentrates and ores processed and tonnage produced by individual profit centers.

(f) Accounting system and policies for recording investment expenditures, operating revenues, operating costs and income taxes associated with its primary nonferrous activities. Applicants also should provide a complete description of allocation techniques employed for assigning investments, revenues, costs and taxes to individual profit, cost or departmental centers for which costs are accumulated. Applicants should further indicate the relationship of cost and/or departmental accounting entities to the firm's established profit centers.

(g) Component income (profit and loss), cash flow, balance sheet and other financial statements available for each existing profit center engaged in mining, concentrating, smelting, refining or further processing activities. Component financial statements should be provided on an annual basis over

the applicant's five most recent fiscal years. The statements should be prepared in conformity with generally accepted accounting principles and the data contained therein reconciled with the applicant's consolidated corporate financial statements.

(h) Annual and five-year operating and capital expenditure plans (or budgets) by individual nonferrous profit center. These documents should include previous plans prepared for the five preceding fiscal years as well as the current one-year and five-year operating and capital expenditure plans. At least the current one-year and five-year plans should provide a specific breakdown of investment expenditures and operating costs associated with the operation and maintenance of each profit center's existing and proposed pollution control facilities.

1.5.2 *Exhibit B.* Supplemental description and explanation of items appearing in the financial reporting schedules.

1.5.3 *Exhibit C.* Financial data documentation. Applicants must document annual balance sheet, income statement and supporting data reported for the firm's preceding five fiscal years or for that portion of the past five years during which the firm engaged in smelter operations. This documentation should be provided by attaching to the application:

(a) SEC 10-K reports filed by the parent corporation and its unconsolidated subsidiaries for each of the preceding five fiscal years.

(b) Certified financial statements prepared (a) on a consolidated basis for the parent corporation and its consolidated subsidiaries and (b) for the firm's unconsolidated subsidiaries and affiliates. This requirement may be omitted for those years in which SEC 10-K reports have been attached to this Exhibit.

(c) Business Segment Information reports filed with the Securities and Exchange Commission by the firm and its unconsolidated subsidiaries for each of the preceding five years (as available).

2. *NSO Financial Reporting Overview*

2.1 *Relation to Applicant's Accounting Principles.* In completing the NSO financial reporting schedules, applicants should follow the accounting principles used during each respective reporting period to prepare their annual certified financial statements. Applicants must attach as part of Exhibit B, a schedule identifying and explaining any differences in accounting principles applied to reporting in the NSO schedules, and in a firm's certified financial statements the investment expenditures, operating revenues, operating costs, income taxes and other financial transactions associated with the applicant's smelter operations.

2.2 *Transfer Prices on Affiliated Party Transactions.* Certain transactions by the smelter subject to an NSO application may reflect sales to or purchases from "affiliated" customers or suppliers with whom the smelter has a common bond of ownership and/or managerial control. In preparing this application, affiliated party transactions shall be defined as transactions with any entity that the firm, or its owners, controls directly or indirectly either through an ownership of 10 percent or more of the entity's voting interests or through an exercise of managerial responsibility. Applicants must attach as a part of Exhibit B supporting schedules explaining the pricing policies established on affiliated party transactions incorporated in the financial reporting schedules.

Prices on inter-segment material and product transfers within a firm, or on external purchases from and sales to other affiliated suppliers and customers, may differ from the prices on comparable transactions with unaffiliated suppliers and customers. In this event, applicants also should present in the Exhibit B supporting schedules and incorporate in the NSO financial reporting schedules, appropriate adjustments for restating affiliated party transactions. Affiliated party transactions should be restated at either (a) equivalent prices on comparable transactions with unaffiliated parties if such price quotations can be obtained or (b) prices that provide the selling entity with a normal profit margin above its cost of sales if a meaningful comparison with unaffiliated transaction prices cannot be established. A "normal" profit margin should be defined as the gross operating profit per dollar of operating revenue that will provide an after tax rate of return on permanent capital (long term assets less current liabilities) of no more than eight percent.

2.3 *Forecasting Requirements.* Applicants must provide the Agency with at least two sets of financial forecasts covering the period from calendar years 1979 through 1985. The first set of forecasts should be for a "base" case (Schedules D.1 and D.2) reflecting applicant expectations about future smelter operations if additional pollution control facilities are not required. The second set of forecasts should be prepared for an adjusted "controls" case (Schedules E.1 and E.2) reflecting applicant expectations about future smelter operations if additional constant controls are required to comply with SIP sulfur dioxide emission limitations.

Applicants requesting either a temporary or permanent waiver from interim constant control requirements also must provide an additional set of financial forecasts (Schedules F.1 and F.2) reflecting anticipated smelter operations with the installation of such controls.

It is recognized that some line items may be the same under both cases. On the other hand, production interruptions or curtailments due to the installation of additional pollution control facilities may require adjustments to certain revenue and cost estimates in the respective controls cases. The installation of additional pollution control facilities that involve process changes in the smelter's operations also may require specific forecasts by applicants of associated impacts on incremental operating revenues and costs.

Applicants should make their financial forecasts in terms of nominal dollar estimates. Forecasts of selected parameters provided by EPA will furnish guidelines to an applicant in preparing part of the required cost and revenue estimates. In particular, refined copper, zinc and lead price indices provided in nominal-dollar terms should be used directly by the applicant as given—i.e., the stipulated price estimates should not be inflated. In all cases applicants should disclose the index applied to their revenue and cost forecasts.

2.4 *EPA Furnished Forecast Data.* Projections for 1979 through 1985 to be provided by the Agency will include:

(a) Aggregate industry production of copper, lead and zinc

(b) Average capacity utilization factors for primary nonferrous metal producers

(c) Refined prices for copper, lead and zinc

(d) Energy price indices for natural gas, electricity, fuel oil, sulfur and coal

(e) Wage indices for manufacturing labor

(f) Gross National Product price deflator

(g) Weighted average cost of capital for nonferrous metal producers

The wage indices are to be used only to estimate wage increases after the expiration of an applicant's current labor agreements.

2.5 *Applicant Generated Forecasts.* Within the specified limitations, applicants may employ any reasonable method of forecasting by-product, co-product and other prices not provided by the Agency. The method selected should be explained and unit prices or costs provided where applicable. The forecast elements should be compatible with an applicant's historical cost and revenue elements to permit direct comparisons of historical and forecasted data. Applicants should attach as part of Exhibit B appropriate schedules explaining variances between forecasted and historical unit costs for the smelter.

An acceptable method of forecasting by-product (e.g., gold and silver) prices would be to (a) compute an average of the 1978 constant-dollar equivalents to a by-product's 1974-1978 prices and (b) inflate the average price by the forecasted general rate of inflation for each successive year over the 1979-1986 forecast period. Similarly, concentrate prices could be estimated by applying forecasts of the appropriate refined price index to typical contractual terms indicated for 1978 purchases from unaffiliated suppliers.

To the maximum extent practicable, by-product, co-product and (when applicable) unaffiliated concentrate prices should be stated at market prices adjusted to f.o.b. smelter. Adjustments to these pricing bases should be made to reflect differences in grades and types of production. All adjustments should be consistent with expected sales, grades and types of concentrate processed. Applicants should attach as part of Exhibit B schedules describing and explaining the methods used to forecast these revenue and cost items and the adjustments required for these revenue and cost forecasts.

Applicants should explain fully any changes from the historical data that are required to forecast labor productivity, ore/concentrate grade and composition, materials and energy consumption per unit of output, yield rates and other physical input/output relationships.

Existing contractual terms should be used in forecasting those sale or input costs or prices to which the applicant is committed by contracts. The use of contract-dictated prices should be disclosed and supported by attaching as part of Exhibit B the terms and duration of labor and other supplier arrangements.

2.6 *Depreciation.* With the exceptions of Schedules B and C, depreciation refers to that used for Federal income tax purposes. Depreciation in Schedules B and C refers to that used in financial reporting statements.

Base Case Forecast Summary—Schedule A.1

General

All applicants must complete this schedule and its supporting schedules under the conditions of the "base" case in which no

additional pollution control facilities are considered.

Line 01—Net Income from Operations. Enter for each year from 1979 through 1985 the amounts reported in Schedule D.1., Line 23.

Lines 02 & 03—Depreciation and Amortization. Enter for each year from 1979 through 1985 the amounts reported in Schedule D.1, Lines 16 and 17.

Line 04—Operating Cash Flow. Enter for each year from 1979 through 1985 the total of amounts reported on Lines 01 through 03.

Line 05—Capital Expenditure Projection. Enter for each year from 1979 through 1985, the amounts reported in Schedule D.2, Line 07.

Line 06—Net Cash Flow Projections. Enter for each year from 1979 though 1985 the difference between amounts reported on Lines 04 and 05.

Line 07—Discount Factors. Amounts entered for each year from 1979 through 1985 have been provided by EPA.

Line 08—Present Value of Future Cash Flows. Enter for each year from 1979 through 1985 the product of Line 06 times Line 07.

Line 09—Terminal Value. Enter under the total column, the estimated terminal value of the smelter. This shall be computed by capitalizing the forecasted net income from operations (Schedule D.1, Line 23) for 1985 by the historical cost of capital as furnished by EPA. Specifically, divide net income from operations by the cost of capital (in decimal form).

Line 10—Discount Factor. Amount entered has been provided by EPA.

11—Present Value of Terminal Salvage Value. Enter the product of Line 09 times Line 10.

Line 12—Present Value of Future Cash Flows. Enter the sum of amounts previously reported on Line 08 for 1979 through 1985.

Line 13—Total Present Value. Enter the sum of Line 11 plus Line 12.

Line 14—Current Salvage Value. Enter the amount reported in Schedule C.2.a, Line 17.

Line 15—Net Present Value. Enter the difference between amounts reported as Lines 13 and 14.

Constant Controls Case Forecast Summary—Schedule A.2

General

All applicants must complete this schedule and its supporting schedules under the conditions where the applicant would undertake sufficient additional investment in pollution control facilities to achieve full compliance with Agency emission limitation standards.

Line 01—Net Income From Operations. Enter for each year from 1979 through 1985 the amount reported in Schedule E.1, Line 23.

Line 02—Constant Controls Capital Investment. Enter the estimated capital outlays for interim controls in the years which outlays would be made. These values shall correspond to the investment estimates shown in the supporting schedules for Line 16 of Schedule E.1.

Line 03—Sustaining Capital. Enter for each year from 1979 through 1985, the amounts reported in Schedule E.2., Line 07.

Line 04—Total. Enter the sum of Line 02 and Line 03 for each year.

Line 05—Adjusted Cash Flow Projections. Enter for each year from 1979 through 1985 the difference between amounts reported on Line 01 and 04.

Line 06—Discount Factors. Amounts entered for each year from 1979 through 1985 have been provided by EPA.

Line 07—Present Value of Future Cash Flows. Enter for each year from 1979 through 1985 the product of Line 05 times Line 06.

Line 08—Terminal Value. Enter under the total column, the estimated terminal value of the smelter. This shall be computed by capitalizing the forecasted net income from operations (Schedule E.1, Line 23) for 1985 by the historical cost of capital as furnished by EPA. Specifically, divide net income from operations by the cost of capital (in decimal form).

Line 09—Discount Factor. Amount entered has been provided by EPA.

Line 10—Present Value of Terminal Salvage Value. Enter the product of Line 08 times Line 09.

Line 11—Present Value of Future Cash Flows. Enter the sum of amounts previously reported on Line 07 for 1979 through 1985.

Line 12—Total Present Value. Enter the sum of Line 10 plus Line 11.

Line 13—Current Salvage Value. Enter the amount reported in Schedule C.2.a, Line 17.

Line 14—Net Present Value. Enter the difference between amounts reported as Lines 12 and 13. Applicants reporting a negative net present value will be eligible for a waiver from full compliance with constant control standards for SIP sulfur dioxide emission limitations. Applicants that do not have an existing system of constant control technology also must complete Schedule A.3 and Schedules F.1 and F.2 to determine their eligibility for a temporary or permanent waiver from interim-control requirements.

Interim Control Case Forecast Summary—Schedule A.3

General

Applicants that do not have an existing system of constant control technology must complete this schedule and its supporting schedules if they want to request a waiver from interim control requirements.

Line 01—Gross Operating Profit. Enter for each year from 1979 through 1985 the amount reported in Schedule F.1, Line 12. Applicants will be eligible for a temporary waiver from the interim development of constant control technology for sulfur dioxide emissions if the reported gross operating profit is a negative value for one or more years during the 1979 through 1985 forecast period. Applicants also should complete parts B and C to determine eligibility for a permanent waiver from interim-control requirements.

Line 02—Net Income from Operations. Enter for each year from 1979 through 1985 the amount reported in Schedule F.1, Line 23.

Line 03 & 04—Depreciation and Amortization. Enter for each year from 1979 through 1985 the amounts reported in Schedule F.1, Lines 16 and 17.

Line 05—Operating Cash Flow. Enter for each year from 1979 through 1985 the total of amounts reported on Lines 02 through 04.

Line 06—Interim Controls Capital Investment. Enter the estimated capital outlays for interim controls for the years during which outlays would be made. These values shall correspond to the investment estimates shown in the supporting schedules for Line 16 of Schedule F.1.

Line 07—Sustaining Capital. Enter for each year from 1979 through 1985, the amounts reported in Schedule F.2, Line 07.

Line 08—Total. Enter the sum of Line 06 and Line 07 for each year.

Line 09—Net Cash Flow Projections. Enter for each year from 1979 through 1985 the difference between the amounts reported on Line 05 and 08.

Line 10—Discount Factors. Amounts entered for each year from 1979 through 1985 have been provided by EPA.

Line 11—Present Value of Future Cash Flows. Enter for each year from 1979 through 1985 the product of Line 09 times Line 10.

Line 12—Terminal Value. Enter under the Total column, the estimated terminal value of the smelter. This shall be computed by capitalizing the forecasted net income from operations (Schedule F.1, Line 23) for 1985 by the historical cost of capital as furnished by EPA. Specifically, divide net income from operations by the cost of capital (in decimal form).

Line 13—Discount Factor. Amount entered has been provided by EPA.

Line 14—Present Value of Terminal Salvage Value. Enter the product of Line 12 times Line 13.

Line 15—Present Value of Future Cash Flows. Enter the sum of amounts previously reported on Line 11 for 1979 through 1985.

Line 16—Total Present Value. Enter the sum of Line 14 plus Line 15.

Line 17—Current Salvage Value. Enter the amount reported in Schedule C.2.a, Line 17.

Line 18—Net Present Value. Enter the difference between amounts reported on Lines 16 and 17. Applicants reporting a negative net present value will be eligible for a permanent waiver from interim use of a constant control system for sulfur dioxide emissions.

Consolidated Nonferrous Profit and Loss Summary—Schedule B.1

General

Prepare a separate consolidated profit and loss summary of total nonferrous metals operations for each fiscal year ending in 1974 through 1978 during which the firm engaged in smelter operations. Report in Column (a) for each respective period consolidated revenue and cost data associated with the firm's applicable mining, concentrator, smelter, refinery and/or other nonferrous operations. For firms engaged solely in nonferrous metal operations, amounts reported in Column (a) must agree with the firm's certified consolidated income statements except for reclassifications required to complete individual line items. Itemize the required reclassifications on a separate schedule and attach as part of Exhibit B. Firms with activities in addition to nonferrous metal operations also must attach as part of Exhibit B a schedule reconciling the firm's consolidated nonferrous operating results with its total consolidated income statement data.

Report respective amounts assignable to Mining, Concentrator, Smelter, Refinery and Other Nonferrous operating segments in Columns (d) through (h). Firms with more than one mine, concentrator, smelter,

refinery or "other" nonferrous operating entity should report in the specified operating segment column the combined operating results of all such segment entities. Applicants may not, however, combine the operations of more than one segment as identified in this schedule (e.g., the concentrator and smelter segments) without prior consultation with and approval from the Agency.

The amounts assigned to each segment's operations should include both (1) revenues and costs directly attributable to the segment's operating activities and (2) indirect operating costs shared with other segments *to the extent that a specific causal and beneficial relationship can be identified* for the inter-segment allocation of such costs. Do not allocate revenues and costs associated with central administrative activities for which specific causal and beneficial relationships to the activities of individual operating segments cannot be established. Nonallocable items include, but are not restricted to, amounts such as dividend and interest income on centrally administered portfolio investments, central corporate administrative office expenses and interest on long-term debt financing arrangements. Report amounts not directly assignable to Mining, Concentrator, Smelter, Refinery and Other Nonferrous operating segments as nontraceable in Column (c). Provide a detailed explanation of amounts classified as nontraceable on a separate schedule and attach as part of Exhibit B.

Consolidated eliminations reported in Column (b) should reflect only amounts arising from transactions among Mining, Concentrator, Smelter, Refinery and other Nonferrous segment operations reported in Columns (d) through (h) respectively. Explain all reported eliminations on a separate schedule and attach as part of Exhibit B.

Line 01—Operating Revenues. Report operating revenues assignable to each segment's product and service sales and transfers in accordance with pricing policies established for financial reporting purposes. Prepare and attach as part of Exhibit B a schedule classifying operating segment revenues for each fiscal year by (1) sales to unaffiliated customers and (2) inter-segment product transfers and sales to other affiliated customers with whom the applicable segment has a common bond of ownership and/or managerial control. Refer to the NSO financial reporting overview section on "Transfer Prices on Affiliated Party Transactions" for a definition of affiliated customer relationships. Explain in the schedule attached to Exhibit B the pricing policies used for reporting inter-segment product transfers and other sales to affiliated customers.

Line 03—Selling, General and Administrative (SG&A) Expenses. Report SG&A expenses attributable to each segment's annual operating activities. Exclude from SG&A expenses those operating costs to be reported separately on Lines 04 through 08. Attach as part of Exhibit B supporting schedules that (1) segregate SG&A expenses by major expense components, (2) classify the major expense components according to those costs incurred directly by each segment and costs allocated to the segment from indirect cost pools, and (3) explain the basis used in each case for indirect cost allocations.

Line 04—Taxes, Other Than Income Tax. Report all taxes (exclusive of Federal, state, local and foreign income taxes) assignable to each segment's annual operations. Attach as part of Exhibit B a schedule that (1) segregates these operating taxes by major expense component, (2) classifies each expense component according to direct and indirect cost elements and (3) explains the basis used in each case for indirect cost allocations.

Line 05—Exploration and Research Costs. Report exploration and research costs (exclusive of capitalized costs reported in Schedule B.2) that are assignable to each segment's annual operations. Attach as part of Exhibit B a schedule (1) segregating exploration and research costs by major expense components, (2) classifying each expense component according to direct and indirect cost elements and (3) explaining the basis used in each case for indirect cost allocations.

Line 06—Pollution Control Depreciation & Amortization. Report annual depreciation and amortization charges attributable to each segment's investment in pollution control facilities and equipment. Reported charges should be computed in accordance with depreciation and amortization methods adopted for financial reporting purposes in the firm's certified consolidated financial statements. Attach as part of Exhibit B a schedule segregating each segment's pollution control and non-pollution-control facility investments into major depreciable asset components. Describe for each asset component the (1) depreciation method adopted for financial reporting purposes, (2) annual depreciation and amortization charges by applicable fiscal year, (3) classification of annual charges into direct and indirect cost elements and (4) basis used for indirect cost allocations in each case.

Line 07—Other Facility Depreciation, Depletion & Amortization. Report annual depreciation, depletion and amortization charges (exclusive of charges reported on Line 06) assignable to each segment's operations. Refer to the Line 06 instructions for additional reporting requirements.

Line 08—Other Operating Expenses. Report any additional expenses assignable to each segment's annual operations. Attach as part of Exhibit B a schedule (1) segregating these additional expenses into major expense components, (2) classifying each expense component according to costs incurred directly by each segment and costs allocated to the segment from indirect cost pools and (3) explaining the basis used in each case for indirect cost allocations.

Line 09—Total Operating Expenses. Enter the total of amounts reported on Lines 02 through 08 for each segment.

Line 10—Income from Operations. Enter the amount of Line 01 minus the amount on Line 09 for each reporting segment.

Line 11—Income from Unconsolidated Affiliates. Report the total of annual (1) nonferrous segment equity in earnings of unconsolidated subsidiaries and affiliates subject to the "equity" method of accounting and (2) dividend income assignable to nonferrous metal operations from investments in unconsolidated subsidiaries and affiliates accounted for on the "cost" basis. Income from unconsolidated entities should either be assigned to the Other Nonferrous segment in Column (h) where appropriate or reported in Column (c) as nontraceable.

Line 12—Other Dividend & Interest Income. Report dividend income from the consolidated nonferrous segment's portfolio investments in marketable securities and interest income earned by the consolidated segment. Do not assign other dividend and interest income to the operating segments in Columns (d) through (h).

Line 13—Gain/(Loss) from Disposition of Property. Report net gains or losses recognized during each respective fiscal year from disposition of property, plant and equipment. Report such gains or losses in accordance with the firm's normal practice for certified financial statement reporting. If such gains or losses are not significant and are classified otherwise, no reclassification need be made. A note to this effect must be included in Exhibit B.

Line 14—Interest & Financial Charges on Short-Term Debt. Report interest expense and associated financial charges for each respective fiscal year on current liabilities in accordance with the assignment of such liabilities to individual nonferrous reporting segments in Schedule B.2. Do not include interest on the portion of long-term debt due within the current year for each reporting period.

Line 15—Interest & Financial Charges on Other Debt. Report interest expense and associated financial charges, including interest on capitalized leases, on all noncurrent debt directly assignable to the firm's consolidated nonferrous operations. Include interest on the current portion of long-term debt. Do not assign interest expense and financial charges on long-term debt to the operating segments in Columns (d) through (h).

Line 16—Miscellaneous Income & Expenses. Report minority interest in income, foreign currency exchange effects, and other non-operating income and expenses directly assignable to the firm's nonferrous operating segments and not recognized elsewhere on this schedule. Report such items in accordance with the accounting methods used for certified financial reporting purposes.

Line 17—Total Other Income and Expense. Enter the algebraic sum of amounts reported on Lines 11 through 16 for each segment.

Line 18—Net Taxable Income. Enter the amount of Line 10 minus the amount reported on Line 17 for each segment.

Consolidated Nonferrous Capital Investment Summary—Schedule B.2

General

Prepare a consolidated capital investment summary for total nonferrous metals operations during each fiscal year covered by Schedule B.1. Report in Column (a) for each year consolidated end-of-period asset investment and current liability balances associated with the firm's mining, concentrator, smelter, refinery and/or other nonferrous operations as defined in the instructions for Schedule B.1. For firms engaged solely in nonferrous metal operations, amounts reported in Column (a) must agree with the firm's certified consolidated balance sheets except for reclassifications required to complete individual line items. Itemize these reclassifications on a separate schedule and attach as part of Exhibit B. Firms with activities in addition to nonferrous metal operations also must attach as part of Exhibit B a schedule reconciling the firm's consolidated nonferrous asset investment and current liability balances with comparable data reported in its certified consolidated balance sheets.

Report amounts assignable to Mining, Concentrator, Smelter, Refinery and Other Nonferrous operating segments in Columns (d) through (h), respectively. The amounts assigned to each segment should include both (1) investments and liabilities directly identifiable with the segment's operating activities and (2) asset investments share with other segments to the extent that a specific causal and beneficial relationship can be established for the inter-segment allocation of such investments. Report amounts not assignable to particular segments as nontraceable in Column (c). Do not allocate to particular segments the costs of assets maintained for general corporate purposes. Provide a detailed explanation of amounts classified as nontraceable on a separate schedule and attach as part of Exhibit B.

Report consolidated eliminations in Column (b). Include only those eliminations applicable to transactions among Mining, Concentrator, Smelter, Refinery and Other Nonferrous segments as indicated in Columns (d) through (h).

Line 01—Cash on Hand and Deposit. Report in Column (a) total cash balances, as defined for certified financial statement reporting, either held by the consolidated nonferrous operating segments or, in the case of firms with activities in addition to nonferrous metal operations, assignable to the consolidated nonferrous operating segments on the basis of a causal and beneficial relationship with total corporate activities. Report in Columns (d) through (h) the respective amounts of such balances assignable to each operating segment on the basis of a causal and beneficial relationship with consolidated nonferrous segment operations. Attach as part of Exhibit B an explanation of the basis used for inter-segment allocations of cash on hand and deposit.

Line 02—Temporary Cash Investments. Report in Column (a) temporary cash investments in time deposits or other short-term securities. Include only those investments either held by the consolidated nonferrous operating segments to meet current-period tax payments and other budgeted expenditures specifically identifiable with their continued operations or, in the case of firms with activites in addition to nonferrous metal operations, assignable to the consolidated nonferrous segments for such purposes. Exclude any temporary cash investments for which no specific future outlay requirement can be identified.

Report in Columns (d) through (h) the respective amounts of temporary cash investments identifiable with each segment's future expenditure plans as indicated above. Attach as part of Exhibit B a schedule classifying temporary cash investments according to identifiable budgeted expenditure requirements.

Line 03 and 04—Net Trade Receivables. Report trade accounts and notes due from unaffiliated customers and from inter-segment transfers or sales to affiliated customers in Lines 03 and 04, respectively. Report the receivables, net of reserves for uncollectible accounts, they are recorded in the firm's financial records for certified financial statement reporting. Attach as part of Exhibit B an explanation of differences, if any, in typical trade credit terms granted by each segment to its affiliated and unaffiliated customers.

Lines 05 and 06—Inventory Investments. Report end-of-period inventories assignable to each segment according to the valuation method used for certified financial statement reporting. Report separately inventories held for resale, including raw materials inventories held for processing and subsequent sale (Line 05) and materials and supplies inventories (Line 06). If LIFO reserves are not specifically identifiable with respect to inventories held for resale, allocate them on a pro-rata basis.

Line 07—Other Current Assets. Report prepaid expenses, deferred charges, non-trade notes and accounts receivable, and other assets classified as current for certified financial statement reporting purposes that are assignable to each segment's operations. Attach as part of Exhibit B a schedule classifying these other current assets according to their types and amounts.

Line 08—Total Current Assets. Enter the total of Lines 01 through 07 for each segment.

Line 09—Gross Facility Investment. Report all capitalized costs classified as property, plant and equipment for certified financial statement reporting that are assignable to each operating segment. Refer to the Line 11 instructions for additional reporting requirements on nonferrous facility investment.

Line 10—Accumulated Depreciation, Depletion and Amortization. Report accumulated depreciation, depletion, amortization and associated valuation charges recorded for certified financial statement reporting purposes in relation to each segment's facility investments as reported on Line 09. Associated valuation charges are defined in Financial Accounting Standards Board (FASB) Statement No. 19 as losses recognized in connection with an impairment in the value of an unimproved property below its acquisition cost. Refer to the Line 11 instructions for additional reporting requirements on nonferrous facility investments.

Line 11—Net Facility Investment. Enter the amount reported on Line 09 minus the amount reported on Line 10 for each segment. Attach as part of Exhibit B a schedule classifying gross facility investments, accumulated depreciation, depletion and amortization charges, and net facility investments by major pollution-control and non-pollution-control components as defined in the supporting depreciation schedule for Schedule B.1, Lines 06 and 07. Identify for each asset component the direct versus joint-use investments assigned to each operating segment and explain the basis used to allocate amounts associated with joint-use facilities among the operating segments.

Line 12—Investments in Unconsolidated Subsidiaries. Report nonferrous segment investments in and advances to unconsolidated subsidiaries and affiliates as recorded on the firm's financial records. These unconsolidated entity investments should either be assigned to the Other Nonferrous segment in Column (h) where appropriate or reported in Column (c) as nontraceable.

Line 13—Other Investments and Advances. Report in columns (a) and (c) only noncurrent receivables, investments in debt and equity securities (exclusive of short-term security investments reported on Line 02) and other portfolio investments assignable to the consolidated nonferrous segment operations.

Line 14—Miscellaneous Non-Current Assets. Report all other assets classified as non-current for certified financial statement reporting and assignable to nonferrous segment operations. Attach as part of Exhibit B a schedule reporting by type and amount the major components of such investments.

Line 15—Total Other Non-Current Assets. Enter the total of Lines 12 through 14 for each respective segment.

Line 16—Total Asset Investment. Enter the total of Lines 08, 11 and 15 for each segment.

Lines 17 and 18—Trade Accounts and Notes Payable. Report trade notes and accounts due respectively on purchases from unaffiliated suppliers (Line 17) and on inter-segment transfers or purchases from affiliated suppliers (Line 18). Attach as part of Exhibit B an explanation of differences, if any, in typical trade credit terms received by each segment from its affiliated and unaffiliated suppliers.

Line 19—Other Expense Accruals. Report payments classified as current for salaries and wages, other employee benefits, operating taxes and related operating expenses previously reported for each segment on Schedule B.1, Lines 02 through 08. Attach as part of Exhibit B a schedule classifying by type and amount the major components of other expense accruals assignable to each segment.

Line 20—Current Notes Payable. Report payments due to nontrade creditors on short-term financing arrangements directly associated with each nonferrous segment's operations. Exclude current installments due on long-term debt financing arrangements, notes due to officers and directors, inter-segment loans or advances and loans or advances from affiliated operating segments within the firm.

Line 21—Other Current Liabilities. Report other nontrade payables, current income taxes payable and other liabilities classified as current for each segment's operations.

Line 22—Total Current Liabilities. Enter the total of Lines 17 through 21 for each segment.

Line 23—Net Capital Investment. Enter the amount reported on Line 16 minus the amount reported on Line 22 for each segment.

Smelter Profit and Loss Summary—Schedules C.1 General

Report annual revenues, costs and income taxes assignable to operation of the smelter subject to this NSO application. Assignable revenues and costs should include only the results of transactions either (a) directly associated with smelter operations or (2) for which the applicant can establish a causal and beneficial relationship with smelter operations. The annual data requested in this schedule should be reported for each of the five fiscal years immediately preceeding the year in which this application is filed or for that portion of the five-year period during which the firm engaged in smelter operations.

Line 01—Primary Metal Sales. Enter for each fiscal year the amount reported in Schedule C.1.a. Line 40.

Line 02—Co-Product & By-Product Sales. Report annual revenues, net of returns and allowances, derived from smelter sales and/or transfers of co-products and by-products to both unaffiliated and affiliated customers. Attach as part of Exhibit B a supporting schedule for each major co-product and by-product component of smelter revenues. Segregate the revenues reported by major co-product and by-product components into

their unaffiliated customer and affiliated customer elements. Report for each component's unaffiliated and affiliated customer revenue elements the (1) average grade of product sold, (2) actual quantity sold, (3) average price per unit and (4) total smelter revenues. Also show for each product line any adjustments required to restate transfer prices and explain the basis for such adjustments. Refer to the NSO Financial Reporting Overview section on "Transfer Prices on Affiliated Party Transactions" for instructions on the restatement of affiliated customer revenues.

Line 03—Tolling Service Revenues. Enter for each fiscal year the amount reported in Schedule C.1.a. Line 53.

Line 04—Other Operating Revenues. Report annual revenues directly associated with smelter operations that have not previously been reported on Lines 01 through 03. Attach as part of Exhibit B a schedule showing the types and amounts of sales reported as other operating revenue. The following non-operating revenue and income items should *not* be included as other operating revenue or as a part of revenues reported on Lines 01 through 03.

- Royalties, licensing fees and other income from intangibles
- Interest and dividend income on portfolio investments
- Equity in income (loss) of unconsolidated subsidiaries and affiliates
- Gain (loss) from discontinued operations and disposal of property
- Minority interest adjustment to consolidated subsidiary income
- Extraordinary items

Line 05—Total Operating Revenue. Enter the total of amounts reported on Lines 01 through 04 for each year.

Line 06—Concentrates Processed. Report the cost of concentrates processed and sold or transferred to unaffiliated and affiliated customers. Concentrates purchased from unaffiliated suppliers should be valued at the actual prices paid. Concentrates purchased from affiliated suppliers should be valued at or, if necessary, restated to equivalent prices quoted by unaffiliated suppliers. If prices used to report revenues are c.i.f. and to report concentrate costs are f.o.b. smelter, all transportation charges paid on the seller's or buyer's account should be excluded from smelter expenses. Attach as part of Exhibit B supporting schedules showing the:

- Annual value of concentrate purchases classified according to purchases from unaffiliated and affiliated suppliers.
- Cost of sales adjustments to concentrate purchases for net annual additions to or withdrawals from concentrate inventories, freight-in on concentrate purchases and inventory spoilage.
- Impact on cost of sales for restating, where applicable, the cost of concentrate purchases from affiliated suppliers to the equivalent prices paid to unaffiliated suppliers.
- Volumes, grades and net prices of concentrate purchases from unaffiliated and affiliated suppliers by type of concentrate purchased.
- Volumes, grades and net prices associated with toll concentrates processed by type of concentrate.

Line 07—Other Materials Costs. Report annual costs incurred for flux, refractories, coke and other materials used by the smelter in its processing of concentrates. Materials purchased from unaffiliated suppliers should be valued at the actual prices paid after adjustment for transportation costs incurred. Materials purchased from affiliated suppliers should be valued at or, if necessary, restated to equivalent prices quoted by unaffiliated suppliers. Include in Exhibit B supporting schedules showing the:

- Annual value of material purchases classified according to purchases from unaffiliated and affiliated suppliers.
- Cost of sales adjustments to material purchases for net annual additions to or withdrawals from material inventories, freight costs on material purchases and inventory loss.
- Impact on cost of sales for restating, where applicable, the costs of material purchases from affiliated suppliers to equivalent prices paid to unaffiliated suppliers.
- Classification of other material costs by major cost factors for each cost component that exceeds 20 per cent of any line item in the cost of sales schedule.

Line 08—Production Labor Costs. Report in each column total direct labor costs incurred by the smelter for processing purchased and toll concentrates.

Include in Exhibit B supporting schedules showing the:

- Manhours and wage rates for major labor classifications.
- Potential impact on wage rates of provisions in the smelter's current labor contracts.
- Explanation of major variances observed in direct labor costs over the five-year period as a result of factors such as strikes or new labor contracts.

Line 09—Pollution Control Costs. Report in each column expenses incurred for operating and maintaining pollution control facilities. All by-product credits associated with pollution control facility operations should be eliminated and reported on Line 02. Depreciation and amortization charges against the smelter's pollution control facilities should be reported separately on Line 16. Attach as part of Exhibit B supporting schedules showing the:

- Major pollution control cost elements with their values classified according to direct and indirect cost factors.
- Techniques used to allocate indirect pollution control costs to major cost pools.

Line 10—Other Production Costs. Report annual smelter overhead and other production costs not previously reported on Lines 06 through 10. By-product credits, if any, should be eliminated and reported on Line 02 as operating revenues. Attach as part of Exhibit B supporting schedules showing the:

- Major cost elements classified according to direct and indirect production costs.
- Disaggregation of major overhead cost components into their fixed and variable cost elements.
- Allocation techniques used in assigning indirect overhead costs to the major cost components.
- Elements of overhead costs represented by purchases from affiliated suppliers and adjustments, if any, required to restate these costs on the basis of equivalent prices paid to unaffiliated suppliers.

Line 11—Total Cost of Sales. Enter the total of amounts reported on Lines 06 through 10 for each year.

Line 12—Gross Operating Profit. Enter the amount reported on Line 05 minus the amount reported on Line 11 for each year.

Line 13—Selling, General and Administrative (SG&A) Expenses. Report SG&A expenses attributable to the smelter's annual operating activities. Exclude those operating costs to be reported separately on Lines 14 through 18. Attach as part of Exhibit B supporting schedules (1) segregating SG&A expenses by major expense components, (2) classifying the major expense components according to those costs incurred directly by smelter operations and costs allocated to the smelter from indirect cost pools and (3) explaining the basis used for indirect cost allocations.

Line 14—Taxes, Other Than Income Tax. Report operating taxes assignable to the smelter in accordance with instructions for Schedule B.1, Line 04.

Line 15—Exploration and Research Costs. Report exploration and research costs assignable to the smelter in accordance with instructions for Schedule B.1, Line 05.

Line 16—Pollution Control Depreciation and Amortization: Report annual depreciation and amortization charges attributable to the smelter in accordance with instructions for Schedule B.1, Line 16.

Line 17—Other Facility Depreciation and Amortization. Report annual depreciation and amortization charges attributable to the smelter in accordance with instructions for Schedule B.1, Line 07.

Line 18—Miscellaneous Operating Expenses. Report additional expenses assignable to the smelter in accordance with the instructions for Schedule B.1, Line 08.

Line 19—Total Other Operating Expenses. Enter the total of amounts reported on Lines 13 through 18 for each year.

Line 20—Income From Operations. Enter the amount reported on Line 12 minus the amount reported on Line 19 for each year.

Lines 21-23—Other Income and Expenses. Report amounts assignable to smelter operations in accordance with instructions for Schedule B.1, Lines 13, 14, and 16.

Line 24—Total Other Income and Expense. Enter the algebraic sum of amounts reported on Lines 21 through 23 for each year.

Line 25—Net Taxable Income. Enter the amount reported on Line 20 minus the amount reported on Line 24 for each year.

Supplemental Smelter Revenue Data—Schedule C.1.a.

General

Report annual product sales and associated operating revenues, net of returns and allowances, from smelter sales and/or transfers of copper, lead and zinc products and totalling services to both unaffiliated and affiliated customers. Revenues from affiliated customer sales should be stated or, if necessary, restated at prices equivalent to those received on comparable sales to unaffiliated customers. Refer to the NSO Financial Reporting Overview discussion of "Transfer Prices on Affiliated Party Transactions" for instructions on the restatement of affiliated customers revenues.

Lines 01, 14 and 27—Primary Nonferrous Product Sales. Report in thousands of tons the total quantity of copper, lead and zinc products sold in each fiscal year.

Lines 02, 15 and 28—Unaffiliated Customer Sales. Report in thousands of tons the quantities of copper, lead and zinc product sales to unaffiliated customers during each fiscal year.

Lines 03, 16 and 29—Unaffiliated Customer Revenues. Report in thousands of dollars

the total operating revenues derived from smelter sales of copper, lead and zinc to unaffiliated customers during each fiscal year.

Lines 04, 17 and 30—Unaffiliated Customer Prices. Report the average unit price, computed as operating revenues reported on Lines 03, 16 and 29 divided by the quantities reported on Lines 02, 15 and 28, respectively, received on smelter sales of copper, lead and zinc to unaffiliated customers during each fiscal year.

Lines 05, 18 and 31—Average Product Quality Grade. Report the average quality rating assigned to copper, lead and zinc products purchased by the smelter's unaffiliated customers.

Lines 06, 19 and 32—Affiliated Customer Sales. Report in thousands of tons the quantities of copper, lead and zinc product sales to affiliated customers during each fiscal year.

Lines 07, 20 and 33—Affiliated Customer Revenues. Report in thousands of dollars the total operating revenues derived from smelter sales of copper, lead and zinc to affiliated customers during each fiscal year.

Lines 08, 21 and 34—Affiliated Customer Prices. Report the average unit price, computed as operating revenues reported on Lines 07, 20 and 33 divided by the quantities reported on Lines 06, 19 and 32, respectively, received on smelter sales of copper, lead and zinc to affiliated customers during each fiscal year.

Lines 09, 22 and 35—Average Product Quality Grade. Report the average quality rating assigned to copper, lead and zinc products purchased by smelter's affiliated customers.

Lines 10, 23, and 36—Total Primary Product Revenues. Report total operating revenues derived from the smelter's sales to unaffiliated and affiliated customers of respective copper (Lines 03 + 07), lead (Lines 16 + 20) and zinc (Lines 29 + 33) during each fiscal year.

Lines 11, 24 and 37—Transfer Price Adjustments. Report operating revenue adjustments required to equate affiliated customer transfer prices with unaffiliated customer market prices on smelter sales of copper, lead and zinc during each fiscal year. Attach as part of Exhibit 3 an explanation of the method used for restating transfer prices where such adjustments are necessary.

Lines 12, 25 and 38—Other Revenue Adjustments. Report sales returns and allowances and other adjustments applicable to the segment's revenues derived from copper, lead and zinc product sales. Attach as part of Exhibit B a schedule reporting the types and amounts of such adjustments.

Lines 13, 26 and 39—Adjusted Product Revenues. Enter the algebraic sums of Lines 10 through 12 for adjusted copper sales (Lines 13), Lines 23 through 25 for adjusted lead sales (Line 26) and Lines 36 through 38 for adjusted zinc sales (Line 39).

Line 40—Primary Metal Revenues. Enter for each fiscal year the sum of Lines 13, 26 and 39.

Line 41—Toll Concentrates Processed. Report in thousands of tons the total quantity of toll concentrates processed during each fiscal year.

Lines 42 to 45—Unaffiliated Customer Toll Revenues. Report for each fiscal year the quantity of toll concentrates processed for unaffiliated customers (Line 42), total operating revenues derived from this processing (Line 43), average price charged per ton of concentrate processed (Line 44 = Line 43/42) and the average quality rating assigned to toll concentrates processed for unaffiliated customers (Line 45).

Lines 46 to 49—Affiliated Customer Toll Revenues. Report for each fiscal year the quantity of toll concentrates processed for affiliated customers (Line 46), total operating revenues derived from such processing (Line 47), average price charged per ton of concentrate processed (Line 48 = Line 47/46) and the average quality rating (Line 49) assigned to toll concentrates processed for affiliated customers.

Line 50—Tolling Service Revenues. Enter for each fiscal year the total of amounts reported on Lines 43 and 47.

Line 51—Transfer Price Adjustments. Report operating revenue adjustments required to equate affiliated customer transfer prices with market prices charged to unaffiliated customers on the smelter's tolling services. Attach as part of Exhibit B an explanation of the method used for restating transfer prices where such adjustments are necessary.

Line 52—Other Revenue Adjustments. Report other adjustments applicable to the smelter's tolling service revenues. Attach as part of Exhibit B a schedule reporting the types and amounts of such adjustments.

Line 53—Adjusted Tolling Service Revenues. Enter for each fiscal year the total of amounts reported on Lines 50 through 52.

SMELTER CAPITAL INVESTMENT SUMMARY—SCHEDULE C.2

GENERAL

Report annual end-of-period asset investments and current liabilities associated during the fiscal years indicated in Schedule C.1 with operation of the smelter subject to this NSO application. Reporting procedures applicable to the smelter's capital investment summary will in general coincide with procedures stipulated by the instructions for Schedule B.2. Certain modifications may be required, however, to meet Agency reporting requirements outlined in the following instructions.

Firms with multi-facility smelter operations must segregate data for the specific smelter subject to this application from consolidated smelter operating data reported in Schedule B.2. Applicants also may be required to restate trade receivables and payables for transfer price adjustments on the smelter's transactions with affiliated customers. In addition to these potential modifications in financial reporting procedures, applicants must provide more extensive data for smelter investments in production and pollution control facilities.

Lines 01 & 02—Cash & Temporary Cash Investments. Report total cash balances (Line 01) and temporary cash investments (Line 02) assignable to the smelter's operations at the end of each fiscal year in accordance with instructions provided for Schedule B.2. Attach as part of Exhibit B a schedule classifying the smelter's temporary cash investments associated with identifiable budgeted expenditure requirements if these investments differ from the amounts reported previously for Schedule B.2, Line 02.

Lines 03 & 04—Net Trade Receivables. Report trade accounts and notes, net of reserves for uncollectible items, assignable to the smelter in relation to its unaffiliated (Line 03) and affiliated (Line 04) customer sales and transfers. Trade receivables reported by the smelter as due from affiliated customers should be stated or, if necessary, restated on credit terms equivalent to those received by unaffiliated customers on a sale of comparable products. Attach as part of Exhibit B a schedule showing adjustments in the smelter's receivables investments required to equate trade credit terms extended to affiliated and unaffiliated customers.

Lines 05 & 06—Inventory Investments. Report respective end-of-period investments in raw material, work-in-process and finished good inventories held to support the smelter's future production and sale of products (Line 05) and associated inventories of other materials and supplies (Line 06). Inventory purchased from affiliated suppliers should be stated or, if necessary, restated at market prices prevailing on purchases from unaffiliated suppliers. Attach as part of Exhibit B a schedule (1) describing whether inventories have been valued on a last-in-first-out (LIFO), first-in-first-out (FIFO) or other cost allocation process, (2) describing the smelter's transfer pricing policies on inventory purchases from affiliated suppliers and (3) presenting adjustments required in reported inventory investments to reflect restatements of transfer prices on purchases from affiliated suppliers.

Line 07—Other Current Assets. Report other current assets assignable to the smelter's operations for each respective year in accordance with instructions provided for Schedule B.2. Attach as part of Exhibit B a schedule classifying the smelter's other current assets if these investments differ from the amounts reported previously in Schedule B.2.

Line 08—Total Current Assets. Enter the total of amounts reported on Lines 01 through 07 for each fiscal year.

Lines 09 & 14—Property, Plant & Equipment. Report by individual line item property, plant and equipment investments assignable to smelter operations for each fiscal year. Include in gross facility investments at the end of each period both (1) property, plant and equipment directly associated with the smelter's operations and (2) facilities shared with other operating segments to the extent that a causal and beneficial relationship can be established for the intersegment allocation of such facility investments.

Attach as part of Exhibit B a schedule reporting by individual line item the annual capital expenditures on additional property, plant and equipment investments in the smelter's operations. Further classify these annual capital expenditures into both (1) investments required to maintain the smelter versus investments in smelter expansion and improvement and (2) direct facility versus joint-use facility investments. Explain the method used for allocating capital expenditures on joint-use facilities to the smelter's operations. Refer to the Line 17 instructions for additional reporting requirements on the smelter's facility investments.

Line 15—Total Smelter Investment. Enter the total of amounts reported on Lines 09 through 14 for each respective fiscal year.

Line 16—Accumulated Depreciation & Amortization. Report, in accordance with the Line 10 instructions in Schedule B.2, accumulated depreciation, amortization and other valuation charges assignable to the smelter's investment in property, plant and equipment. Refer to the Line 17 instructions

for additional reporting requirements on smelter facility investments.

Line 17—Net Smelter Investment. Enter the amount reported on Line 15 minus the amount reported on Line 16 for each fiscal year. Attach as part of Exhibit B a schedule depicting additional reporting requirements stipulated by the Line 11 instructions in Schedule B.2 if the supplemental capital investment data differ from amounts reported previously in Schedule B.2, Line 11.

Line 18—Other Non-Current Assets. Report, in accordance with the Line 14 instructions in Schedule B.2, other assets assignable to the smelter's operations for each fiscal year. Attach as part of Exhibit B a schedule reporting by type and amount the major components of such investments if the data differ from information reported previously under Schedule B.2, Line 14.

Line 19—Total Smelter Capital Investment. Enter the total of amounts reported on Lines 08, 17 and 18 for each fiscal year.

Lines 20 & 21—Trade Accounts & Notes Payable. Report trade accounts and notes due on the smelter's purchases from unaffiliated suppliers (Line 20) and on its inter-segment transfers or purchases from affiliated suppliers (Line 21). Trade payables reported by the smelter as due to affiliated suppliers should be stated or, if necessary, restated on terms equivalent to those received from unaffiliated suppliers on a purchase of comparable materials. Attach as part of Exhibit B a schedule showing adjustments required on the smelter's trade payables to equate trade credit terms received from affiliated and unaffiliated suppliers.

Line 22—Other Expense Accruals. Report, in accordance with the Line 19 instructions in Schedule B.2, other expense accruals assignable to the smelter's operations during each fiscal year. Attach as part of Exhibit B a schedule classifying by type and amount the major components of such accruals if the information differs from data reported previously under Line 19 in Schedule B.2.

Line 23—Current Notes Payable. Report, in accordance with the Line 20 instructions in Schedule B.2, payments due to nontrade creditors on debt financing arrangements associated with the smelter's operations.

Line 24—Other Current Liabilities. Report other nontrade payables classified as current obligations assignable to the smelter's operations.

Line 25—Total Current Liabilities. Enter the total of amounts reported on Lines 20 through 24 for each fiscal year.

Line 26—Net Smelter Capital Investment. Enter the amount reported on Line 19 minus the amount reported on Line 25 for each fiscal year.

Cash Proceeds from Liquidation—Schedule C.2.a

General

Applicants should determine the current salvage value of their existing investment in the smelter as the net proceeds that could be derived through an orderly liquidation of the smelter's assets. The net cash proceeds should be reported after an appropriate allowance for disposal costs, contractual claims against the smelter (e.g., labor termination penalties), and income tax effects on the corporation of such liquidation costs.

The applicant must stipulate the most advantageous alternative market (use) for the smelter's facilities. Generally, this market will be:

- Secondary market for used plant and equipment
- Sale for scrap
- Abandonment where the disposal cost exceeds scrap value.

The current net salvage value should be disaggregated into the same property plant and equipment asset groups reported under the historical capital investment summary, Schedule C.2.

Line 01—Current Assets. Enter in Columns 1 and 2, the value of total current assets shown in Line 08 of Schedule C.2 (Historical Capital Investment Summary) for 1978. No gain or loss should be reported in Columns 3 through 5 for the liquidation of current asset investments.

Lines 02-07—Property Plant and Equipment. Enter in Column 1 the appraised liquidation value (in terms of pretax cash proceeds) of the smelter by asset group. This estimate should be certified by a qualified third party professional appraiser and shall represent the best use and highest alternative value of these assets. The liquidation value of any assets which are jointly used by the smelter and other operating segments shall be excluded if upon closure of the smelter, such assets would continue in service for the non-smelter activity.

In Column 2, report the net book value of these assets for which liquidation values have been reported in Column 1. The reported values should correspond with amounts reported for 1978 in Lines 09 through 15 in Schedule C.2 as adjusted for appropriate eliminations of joint-use facilities and reconciliation to a net book value as reported for income taxes. Attach as part of Exhibit B supporting schedules showing all adjustments and conversion of net book value as reported on the financial statements to net book value, that would be used for income tax purposes.

Compute Column 3 as Column 1 less Column 2. The gain (or loss) shown in Column 3 shall be segregated into ordinary income and capital gains components subject to taxation pursuant to applicable income tax rules. Enter ordinary income in Column 4 and capital gains in Column 5.

Line 08—Total. Enter the sum of Lines 02 through 07 for each of the columns.

Line 09—Other Non-current Assets. In Column 1, report the appraised value of other non-current assets in accordance with the instructions for Line 14, Schedule B.2, *except* that any joint asset(s) that would continue in the event of smelter liquidation shall be excluded. This estimate shall be certified by a qualified third party professional appraiser.

In Column 2, report the net book value of the non-current assets directly corresponding to those assets included in the liquidation value estimated under Column 1.

The remaining columns shall be completed in accordance with the instructions given above Lines 02 to 06.

Line 10—Total Smelter Value. Enter the sum of Lines 01, 08 and 09.

Line 11—Total Current Liabilities. Report in both Columns 1 and 2 the value of total current liabilities shown in Line 25 of Schedule C.2 (Historical Capital Investment Summary) for 1978.

Line 12—Gross Liquidation Value. Line 10 less Line 11.

Line 13—Liquidation Costs. In Columns 1, 3, and 4, report the value of any liquidation costs such as labor contract termination penalties, severance pay and related costs, associated with closure of the smelter.

Line 14—Taxable Gain (or Loss). Enter in Columns 4 and 5, enter the differences between Line 12 less Line 13.

Line 15—Income Tax Rate. Enter the marginal income tax rate for 1978 of the firm for ordinary income and capital gains in Column 4 and 5 respectively.

Line 16—Income Tax on Gain (or Loss). In Columns 4 or 5, enter the product of Line 14 multiplied by the marginal income tax rates reported in Line 15. In Column 1 enter the sum of Column 4 plus Column 5.

Line 17—After Tax Cash Proceeds. Line 12 less Lines 13 and 16. This computation applies to Column 1 only.

"Base" Case Pro-Forum Profit and Loss Summary—Schedule D.1

General

Report annual forecasts of operating revenues, operating costs and income taxes anticipated during calendar years 1979 through 1985 from operation of the smelter subject to this NSO application. These *"base" case estimates should be forecast under the assumption that additional sulfur dioxide control facilities beyond those already in operation will not be required* to comply with SIP emission limitations. Report all line items under each column for the years indicated by this schedule.

Line 01—Primary Metal Sales Revenue. Enter the totals reported in Schedule D.1.a, Line 16.

Line 02—Co-Product & By-Product Sales Revenue. Enter the totals reported in Schedule D.1.a, Line 20.

Line 03—Totaling Service Revenues. Enter the totals reported in Schedule D.1.a, Line 25.

Line 04—Other Operating Revenues. Report operating revenues anticipated from sources not accounted for under Lines 01 through 03. Refer to instructions for Line 04 in Schedule C.1 items that should not be included in "other" operating revenues. Attach as part of Exhibit B a schedule showing annual amounts forecasted by individual revenue component for "other" operating revenues associated with the smelter's pro-forma, "base" case operations.

Identify in the supporting schedule any differences in the "other" revenue components reported in Schedules C.1. and D.1 and explain the reasons for such differences.

Line 05—Total Operating Revenues. Report the total of amounts reported on Lines 01 through 04.

Line 06—Concentrate Costs. Enter the totals reported in Schedule D.1.a, Line 30.

Line 07—Other Material Costs. Report total pro-forma costs forecasted for flux, refractories, coke and other materials directly associated with the smelter's processing of concentrates. Attach as part of Exhibit B a schedule showing the annual amounts forecasted by major material cost components. For each cost component, identify the forecasted quantity and unit price elements of material cost and explain the basis for forecasting these quantity and price elements. Identify in the supporting schedule any differences in the "other" material cost components shown in Schedules C.1. and D.1. and explain the reasons for such differences.

Line 08—Production Labor Costs. Enter the totals reported for calendar years 1979 through 1985 in Schedule D.1.a, Line 35.

Line 09—Production Overhead Costs. Report the total pro-forma costs forecasted for indirect labor, indirect materials and other production overhead costs associated with the smelter's "base" case forecasts. Attach as part of Exhibit B a schedule showing annual overhead costs projected by major cost components associated with the smelter's operations. For each cost component, where appropriate, identify the forecasted quantity and unit price elements of overhead costs and explain the basis for estimating these quantity and price elements. Also identify in the supporting schedule any differences in production overhead cost classifications used in Schedules C.1 and D.1 and explain the reasons for such differences.

Line 10—Pollution Control Costs. Report the total, pro-forma costs forecasted for expenses identifiable with operation and maintenance of the smelter's existing pollution control equipment and facilities. By-product credits associated with operation of the pollution control facilities should be eliminated from the cost accounts and reclassified to Schedule D.1.a, Line 18. Attach a schedule as part of Exhibit B classifying pollution control costs by major cost components. Explain the basis used for estimating each of the cost components. Identify in the supporting schedule any differences in the pollution control cost classifications shown in Schedules C.1 and D.1 and explain the reasons for such differences.

Line 11—Total Cost of Sales. Report the sum of operating costs reported on Lines 06 through 10.

Line 12—Gross Operating Profit. Report the difference between Line 05 minus Line 11.

Line 13—Selling, General & Administrative Expenses. Report the total, pro-forma costs forecasted for administrative, marketing and general corporate overhead functions that directly or indirectly support the smelter's operations. Refer to the NSO Financial Reporting Overview for a general discussion of indirect cost allocations from overhead cost pools. Attach as part of Exhibit B a schedule classifying selling, general and administrative expenses into major cost components. Indicate whether each component represents costs directly assignable to the smelter or indirect costs allocated from other business segments to the smelter. Explain the basis used for estimating the amount of expected costs included in each component and the basis used for allocating indirect cost elements to the smelter. Identify and explain any differences in the selling, general and administrative cost classification used in Schedules C.1 and D.1.

Line 14—Taxes, Other Than Income Taxes. Report the total, pro-forma costs forecasted for property taxes and associated levies paid to governmental units by or for the benefit of the firm's smelter operations. Attach as part of Exhibit B a schedule classifying operating taxes by major cost components. Indicate whether each cost component represents costs directly assignable to the smelter or indirect costs allocated from overhead cost pools. Explain the basis for allocating indirect taxes to the smelter. Identify and explain any differences in the component classifications used in Schedules C.1. and D.1.

Line 15—Exploration and Research Costs. Report the total, pro-forma estimates of costs incurred directly by or for the benefit of the smelter operations. Attach as a part of Exhibit B a schedule classifying the costs by major direct and indirect cost components. Identify and explain any differences in pro-forma versus historical cost classifications used in Schedules C.1 and D.1.

Line 16—Pollution Control Facility Depreciation and Amortization. Report the pro-forma estimates of depreciation and amortization charges associated with the smelter's investment in pollution control equipment and facilities. Attach as part of Exhibit B supporting schedules classifying pollution control facilities by major assets or asset groups. For each facility component, indicate the depreciation or amortization that would be reported for tax purposes. Based on income tax depreciation, report the original cost of the component assets, undepreciated balance of the component assets, the remaining depreciable life and the annual depreciaton or amortization charge. Indicate for each asset component whether the depreciation and amortization charges represent direct cost assignments or indirect cost allocations to the smelter.

Line 17—Other Smelter Facility Depreciation and Amortization. Report the pro-forma estimates of depreciation and amortization charges associated with the smelter's investment in equipment and facilities other than those classifed as pollution control facilities. Attach as part of Exhibit B supporting schedules prepared according to the instructions for Line 16 above.

Line 18—Interest on Short-Term Debt. Report the pro-forma estimates of interest and other financing charges on short-term obligations classified in the smelter's current liabilities on Schedule C.1. Interest and associated financing charges on long-term debt should *not* be included as an expense identifiable with the smelter's operations. Attach as part of Exhibit B a schedule showing the interest-bearing, short-term debt contracts identifiable with the smelter's operations, the interest rate projected for these contracts and the estimated annual interest charges. Identify and explain any differences in the pro-forma versus historical classifcation in Schedules C.1. and D.1. of short-term debt contracts identifiable with the smelter operations.

Line 19—Miscellaneous Operating Expenses. Report only the total of pro-forma operating expenses associated with or allocated to the smelter that cannot be appropriately classified in one of the preceeding line items. Attach as part of Exhibit B a schedule showing the classification of these residual operating expenses into major cost components. Explain the basis used for forecasting the costs under each component. Identify each cost component in terms of direct or indirect cost and explain the basis used for allocating the indirect costs to smelter operations. Identify and explain the differences in the pro-forma versus historical cost classifications included in Schedules C.1. and D.1.

Line 20—Total Other Operating Expenses. Enter the sum of operating costs reported on Lines 13 through 19.

Line 21—Income From Operations. Report the balance obtained by subtracting Line 20 from Line 12.

Line 22—Income Taxes. Multiply income from operations by the sum of the Federal, State and local marginal tax rates. Attach as part of Exhibit B a schedule detailing the estimated marginal tax rate by taxing entity.

Line 23—Net Income From Operations. Report the balance obtained by subtracting Line 22 from Line 21.

Supplemental Revenue and Cost Forecast Information—Schedule D.1.a

GENERAL

Report forecasts of annual indicated operating revenue and cost factors anticipated during calendar years 1979 through 1985 from operation of the smelter subject to this NSO application. These *"base" case estimates should be forecast under the assumption that additional sulfur dioxide control facilities beyond those already in operation will not be required* to comply with SIP emission limitations. Report all line items under each column for the years indicated by this schedule.

Lines 01, 06 and 11—Forecasted Unit Sales. Report estimates for the annual quantity of copper, lead and zinc to be produced and sold by the smelter. Attach as part of Exhibit B an explanation of the methods used to make these forecasts. Indicate how the forecasted sales for each product line relate to external forecasts for industry production of copper, lead and zinc and for average annual capacity utilization experience by the industry's nonferrous metals producers. Explain the differences, if any, between historical trends observed in the smelter's copper, lead and zinc sales experience (Schedule C.1.a) and the trends projected by this forecast.

Lines 02, 07 and 12—Forecasted Price Per Unit. Report the estimated per unit market prices to be received on the smelter's projected sales of copper, lead and zinc. Attach as part of Exhibit B an explanation of the method used to make these price forecasts. Explain how forecasted prices relate to external projections of refined prices for copper, lead and zinc. Explain the differences, if any, between historical trends observed in copper, lead and zinc prices reported by the smelter (Schedule C.1.a) and price trends projected by this forecast.

Lines 03, 08 and 13—Forecasted Primary Metal Revenues. Enter the products of quantity and price forecasts for copper (Line 01 × 02), lead (Lines 06 × 07) and zinc (Lines 11 × 12.).

Lines 04, 09 and 14—Revenue Adjustments. Report the estimates of required adjustments, if any, to total copper, lead and zinc revenues for sales returns, allowances and other adjustments factors. Attach as part of Exhibit B a schedule indicating the types and amounts of these estimated revenue adjustments.

Lines 05, 10 and 15—Net Primary Metal Revenues. Enter the net revenue projections after deducting estimated revenue adjustments for the sale of copper (Line 03—04), lead (Line 08—09) and zinc (Line 13—14).

Line 16—Pro-Forma Primary Metal Revenues. Enter for each year the sum of Lines 05, 10 and 15.

Line 17—Forecasted Co-Products Revenues. Report the projected net revenues anticipated for each year from sales of co-products derived from the smelter's operations. Attach as part of Exhibit B a schedule showing by individual type of co-product, the estimated quantity to produced and sold, market price per unit of sales and total revenues derived from the co-product sales. Explain the differences, if any, between historical trends observed in the smelter's co-

product sales (Schedule C.1) and revenue trends projected by this forecast.

Line 18—Pollution Control by-Product Revenues. Report projected revenues anticipated from the sale of by-products derived from operation of the smelter's pollution control facilities. Attach as part of Exhibit B a schedule showing by type of by-product produced, the estimated quantity of output, price to be received per unit of output sold and total revenue derived from the by-product sales. Explain the differences, if any, between historical trends observed in the smelter's by-product sales (Schedule C.1) and revenue trends projected by this forecast.

Line 19—Other By-Product Revenues. Report projected revenues anticipated from the sales of gold, silver and other by-products derived from the smelter's operations. Attach as part of Exhibit B a schedule providing additional forecast documentation as specified in the instructions for Line 18.

Line 20—Total Co-Product and By-Product Revenues. Enter for each year the total of Lines 17 through 19.

Line 21—Forecasted Toll Concentrate Processing. Report the projected quantity of toll concentrates to be processed during each year. Attach as part of Exhibit B a description of the projected types and grades of concentrates to be processed and an explanation of the method used in developing these projections.

Line 22—Tolling Service Price Forecast. Report for each year the per-unit price anticipated from the smelter's tolling service processing. Attach as part of Exhibit B an explanation of the method used to develop these market price projections in relation to the types and grades of concentrates expected to be available for processing.

Line 23—Tolling Service Revenue forecast. Enter for each year the product of average quantity and price projections for the smelter's tolling services.

Line 24—Tolling Service Revenue Adjustments. Report the amounts of any adjustments against the smelter's total tolling service revenues. Attach as part of Exhibit B an explanation of the types of adjustments anticipated and the method used in forecasting such adjustments.

Line 25—Net Tolling Service Revenues. Enter for each year the net revenue projection after deducting estimated revenue adjustments on tolling service activities (Line 23 less line 24). Attach as part of Exibit B an explanation of the differences, if any, between historical trends observed in the smelter's tolling service revenues (Schedule C.1) and the revenue trend projected by this forecast.

Line 26—Forcasted Quantity of Concentrate Processed. Report for each year an estimate for the total quantity of concentrates to be processed by the smelter. Attach as part of Exhibit B a description of the types and grades of concentrates available for processing. Explain the method or methods used in developing these concentrate input estimates. Do not include the quantity of toll concentrates.

Line 27—Concentrate Price Forecast. Report for each year the estimated price to be paid per unit of concentrate purchased. Attach as part of Exhibit B an explanation of the method or methods used in projecting the price to be paid for purchased concentrates. Indicate the relationship between projected concentrate prices and the projected types and grades of concentrate purchased as developed on Line 26 above.

Line 28—Total Concentrate Cost. Enter the product of quantity and average per-unit price projections reported for each year on Lines 26 and 27.

Line 29—Concentrate Cost Adjustments. Report estimated adjustments to the cost of concentrates purchased. Attach as part of Exhibit B a description of any required cost adjustments and an explanation of the method used to estimate the amount of such adjustments.

Line 30—Net Cost of Concentrates Processed. Enter for each year the difference between amounts reported on Lines 28 and 29. Attach as part of Exhibit B an explanation of the differences, if any, between historical trends observed in the smelter's cost of concentrates processed (Schedule C.1) and the concentrate costs projected by this forecast.

Line 31—Projected Labor Quantity Requirements. Report for each year the estimated quantity of direct labor hours required to support the processing levels projected in the smelter's revenue forecasts. Attach as part of Exhibit B an explanation of the labor productivity factors considered in estimating the smelter's direct labor requirements.

Line 32—Projected Direct Labor Wage Rates. Report for each year the projected wage rate to be paid per unit of direct labor input. Attach as part of Exhibit B a description of direct labor cost factors under existing labor contracts and an explanation of the method or methods used to project direct labor costs upon the expiration of these contracts.

Line 33—Total Direct Labor Wage Payments. Enter for each year the product of Lines 31 and 32.

Line 34—Supplemental Employee Benefit Forecasts. Report adjustments required to direct labor costs for other employee compensation under supplemental benefit plans. Attach as part of Exhibit B a description of such plans and their costs and an explanation of the method or methods used to project such costs.

Line 35—Total Production Labor Cost. Enter for each year the total of Lines 33 and 34.

Lines 36, 39, 42, 45, and 48—Forecasted Energy Quantities. Report for each year the estimated quantity of energy by industrial type required to support the processing levels projected in the smelter's revenue forecasts. Attach as a part of Exhibit B, an explanation of energy use factors and qualities considered in estimating the smelters energy requirements.

Lines 37, 40, 43, 46, and 49—Forecasted Unit Price. Report for each year the projected price to be paid per unit of energy input by type of energy. Attach as a part of Exhibit B, a description of the energy price factors under existing energy contracts and an explanation of the method or methods used to project unit energy prices after expiration of these contracts.

Lines 38, 41, 44, 47, and 50—Total Payments. Enter the products of quantity and price forecasts for electricity (Lines 36×37), natural gas (Lines 39×40), coal (Lines 42×43), fuel oil (Lines 45×46), and other (Lines 48×49).

Line 51—Forecasted Energy Costs. Enter for each year the total of Lines 38, 41, 44, 47, and 50.

Base Sustaining Capital Investment Summary—Schedule D.2

The applicant should estimate and report, in Schedule D.2, yearly sustaining capital outlays for maintenance of the smelter's existing productive capability. These "base" case estimates should be forecast under the assumption that additional sulfur dioxide control facilities beyond those already in operation will not be required. Major elements of these outlays should be disclosed, as well as the total of such outlays. Estimates shall be restricted to those items which will be capitalized for tax purposes. These outlays shall primarily be for plant replacement, although outlays for improvements and expansion may be included to the extent that improvements and/or expansion, exclusive of required pollution control outlays, can be justified as economically feasible. Estimates of sustaining capital shall exclude any incremental investment for new interim pollution control requirements. Sustaining control investments in facilities shared with other operating segments shall be allocated in accordance with the instructions given below.

Estimates of sustaining capital shall be compatible with productive capacity and cost control requirements underlying the operating revenue and cost forecasts incorporated in Schedule D.1.

Lines 01 to 06—Sustaining Capital. Report by individual line item property, plant and equipment sustaining capital investments assignable to smelter operations for each fiscal year. Include both (1) property, plant and equipment directly associated with the smelter's operations and (2) facilities shared with other operating segments to the extent that a causal and beneficial relationship can be established for the intersegment allocation of such facility investments.

Attach as part of Exhibit B a schedule disclosing by individual line item the major elements of annual capital expenditures for sustaining capital. Further classify these annual capital expenditures into both (1) investments required to maintain the smelter versus investments in smelter expansion and improvements and (2) direct facility versus joint-use facility investments. Explain the method used for allocating capital expenditures on joint-use facilities to the smelter's operations.

Line 07—Total Smelter Sustaining Capital. Enter the total of amounts reported on Lines 01 through 06 for each respective fiscal year. Transfer the reported total for each respective year to Schedule A.1. Line 05.

"Controls" Case Pro-Forma Profit and Loss Summary—Schedule E.1

General

Report adjusted annual forecasts of operating revenues, operating costs and income taxes anticipated during calendar years 1979 through 1985 from operation of the smelter subject to this NSO application. These *"controls" case forecasts should be based on an assumption that the applicant implements in 1979 a program of additional pollution control facility investments sufficient to achieve full compliance* with the smelter's SIP emission limitations for sulfur dioxide.

The assumed investment program should be based on any adequately demonstrated process system and/or control technology

that would maximize the smelter's earnings subsequent to installation of the system(s). For this purpose, adequately demonstrated systems include, but are not limited to, the technology underlying EPA's new source performance standards for copper, lead and zinc smelters (40 CFR Part 60, Subparts P, Q and R) and the following control systems: Flakt-Bolliden sodium citrate concentration, magnesium oxide concentration, lime-limestone scrubbing and Cominco ammonia scrubbing.

Copper smelters which will process concentrates containing an average of 1,000 pounds per hour or more of arsenic during the forecast period should assume that they will be required to use best engineering techniques to control fugitive emissions of arsenic. Copper smelters should also assume that they will be required to comply with arsenic control standards and measures promulgated by the Occupational Safety and Health Administration (OSHA). All smelters should assume that they will be required to install whatever technology is necessary to reduce their process and fugitive emissions of lead enough to achieve a concentration of 1.5 micrograms per cubic meter (mg/m³) on a 90-day average basis in the ambient air by January 1, 1985.

Report forecasted information required by each individual line item in a manner consistent with the instructions for Schedule D.1. Attach as part of Exhibit B supporting schedules describing and explaining the adjustments required to convert the "base" case forecasts in Schedule D.1 to the estimates reported in Schedule E.1. Transfer the amount reported for each year on Line 23 of this schedule to Schedule A.2, Line 01.

Constant Controls Sustaining Capital Investment Summary—Schedule E.2

The applicant should estimate and report yearly sustaining capital outlays for maintenance of the smelter's existing productive capability. These constant controls case estimates should be forecast under the assumption that full compliance with Agency air standards will be achieved. Major elements of these outlays should be disclosed, as well as the total of such outlays. Estimates shall be restricted to those items which will be capitalized for tax purposes. These outlays shall primarily be for plant replacement, although outlays for improvements and expansion may be included to the extent that improvements and/or expansion, exclusive of required pollution control outlays, can be justified as economically feasible. Estimates of sustaining capital shall exclude any incremental investment for new interim pollution control requirements. Sustaining control investments in facilities shared with other operating segments shall be allocated in accordance with the instructions given below.

Estimates of sustaining capital shall be compatible with productive capacity and cost control requirements underlying the operating revenue and cost forecasts incorporated in Schedule E.1.

Lines 01 to 06—Sustaining Capital. Report by individual line item property, plant and equipment sustaining capital investments assignable to smelter operations for each fiscal year. Include both (1) property, plant and equipment directly associated with the smelter's operations and (2) facilities shared with other operating segments to the extent that a causal and beneficial relationship can be established for the intersegment allocation of such facility investments.

Attach as part of Exhibit B a schedule disclosing by individual line item the major elements of annual capital expenditures for sustaining capital. Further classify these annual capital expenditures into both (1) investments required to maintain the smelter versus investments in smelter expansion and improvements and (2) direct facility versus joint-use facility investments. Explain the method used for allocating capital expenditures on joint-use facilities to the smelter's operations.

Line 07—Total Smelter Sustaining Capital. Enter the total of amounts reported on Lines 01 through 06 for each fiscal year. Transfer the reported total for each year to Schedule A.2, Line 03.

"Interim Controls" Case Pro-Forma Profit and Loss Summary—Schedule F.1

General

Report adjusted annual forecasts of operating revenues, operating costs and income taxes for the years 1979 through 1985 from operation of the smelter, subject to this controls waiver application. These "interim controls" *case forecasts should be based on an assumption that the applicant implements in 1979 a program of interim controls.*

The assumed investment program should be based on the installation and operation of a well-designed sulfuric acid plant to treat all strong gas streams. The "interim controls" projection may, but need not, account for lead and arsenic controls on the same basis as for other applicants. If those controls are taken into account, however, it should be assumed that the SO_2 controls are also in an "interim controls" configuration.

Report forecasted information required by each individual line item in a manner consistent with the instructions for Schedule D.1. Attach as part of Exhibit B supporting schedules describing and explaining the adjustments required to convert the "base" case forecasts in Schedule D.1 to the estimates reported in Schedule F.1. Transfer the appropriate amounts reported for each year from this Schedule to Schedule A.3, Lines 01 and 02.

Interim Controls Sustaining Capital Investment Summary—Schedule F.2

The applicant should estimate and report, in Schedule F.2, yearly sustaining capital outlays for maintenance of the smelter's existing productive capability. Major elements of these outlays should be disclosed, as well as the total of such outlays. Estimates shall be restricted to those items which will be capitalized for tax purposes. These outlays shall primarily be for plant replacement, although outlays for improvements and expansion may be included to the extent that improvement and/or expansion, exclusive of required pollution control outlays, can be justified as economically feasible. Estimates of sustaining capital shall exclude any incremental investment for new interim pollution control requirements. Sustaining control investments in facilities shared with other operating segments shall be allocated in accordance with the instructions given below.

Estimates of sustaining capital shall be compatible with productive capacity and cost control requirements underlying the operating revenue and cost forecasts incorporated in Schedule F.1.

Lines 01 to 06—Sustaining Capital. Report by individual line item property, plant and equipment sustaining capital investments assignable to smelter operations for each fiscal year. Include both (1) property, plant and equipment directly associated with the smelter's operations and (2) facilities shared with other operating segments to the extent that a causal and beneficial relationship can be established for the intersegment allocation of such facility investments.

Attach as part of Exhibit B a schedule disclosing by individual line item the major elements of annual capital expenditures for sustaining capital. Further classify these annual capital expenditures into both (1) investments required to maintain the smelter versus investments in smelter expansion and improvements and (2) direct-facility versus joint-use facility investments. Explain the method used for allocating capital expenditures on joint-use facilities to the smelter's operations.

Line 07—Total Smelter Sustaining Capital. Enter the total of the amounts reported on Lines 01 through 06 for each fiscal year. Transfer the reported total for each year to Schedule A.3, Line 07.

[6560-01-C]

EPA - _____

Environmental Protection Agency

Primary Nonferrous Smelter Order Application

Part I - IDENTIFICATION INFORMATION

1. Firm Name _____ 2. Street/Box/RFD _____
3. City _____ 4. State _____ 5. Zip Code _____
6. IRS Employer Identification No. _____ 7. SEC 1934 Act Registration Number _____

8. Smelter Iden. _____ 9. Street/Box/RFD _____
10. City _____ 11. State _____ 12. Zip Code _____

13. Contact Person _____ 14. Title _____
15. Street/Box/RFD _____ 16. Telephone _____ - _____ - _____
17. City _____ 18. State _____ 19. Zip Code _____

Part II - CERTIFICATION

I certify that the information provided herein and appended hereto is true and accurate to the best of my knowledge.

Name _____ Title _____
Signature _____ Date _____

TITLE 18 USC 1001 makes it a criminal offense for any person knowingly and willingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.

Base Case Forecast Summary

(Smelter Identification)

Schedule A.1

Page 1 of 1

		1979	1980	1981	1982	1983	1984	1985	Total
A. Operating Cash Flow Projection:									
1. Net Income from Operations	01								XXXXX
2. Depreciation & Amortization									
a. Pollution control facilities	02								XXXXX
b. Other smelter facilities	03								XXXXX
3. Operating cash flow	04								XXXXX
4. Capital Expenditure Projections	05								XXXXX
5. Net Cash Flow Projections	06								XXXXX
6. Discount Factors	07								XXXXX
7. Present Value of Future Cash Flow	08								XXXXX
B. Net Present Value									
1. Terminal Value	09								
2. Discount Factor	10								
3. Present Value of Terminal Salvage Value	11								
4. Present Value of Future Cash Flows	12								
5. Total Present Value	13								
6. Current Salvage Value	14								
7. Net Present Value	15								

Constant Controls Case Forecast Summary

(Smelter Identification)

Schedule A.2

Page 1 of 1

		1979	1980	1981	1982	1983	1984	1985	Total
A. Operating Cash Flow Projection:									
1. Net Income from Operation	01								XXXXX
2. Capital Expenditure Projections									
a. Constant Controls	02								XXXXX
b. Sustaining capital	03								XXXXX
c. Total	04								XXXXX
3. Adjusted Cash Flow Projections	05								XXXXX
4. Discount Factors	06								XXXXX
5. Present Value of Future Cash Flows	07								XXXXX

B. Net Present Value		
1. Terminal Value	08	
2. Discount Factor	09	
3. Present Value of Terminal Salvage Value	10	
4. Present Value of Future Adjusted 5. Cash Flows	11	
6. Total Present Value	12	
7. Current Salvage Value	13	
8. Net Present Value	14	

Interim Control Case Forecast Summary

(Smelter Identification)

Schedule A.3

Page 1 of 1

		1979	1980	1981	1982	1983	1984	1985	Total
A. Gross Operating Profit	01								XXXXX
B. Operating Cash Flow Projection:									
1. Net Income from Operations	02								XXXXX
2. Depreciation & Amortization									
a. Pollution control facilities	03								XXXXX
b. Other smelter facilities	04								XXXXX
3. Operating cash flow	05								XXXXX
4. Capital Expenditure Projections									
a. Interim controls	06								XXXXX
b. Sustaining capital	07								XXXXX
c. Total	08								XXXXX
5. Net Cash Flow Projections	09								XXXXX
6. Discount Factors	10								XXXXX
7 Present Value of Future Cash Flow	11								XXXXX
C. Net Present Value									
1. Terminal Value	12								
2. Discount Factor	13								
3. Present Value of Terminal Salvage Value	14								
4. Present Value of Future Cash Flows	15								
5. Total Present Value	16								
6 Current Salvage Value	17								
7. Net Present Value	18								

Nonferrous Metals Operations
Consolidated Profit and Loss Summary
For the Year Ended: _____

Schedule B.1

_____
(Smelter Identification)

		Consolidated (a)	Eliminations (b)	Non-traceable (c)	Mining (d)	Concentrator (e)	Smelter (f)	Refinery (g)	Other Nonferrous (h)
A. Operating Revenues	01	$	$	$	$	$	$	$	$
B. Operating Expenses									
1. Cost of sales	02	$	$	$	$	$	$	$	$
2. Selling, general & administrative	03								
3. Taxes, other than income tax	04								
4. Exploration & research costs	05								
5. Depreciation, depletion & amort.									
a. Pollution control facilities	06								
b. Other operating facilities	07								
6. Other operating expenses	08								
7. Total operating expenses	09	$	$	$	$	$	$	$	$
C. Income from Operations	10	$	$	$	$	$	$	$	$
D. Other Income & (Expense)									
1. Income from unconsol. affiliates	11	$	$XXXXXX	$	$XXXXXX	$XXXXXX	$XXXXXX	$XXXXXX	$
2. Other dividend & interest income	12		XXXXXX		XXXXXX	XXXXXX	XXXXXX	XXXXXX	XXXXXX
3. Gain/(loss) from disp. of property	13								
4. Interest expense & financial charges									
a. Short-term debt	14								
b. Other debt financing	15		XXXXXX		XXXXXX	XXXXXX	XXXXXX	XXXXXX	XXXXXX
5. Misc. income & (expense)	16								
6. Total other income & (expense)	17	$	$	$	$	$	$	$	$
E. Net Taxable Income	18	$	$	$	$	$	$	$	$

Nonferrous Metals Operations
Consolidated Capital Investment Summary

_____
(Smelter Identification)

Schedule B.2

		Consolidated (a)	Eliminations (b)	Non-traceable (c)	Mining (d)	Concentrator (e)	Smelter (f)	Refinery (g)	Other Nonferrous (h)
A. Current Assets									
1. Cash on hand & deposit	01	$	$	$	$	$	$	$	$
2. Temporary cash investments	02								
3. Trade receivables, net									
a. Unaffiliated customers	03								
b. Affiliated customers	04								
4. Inventories									
a. Raw materials & products	05								
b. Other materials & supplies	06								
5. Other current assets	07								
6. Total current assets	08	$	$	$	$	$	$	$	$
B. Property, Plant & Equipment									
1. Gross facility investment	09		$	$	$	$	$	$	$
2. Accum. Deprec., Depl. & Amort.	10								
3. Net facility investment	11	$	$	$	$	$	$	$	$
C. Other Non-Current Assets									
1. Invest. in unconsol. subsid.	12	$	$XXXXXX	$XXXXXX	$XXXXXX	$XXXXXX	$XXXXXX	$XXXXXX	$
2. Other investments & advances	13		XXXXXX		XXXXXX	XXXXXX	XXXXXX	XXXXXX	XXXXXX
3. Misc. non-current assets	14								
4. Total other non-current assets	15	$	$	$	$	$	$	$	$
D. Total Asset Investment	16	$	$	$	$	$	$	$	$
E. Current Liabilities									
1. Trade accounts & notes payable									
a. Unaffiliated suppliers	17	$	$	$	$	$	$	$	$
B. Affiliated supplies	18								
2. Other expense accruals	19								
3. Notes payable, current	20								
4. Other current liabilities	21								
5. Total current liabilities	22	$	$	$	$	$	$	$	$
F. Net Capital Investment	23	$	$	$	$	$	$	$	$

Historical Profit and Loss Summary

(Smelter Identification)

Schedule C.1

		1974	1975	1976	1977	1978
A. Operating Revenues						
1. Primary metal sales	01	$	$	$	$	$
2. Co-product & by-product sales	02					
3. Tolling service revenues	03					
4. Other operating revenues	04					
5. Total operating revenues	05	$	$	$	$	$
B. Cost of Sales						
1. Concentrates processed	06	$	$	$	$	$
2. Other materials	07					
3. Production labor	08					
4. Pollution control expense	09					
5. Other production costs	10					
6. Total cost of sales	11	$	$	$	$	$
C. Gross Operating Profit	12	$	$	$	$	$
D. Other Operating Expenses						
1. Selling, general & administrative	13	$	$	$	$	$
2. Taxes, other than income tax	14					
3. Exploration & research costs	15					
4. Depreciation & amortization						
a. Pollution control facilities	16					
b. Other smelter facilities	17					
5. Misc. operating expenses	18					
6. Total other operating expenses	19	$	$	$	$	$
E. Income from Operations	20	$	$	$	$	$
F. Other Income & (Expense)						
1. Gain/(loss) on disposition of property	21	$	$	$	$	$
2. Interest on short-term debt financing	22					
3. Misc. other income & (expense)	23					
4. Total other income & (expense)	24	$	$	$	$	$
G. Net Taxable Income	25	$	$	$	$	$

Supplemental Smelter Revenue Data

(Segment Identification)

Schedule C.1.a

		1974	1975	1976	1977	1978
A. Copper Product Sales						
1. Total Quantity Sold	01					
2. Unaffiliated Customer Sales						
a. Quantity sold	02					
b. Operating revenue	03					
c. Average unit price	04					
d. Ave. product grade	05					
3. Affiliated Customer Sales						
a. Quantity sold	06					
b. Operating revenue	07					
c. Average unit price	08					
d. Ave. product grade	09					
4. Adjusted Copper Revenues						
a. Total copper revenues	10					
b. Transfer price adjustment	11					
c. Other revenue adjustments	12					
d. Adjusted copper revenues	13					
B. Lead Product Sales						
1. Total Quantity Sold	14					
2. Unaffiliated Customer Sales						
a. Quantity sold	15					
b. Operating revenue	16					
c. Average unit price	17					
d. Ave. product grade	18					
3. Affiliated Customer Sales						
a. Quantity sold	19					
b. Operating revenue	20					
c. Average unit price	21					
d. Ave. product grade	22					
4. Adjusted Lead Revenues						
a. Total lead revenues	23					
b. Transfer price adjustment	24					
c. Other revenue adjustments	25					
d. Adjusted lead revenues	26					

Supplemental Smelter Revenue Data

(Smelter Identification)

Schedule C.1.a

		1974	1975	1976	1977	1978
C. Zinc Product Sales						
1. Total Quantity Sold	27					
2. Unaffiliated Customer Sales						
a. Quantity sold	28					
b. Operating revenue	29					
c. Average unit price	30					
d. Ave. product grade	31					
3. Affiliated Customer Sales						
a. Quantity sold	32					
b. Operating revenue	33					
c. Average unit price	34					
d. Ave. product grade	35					
4. Adjusted Zinc Revenue						
a. Total zinc revenues	36					
b. Transfer price adjustment	37					
c. Other revenue adjustments	38					
d. Adjusted Zinc revenues	39					
D. Primary Metal Revenues	40					
E. Tolling Service Revenues						
1. Total Toll Concentrates Processed	41					
2. Unaffiliated Customer Revenues						
a. Concentrates processed	42					
b. Operating revenue	43					
c. Average unit price	44					
d. Ave. product grade	45					
3. Affiliated Customer Revenues						
a. Concentrates processed	46					
b. Operating revenue	47					
c. Average unit price	48					
d. Ave. product grade	49					
4. Adjusted Tolling Service Revenues						
a. Total tolling service revenue	50					
b. Transfer price adjustment	51					
c. Other revenue adjustments	52					
d. Adjusted tolling service revenues	53					

Historical Capital Investment Summary

(Smelter Identification)

Schedule C.2

		1974	1975	1976	1977	1978
A. Current Assets						
1. Cash on hand & deposit	01	$	$	$	$	$
2. Temporary cash investments	02					
3. Trade receivables, net						
a. Unaffiliated customers	03					
b. Affiliated Customers	04					
4. Inventories						
a. Raw materials & products	05					
b. Other materials & supplies	06					
5. Other current assets	07					
6. Total current assets	08	$	$	$	$	$
B. Property, Plant & Equipment						
1. Land	09	$	$	$	$	$
2. Buildings & improvements	10					
3. Machinery & equipment	11					
4. Transporation equipment	12					
5. Pollution control facilities	13					
6. Other fixed assets	14					
7. Total smelter investment	15	$	$	$	$	$
8. Less: Accum. depreciation & amort.	16					
9. Net smelter investment	17	$	$	$	$	$
C. Other Non-Current Assets	18	$	$	$	$	$
D. Total Smelter Capital Investment	19	$	$	$	$	$
E. Current Liabilities						
1. Trade accounts & notes payable						
a. Unaffiliated suppliers	20	$	$	$	$	$
b. Affiliated suppliers	21					
2. Other expense accruals	22					
3. Notes payable, current	23					
4. Other current liabilities	24					
5. Total current liabilities	25	$	$	$	$	$
G. Net Smelter Capital Investment	26	$	$	$	$	$

Cash Proceeds from Liquidation

(Smelter Identification)

Schedule C.2.a

		(1) Estimated liquidation value	(2) Reported net book value	(3) Total Gain (loss)	(4) Gain (loss) subject to taxation as: Ordinary income	(5) Capital gain
A. Total Current Assets	01	$	$	$ XXXXX	$ XXXXX	$ XXXXX
B. Property, Plant & Equipment						
1. Land	02	$	$	$	$	$
2. Buildings & improvements	03					
3. Machinery & equipment	04					
4. Transportation equipment	05					
5. Pollution control facilities	06					
6. Other fixed assets	07					
7. Total	08					
C. Other Non-Current Assets	09	$	$	$	$	$
D. Total Smelter Value	10	$	$	$	$	$
E. Total Current Liabilities	11	$	$	$ XXXXX	$ XXXXX	$ XXXXX
F. Gross liquidation value	12	$	$	$	$	$
G. Liquidation Costs	13	$	$ XXXXX	$	$	$ XXXXX
H. Net Taxable Gain (or loss)	14	$ XXXXX	$ XXXXX	$ XXXXX	$	$
I. Income Tax Rate	15	$ XXXXX	$ XXXXX	$ XXXXX	$	$
J. Income Tax on Gain (loss)	16	$	$ XXXXX	$ XXXXX	$	$
K. After Tax Cash Proceeds from Liquidation	17	$	$ XXXXX	$ XXXXX	$ XXXXX	$ XXXXX

Supplemental Revenue and Cost Forecast Information

Schedule D 1.a

(Smelter Identification)

		1979	1980	1981	1982	1983	1984	1985
A. Primary Metal Revenue Forecasts								
1. Pro-forma copper revenues								
a Forecasted unit sales	01	____	____	____	____	____	____	____
b. Forecasted price per unit	02	____	____	____	____	____	____	____
c. Total copper revenues	03	$____	$____	$____	$____	$____	$____	$____
d. Revenue adjustments	04	____	____	____	____	____	____	____
e. Net copper revenues	05	$____	$____	$____	$____	$____	$____	$____
2. Pro-forma zinc revenues								
a. Forecasted unit sales	06	____	____	____	____	____	____	____
b. Forecasted price per unit	07	____	____	____	____	____	____	____
c. Total zinc revenues	08	$____	$____	$____	$____	$____	$____	$____
d. Revenue adjustments	09	____	____	____	____	____	____	____
e. Net zinc revenues	10	$____	$____	$____	$____	$____	$____	$____
3. Pro-forma lead revenues								
a. Forecasted unit sales	11	____	____	____	____	____	____	____
b. Forecasted price per unit	12	____	____	____	____	____	____	____
c. Total lead revenues	13	$____	$____	$____	$____	$____	$____	$____
d. Revenue adjustments	14	____	____	____	____	____	____	____
e. Net lead revenues	15	$____	$____	$____	$____	$____	$____	$____
4. Pro-forma primary metal revenues	16	$____	$____	$____	$____	$____	$____	$____
B. Co-Product & By-Product Revenue Forecasts								
1. Forecasted co-product revenues	17	$____	$____	$____	$____	$____	$____	$____
2. Forecasted by-product revenue from:								
a. Pollution control facilities	18	____	____	____	____	____	____	____
b. Other smelter processing	19	____	____	____	____	____	____	____
3. Total pro-forma revenues	20	$____	$____	$____	$____	$____	$____	$____

Supplemental Revenue and Cost Forecast Information

Schedule D.1 a

(Smelter Identification)

		1979	1980	1981	1982	1983	1984	1985
C. Tolling Service Revenue Forecasts								
1. Forecasted quantity of concentrates	21	____	____	____	____	____	____	____
2. Forecasted price per unit processed	22	____	____	____	____	____	____	____
3. Total tolling service revenues	23	$____	$____	$____	$____	$____	$____	$____
4. Revenue adjustments	24							
5. Net tolling service revenues	25	$____	$____	$____	$____	$____	$____	$____
D. Concentrate Cost Forecasts								
1. Quantity of concentrate processed	26	____	____	____	____	____	____	____
2. Forecasted price per unit purchased	27	____	____	____	____	____	____	____
3. Total concentrate costs	28	$____	$____	$____	$____	$____	$____	$____
4. Concentrate cost adjustments	29	____	____	____	____	____	____	____
5. Net cost of concentrate processed	30	$____	$____	$____	$____	$____	$____	$____
E. Production Labor Cost Forecasts								
1. Forecasted direct labor hours	31	____	____	____	____	____	____	____
2. Forecasted hourly wage rate	32	____	____	____	____	____	____	____
3. Total wage payments	33	$____	$____	$____	$____	$____	$____	$____
4. Supplemental employee benefits	34	____	____	____	____	____	____	____
5. Total production labor cost	35	$____	$____	$____	$____	$____	$____	$____

Supplemental Revenue and Cost Forecast Information

Schedule D 1.a

(Smelter Identification)

		1979	1980	1981	1982	1983	1984	1985
F. Energy Cost Forecasts								
1. Electricity								
a. Forecasted quality kilowatt hours	36							
b. Forecasted price per kwh	37							
c. Total electricity payments	38	$	$	$	$	$	$	$
2. Natural gas								
a. Forecasted quantity in mcf	39							
b. Forecasted price per mcf	40							
c. Total natural gas payments	41	$	$	$	$	$	$	$
3. Coal								
a. Forecasted quantity per tons	42							
b Forecasted price per ton	43							
c. Total coal payments	44	$	$	$	$	$	$	$
4. Fuel Oil								
a Forecasted quantity in gallons	45							
b. Forecasted price per gallon	46							
c. Total fuel oil payments	47	$	$	$	$	$	$	$
5 Other (specify)								
a. Forecasted quantity (specific units)	48							
b Forecasted price per unit	49							
c. Total payments	50	$	$	$	$	$	$	$
6. Forecasted energy costs	51	$	$	$	$	$	$	$

Schedule D.2

Base Sustaining Capital Investment Summary

(Smelter Identification)

Sustaining Capital		1979	1980	1981	1982	1983	1984	1985
1. Land	01	$	$	$	$	$	$	$
2. Buildings & improvements	02							
3. Machinery & equipment	03							
4. Transportation equipment	04							
5. Pollution control facilities	05							
6. Other fixed assets	06							
7. Total smelter sustaining capital	07	$	$	$	$	$	$	$

Schedule E.1

Constant Controls Pro-Forma Profit and Loss Summary

(Smelter Identification)

		1979	1980	1981	1982	1983	1984	1985
A Operating Revenues								
1. Primary metal sales	01	$	$	$	$	$	$	$
2. Co-product & by-product sales	02							
3. Tolling service revenues	03							
4. Other operating revenues	04							
5. Total operating revenues	05	$	$	$	$	$	$	$
B. Cost of Sales								
1. Concentrates	06	$	$	$	$	$	$	$
2. Other materials	07							
3. Production labor	08							
4. Production overhead	09							
5. Pollution control costs	10							
6. Total cost of sales	11	$	$	$	$	$	$	$
C. Gross Operating Profit	12	$	$	$	$	$	$	$
D. Other Operating Expenses								
1. Selling, general & administrative	13	$	$	$	$	$	$	$
2. Taxes, other than income	14							
3. Exploration & research costs	15							
4. Depreciation & amortization								
a. Pollution control facilities	16							
b. Other smelter facilities	17							
5. Interest on short-term debt	18							
6. Misc operating expenses	19							
7. Total other operating expenses	20	$	$	$	$	$	$	$
E. Income from Operations	21	$	$	$	$	$	$	$
F. Income Taxes	22	$	$	$	$	$	$	$
G Net Income from Operations	23	$	$	$	$	$	$	$

Schedule E.2

Constant Controls Sustaining Capital Investment Summary

(Smelter Identification)

Sustaining Capital		1979	1980	1981	1982	1983	1984	1985
1. Land	01	$	$	$	$	$	$	$
2. Buildings & improvements	02							
3. Machinery & equipment	03							
4. Transportation equipment	04							
5. Pollution control facilities	05							
6. Other fixed assets	06							
7. Total smelter sustaining capital	07	$	$	$	$	$	$	$

Schedule F.1

Interim Controls Pro-Forma Profit and Loss Summary

(Smelter Identification)

		1979	1980	1981	1982	1983	1984	1985
A Operating Revenues								
1 Primary metal sales	01	$	$	$	$	$	$	$
2 Co-product & by-product sales	02							
3 Tolling service revenues	03							
4 Other operating revenues	04							
5 Total operating revenues	05	$	$	$	$	$	$	$
B. Cost of Sales								
1 Concentrates	06	$	$	$	$	$	$	$
2. Other materials	07							
3. Production labor	08							
4. Production overhead	09							
5. Pollution control costs	10							
6 Total cost of sales	11	$	$	$	$	$	$	$
C. Gross Operating Profit	12	$	$	$	$	$	$	$
D. Other Operating Expenses								
1. Selling, general & administrative	13	$	$	$	$	$	$	$
2. Taxes, other than income tax	14							
3 Exploration & research costs	15							
4. Depreciation & amortization								
a. Pollution control facilities	16							
b. Other smelter facilities	17							
5. Interest on short-term debt	18							
6. Misc. operating expenses	19							
7. Total other operating expenses	20	$	$	$	$	$	$	$
E. Income from Operations	21	$	$	$	$	$	$	$
F. Income Taxes	22	$	$	$	$	$	$	$
G. Net Income from Operations	23	$	$	$	$	$	$	$

Schedule F.2

Interim Controls Sustaining Capital Investment Summary

(Smelter Identification)

		1979	1980	1981	1982	1983	1984	1985
Sustaining Capital								
1. Land	01	$	$	$	$	$	$	$
2. Buildings & improvements	02							
3 Machinery & equipment	03							
4. Transportation equipment	04							
5. Pollution control facilities	05							
6. Other fixed assets	06							
7 Total smelter sustaining capital	07	$	$	$	$	$	$	$

[FR Doc. 79-2921 Filed 1-30-79; 8:45 am]

Federal Register

WEDNESDAY, JANUARY 31, 1979
PART III

CONSUMER PRODUCT SAFETY COMMISSION

■

CHILD-RESISTANT AND PROTECTION PACKAGING REQUIREMENTS

Exemption of Certain Size Packages of Erythromycin Ethylsuccinate Granules or Oral Suspensions and Proposed Exemptions of Colestipol and Erythromycin Ethylsuccinate Tablets and Withdrawal of Proposed Exemption for Ogen

[6355-01-M]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

SUBCHAPTER E—POISON PREVENTION PACKAGING ACT OF 1970 REGULATIONS

PART 1700—POISON PREVENTION PACKAGING

Exemption From Child-Resistant Packaging Standards for Certain Size Packages of Erythromycin Ethylsuccinate Granules or Oral Suspensions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: In this document the Consumer Product Safety Commission (CPSC) issues a final amendment under the Poison Prevention Packaging Act (PPPA) to exempt granules or oral suspensions of erythromycin ethylsuccinate, the total dosage of which does not exceed 8 grams, from the special packaging requirements imposed by the act. The Commission's decision to grant an exemption is based on the relative safety of the product. More specifically, toxicity and injury data indicate a low risk of injury associated with possible accidental ingestion of the drug in the amount requested for exemption by the petitioner, Abbott Laboratories and Ross Laboratories (a division of Abbott).

EFFECTIVE DATE: This amendment is effective January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Sandra Eberle, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207, 301-492-6400.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Regulations issued under the Poison Prevention Packaging Act of 1970 (the "PPPA", 15 U.S.C. 1471-1476) establish child-protection packaging requirements for human oral prescription drugs in order to protect children from serious illness or personal injury resulting from handling, using, or ingesting these substances.

On August 1, 1973 the Consumer Product Safety Commission received a petition (PP 74-2) from Abbott Laboratories, North Chicago, Illinois, requesting an exemption from the child-protection packaging requirements for human prescription drugs in oral dosage forms (16 CFR 1700.14(a)(10) for certain erythromycin ethylsuccinate preparations.

The petitioner manufactures erythromycin ethylsuccinate in oral suspension form, among others. The drug is packaged as an oral suspension and marketed in sizes in which the total dosage ranges from 1.2 grams to 38.4 grams. The product is either dispensed as an already mixed suspension, or is reconstituted by the pharmacist or practitioner by adding a specific volume of water to the Abbott container. It is then relabeled and dispensed to the consumer.

Having considered the petition, human experience data, toxicity information, other available information, and comments by the Technical Advisory Committee on Poison Prevention Packaging, the Commission concluded that reasonable grounds were presented to issue a proposed rule to exempt erythromycin ethylsuccinate oral suspensions from the child-protection packaging standards of the PPPA.

Accordingly, the Commission granted the petition and published a notice in the February 11, 1974, FEDERAL REGISTER (39 FR 5197) proposing a rule to exempt erythromycin ethylsuccinate granules for oral suspension and oral suspensions in packages containing not more than 8 grams of the equivalent of erythromycin from the packaging standards. At the same time the Commission suspended the effective date of the child-protection packaging requirements as they applied to this drug.

It might be noted that the February 11, 1974, FEDERAL REGISTER notice proposed to exempt several other products from the child protection packaging requirements and stayed the effective date of the requirements as they applied to the proposed exemptions. The final rule contained herein, however, does not address these other products.

RESPONSE TO COMMENTS

Fifteen comments were received by the Commission in response to the proposed rule. In general the comments were more concerned with the issue of whether any exemptions should be granted to the special packaging requirements rather than the issue of whether erythromycin ethylsuccinate should be exempted. Only two comments specifically addressed the erythromycin ethylsuccinate oral suspension exemption. Five comments addressed the general issue of exemptions and the remaining comments discussed the proposed exemptions of the other drugs which were listed in the February 11, 1974 FEDERAL REGISTER notice.

One of the respondents who commented on the proposed exemption for erythromycin ethylsuccinate oral suspensions opposed the exemption because there is no human experience data cited in support of the proposed exemption. The Commission does cite animal test data but the respondent states that, "extrapolation from animal data to the child is not permissible because of marked interspecies differences in drug disposition and toxicity."

The Commission has not relied solely on animal data in considering this exemption. Rather, the Commission has gathered extensive data including statistics from the National Clearinghouse for Poison Control Centers which indicate that accidental ingestions of this drug by children is not likely to produce serious illness or injury. A discussion of these data is included below. The Commission points out, furthermore, that the use of extrapolations from animal data is a commonly accepted approach among a majority of pharmacologists.

A commenting trade association states that it has no objection to granting the specific drug exemptions proposed by the Commission based on the toxicological information provided in the proposal. This commentor believes however, that "exemptions should be granted with restraint." He believes there could be a public assumption that any "drugs exempted from child-resistant packaging requirements are 'safe' * * *" and that this assumption may be reinforced without Commission restraint in granting exemptions. The commentor recommends that criteria other than toxicological issues be considered by the Commission in granting exemptions.

The Commission exercises great restraint in granting exemptions pursuant to 16 CFR Part 1702 and does not base exemptions on toxicological issues alone. (16 CFR 1702 contains comprehensive regulations concerning submission and processing of petitions for exemption under the PPPA.) Furthermore, the Commission does not concur with respondent's belief that the public will assume that "drugs exempted from child-resistant packaging requirements are 'safe' * * *". The PPPA requires special packaging only if it is found that "the degree or nature of the hazard to children in the availability of such substance, by reasons of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using or ingesting such substance * * *" (Section 3(a)(1)). In promulgating the child-protection packaging standards for human prescription drugs in oral dosage forms, the Commissioner of the Food and Drug Administration indicated that an "across-the-board approach was taken as the

most efficient means of implementing the act" (38 FR 9431, at 9432, April 16, 1973). It was recognized however, that exemptions to the standard could and should be granted if appropriate (38 FR 9431, at 9432, April 16, 1973).

Several commentors see problems facing pharmacists in responding to exemptions that are approved by CPSC and suggest means by which the Commission could avoid posing these problems. They identify the problem of notification to pharmacists for products which have been exempted. Cited is a communications barrier created by the language of the exemption proposals which would complicate identification of drug components, their quantity in single dosage units, and "the maximum allowable limit of total drug content allowed by the proposed regulation." One person suggests that pharmacists be "provided with specific information regarding the largest number of dosage units * * * (to be) dispensed in conventional packaging * * *". Otherwise, pharmacists would be required to bear the responsibility of calculating the point at which prescription orders calling for above-average quantities of a drug would have to be packaged with child-protection closures. The commentor uses erythromycin ethylsuccinate oral suspensions to illustrate this problem by pointing out that it is available in a one-pint bottle, but that any order larger than 200 ml. of the preparation would require a child-protection closure.

The Commission is unaware of any problems being experienced by pharmacists in these areas. The pharmacist is a professional who must be aware of laws and regulations relating to his or her profession. He or she is not only cognizant of such laws through formal schooling and State board examinations, but is notified of new laws via trade magazines and professional associations.

Furthermore, the PPPA applies to substances which are being sold to consumers and it is both the manufacturer's and pharmacist's responsibility to specially package substances which are subject to the act. When the manufacturer is the person placing the drug in a package intended for use by a consumer in the household, the manufacturer is responsible for ensuring that it is placed in child-resistant packaging (see 16 CFR 1701.1 (43 FR 11980, March 23, 1978)).

A recommendation was made by two commentors that manufacturers or distributors of exempted products "be required to include a prominent, affirmative statement of the exemption in the product's labeling and in advertisements and other materials used to promote the product." The label should also carry "a maximum allowable limit on the quantity of a drug component * * * expressed in terms of the number of dosage units (or volume in the case of liquids) containing the maximum allowable quantity." It was finally recommended that establishment of a standard symbol be used in identifying exempted products for the pharmacist.

The commentors realize that CPSC has no authority to prescribe such labeling requirements but urges the Commission to cooperate with the Food and Drug Administration in implementing these recommendations. Until the time when such recommendations are adopted, the commentor urges the encouragement of voluntary cooperation on the part of manufacturers and distributors of exempted products.

The PPPA provides no authority for imposing such labeling requirements for prescription drugs. The Commission views the suggestions regarding labels as a matter within the FDA's jurisdiction and the individual manufacturer's discretion. As explained above, however, the Commission has not been made aware of pharmacists being unable to obtain information concerning exemptions.

Other respondents oppose any proposed exemptions because they believe the intent of the PPPA would be compromised. They cite possibilities of idiosyncrasies, hypersensitive reactions, long term effects and inadvertent errors in compounding and dispensing prescriptions as justification for safety packaging for all oral prescription drugs.

The Commission realizes that the potential exists for individual hypersensitive reactions to antibiotics such as erythromycin ethylsuccinate. However, the Commission notes that the reactions that have occurred with this particular drug are rare in comparison to other types of antibiotics and are not specifically associated with overdosage.

The Commission further points out that the concern expressed over inadvertent errors in compounding and/or dispensing prescriptions would not be addressed by safety-packaging regulations, since such errors can occur even though child-resistant packaging is being used. The lack of child-resistant closures is not rationally related to errors in compounding and dispensing prescriptions. This is a concern that must be addressed by proper training and licensure procedures for individual pharmacists.

One comment cites other reasons in support of an across-the-board requirement for safety packaging. The commentor states that low toxicity drugs may not be safely ingested by small children and that there is a lack of both acute and long term reaction data. Various human experience data elements have been evaluated in considering the exemption for erythromycin ethylsuccinate oral suspensions. A review has been made of poison control center reports and medical literature regarding the effects of acute ingestions, symptomatology, and the length of hospitalizations. These sources point to the relative safety of this drug when ingested even by young children (see section on Injury Data below).

Other commentors expressed concern over the fact that consumer education as to the proper handling of prescription products will be made more difficult by the presence of two types of containers in the home which may encourage the tendency to re-use more convenient containers for toxic prescription products. The granting of exemptions, the commentors believe, will foster the development of two categories of drugs (safe and unsafe) in the mind of the adult public so that two standards of drug storage develop in the home.

The Commission notes that even if there were no granted exemptions for prescription drugs under the PPPA, a person could still request noncomplying packaging of a drug. The PPPA clearly envisions the use of both types of packaging (e.g. to meet the demands of the elderly and handicapped who are unable to use special packaging). In regard to the commentors' other concerns about consumer education, the Commission, in conjunction with the Food and Drug Administration, urges persons to keep all medications out of the reach of children and locked up, if possible. The two agencies also inform consumers that neither the absence nor presence of child-resistant closures is an indication of safety of a drug.

Another respondent believes that noncomplying packaging will increase the costs for poison control centers and emergency rooms as well as physicians' fees to parents and detract from the image of physicians and pharmacists as persons concerned about child safety. There is no information that exemptions from packaging regulations contribute to the problems identified. As stated above, the Commission is only authorized under the PPPA to require use of child-resistant packaging upon a showing that the substance is capable of causing serious personal injury or illness.

INJURY DATA

The Commission bases its decision to issue an exemption for erythromycin ethylsuccinate in oral suspensions in part on the lack of any significant adverse human experience data since 1962, when the drug was introduced. The petitioner submitted its own rec-

ords showing only three reported instances of overdosage, none of which resulted in any significant adverse effects.

Furthermore, an examination of National Electronic Injury Surveillance System (NEISS) and Poison Control Center Data was conducted to determine the number of ingestions, if any, by children under five years of age of erythromycin oral suspensions. This final rule only involves, however, erythromycin ethylsuccinate oral suspensions in packages containing no more than 8 grams of the drug. It was not possible to determine the amount of erythromycin ethylsuccinate (based on package size and concentration) for those products involved in ingestions.

The NEISS data is separated by product codes and in the prescription drug area there are three codes. These codes separate product form and permit the elimination of ingestions which involve the tablet and capsule form of erythromycin/erythromycin ethylsuccinate. An examination of the NEISS in-depth files from 1973 to 1978 revealed no ingestions of erythromycin/erythromycin ethylsuccinate in liquid form by children under 5 years old. An examination of the comments appearing with the NEISS emergency room reports for 1977–78 showed no ingestions of this drug in liquid form by children under 5 years old. The Commission believes that the information that no accidental ingestions by children of the drug in liquid form have been reported through NEISS since 1973 is particularly significant in light of the fact that granules and oral suspensions of the drug have been on the market in noncomplying packaging since 1974, the year the proposed exemption was published.

The National Clearinghouse for Poison Control Centers (NCPCC) data was listed by brand name or generic name. This did not permit the separation of the various product form and consequently, the following statistics reflect the reported ingestions of all forms of erythromycin ethylsuccinate, not just oral suspensions whose total dosage does not exceed 8 grams. Accordingly, NCPCC data reported 668 ingestions of erythromycin/erythromycin ethylsuccinate by children under 6 years old for 1969–1976. Thirty-three of these cases exhibited symptomatology and five cases resulted in hospitalization.

Poison Control Center Contract data for 1976–77 reported 15 ingestions of erythromycin/erythromycin ethylsuccinate in a liquid form involving children under 5 years old. One of these fifteen cases was hospitalized and one case exhibited nausea and vomiting.

The Commission also bases its decision to issue a final exemption on evidence showing that erythromycin ethylsuccinate has very low toxicity and presents little risk in the amount requested for exemption. This is substantiated by documentation in the form of pharmacopeiae and scholarly monographs. Furthermore, the extrapolated oral median lethal dose (LD 50) for 10 kg children would be greater than 85 grams of erythromycin. (Analysis of other experimental data and available pharmacological information, both animal and human, indicates that the oral toxicity of this product is such that this extrapolation may be considered to approximate the anticipated toxicological effect in humans.) The maximum dosage available in the manufacturer's largest exempt size package for oral suspensions is the equivalent of 8 grams of erythromycin and therefore, substantially less than a toxic dose for a 10 kg child.

FINDINGS

Having considered the petition, human experience data from the National Clearinghouse for Poison Control Centers and the National Electronic Injury Surveillance System, as well as medical and scientific literature, and experimental data; and having consulted, pursuant to section 3 of the PPPA, with the Technical Advisory Committee on Poison Prevention Packaging established under section 6 of the act, the Commission finds that erythromycin ethylsuccinate in oral suspension forms that are packaged in dosages not exceeding 8 grams, do not present the degree or nature of hazard to children in their availability, such that special packaging is required to protect young children from serious personal injury or illness resulting from the ingestion of such preparations.

EFFECTIVE DATE

Since this rule grants an exemption, the delayed effective date provisions of the Administrative Procedure Act are inapplicable (5 U.S.C. 553(d)(1)). Accordingly, this rule is effective January 31, 1979.

CONCLUSION AND PROMULGATION

Having considered the petition, the comments on the proposal, and other relevant material, the Commission concludes that the final rule should be adopted as set forth below.

Accordingly, pursuant to the provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91-601, sections 2(4), 3, 5, 84 Stat. 1670-72; 15 U.S.C. 1471(4), 1472-1474) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92-573, section 30(a), 86 Stat. 1231, 12 U.S.C. 2079(a)), the Commission amends 16 CFR 1700.14 by adding a new paragraph (a)(10)(iii) as follows (the introductory portion of paragraph (a)(10), although unchanged, is included for context):

§ 1700.14 Substances requiring special packaging.

(a) * * *

(10) *Prescription drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c) except for the following:

(iii) Erythromycin ethylsuccinate granules for oral suspension and oral suspensions in packages containing not more than 8 grams of the equivalent of erythromycin.

(Pub. L. 91-601, secs. 2(4), 3, 84 Stat. 1670-72 (15 U.S.C. 1471(4)), 1472, 1474; Pub. L. 92-573, sec. 30(a), 86 Stat. 1231 (15 U.S.C. 2079(a)))

Effective date: January 31, 1979.

Dated: January 25, 1979.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 79-3186 Filed 1-30-79; 8:45 am]

[6355-01-M]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1700]

HUMAN PRESCRIPTION DRUGS IN ORAL DOSAGE FORMS

Proposed Exemption of Colestipol From Child-Protection Packaging Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend the child-resistant packaging regulations to exempt colestipol in powder form in packages containing no more than 5 grams of the drug. (Colestipol is an oral prescription drug used to lower cholesterol.) The exemption is proposed because the information available to the Commission indicates that child-resistant packaging for this product is not necessary to protect young children from serious personal injury or illness, due to the low oral toxicity of the drug, the lack of adverse human experience associated with accidental ingestions, and the fact that the drug is unattractive to children because of its powder form, sandy texture, and lack of flavor. In proposing the exemption, the Commission grants a petition from the Upjohn Company (Petition CP 78-4).

DATES: Comments on this proposed exemption should be submitted by April 2, 1979. If the Commission issues a final regulation concerning the exemption, the Commission proposes that the exemption be effective on the date the final regulation is published in the FEDERAL REGISTER.

ADDRESS: Comments should be addressed to the Office of the Secretary, Consumer Product Safety Commission, 1111 18th Street NW., Third Floor, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT:

Irwin L. Greif, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207 (301) 492-6755.

SUPPLEMENTARY INFORMATION: The regulations issued under the Poison Prevention Packaging Act of 1970 (the "PPPA", 15 U.S.C. 1471-1476) establish child protection packaging requirements (also called "special packaging") for human oral prescription drugs in order to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting these substances.

On May 1, 1978 the Consumer Product Safety Commission received a petition (PP 78-4) from the Upjohn Company, Kalamazoo, Michigan 49001, requesting an exemption from special packaging for "Colestid" (colestipol) in powder form in a 5 gram foil package. Colestid is a non-absorbed cross-linked polymer that absorbs bile acids and cholesterol. The drug is a hypocholesterolemic agent used to lower serum cholesterol via nonsystemic action. In support of the petition Upjohn submitted the following information: a summary of animal toxicology studies, a summary of clinical experience, a summary of metabolism studies, a summary of marketing experience and reported adverse reactions, a report of a child acceptance study, product and packaging specifications, and labeling. A copy of this information is available in the Commission's Office of the Secretary.

Special packaging is currently required for the drug by the Commission's regulation covering human prescription drugs in oral dosage form at 16 CFR 1700.14(a)(10).

After considering the information available to it, the Commission has decided to grant the petition and to propose an exemption from the child-resistant packaging requirements for the reasons discussed below.

GROUNDS FOR EXEMPTION

The Commission's decision to propose the exemption is based on the low acute oral toxicity of the drug, the lack of adverse human experience data associated with the product, and studies indicating that the drug is unattractive to children.

Radioisotopic studies in both animals and man indicate that virtually none of the product is absorbed from the gastrointestinal tract due to its insolubility. In addition, toxicity studies in mice, rats, rabbits, and dogs indicate that the product as formulated does not produce any lethality when ingested in doses up to 4000 mg/Kg. The acute oral LD 50 has been determined to be greater than 4g/kg. (A 10 kg child would have to ingest more than 40 gms. of the product in order to approach the LD 50.) Analysis of other experimental data and available pharmacological information, both animal and human, indicates that the oral toxicity of this product is such that this extrapolation may be considered to approximate the anticipated toxicological effect in humans.

Information available to the Commission shows that the drug is unattractive to children. Results of a study performed by Child-Related Research indicates that children tested did not ingest more than one gram of the product while it was accessible to them. According to the study, the powdery consistency of the product makes it difficult for children to handle and transport the product to their mouths. In addition, the sandy texture and lack of flavor discourages the ingestion of large amounts of the product.

There have not been any overdoses reported for the product. Also the National Electronic Injury Surveillance System does not contain any reports of colestipol poisonings to children under five years of age. There is no ingestion information available from the National Clearinghouse for Poison Control Centers, since the product was first marketed in 1977 and the Clearinghouse information is presently available only through 1976. However, the Commission did have a contract with six Poison Control Centers from October 1976 through October 1977. During this period there were no reported ingestions of the drug.

The Commission solicited the opinion of the Food and Drug Administration (FDA) on the exemption requests. Based on the very low acute toxicity of the product and the results of the product ingestion study conducted by Child-Related Research, FDA concluded that the exemption should be granted.

The Commission also solicited comments from its Technicial Advisory Committee on Poison Prevention Packaging. Of the twelve comments received, ten recommended granting the exemption, citing as reasons the low toxicity and lack of absorption of the drug and the general dislike for the product by the children tested. One comment recommended denial and another recommended granting the petition with reservations, due to the drug's potential for causing gastrointestinal or respiratory distress should a sufficient amount of the drug, in dry form, be ingested or inhaled. However, the product ingestion study indicates that only small amounts of the drug (less than 1 gram in most cases) were actually ingested. With the small amount likely to be ingested, gastrointestinal or respiratory distress is unlikely to occur.

Based on its evaluation of the available toxicity information and human experience data, the Commission finds that this drug in the dosage and form specified does not pose a risk of serious personal illness or injury to children. The Commission emphasizes that this proposed exemption is limited to colestipol in powder form in 5 gram packages and containing no other substance subject to the requirments for special packaging under 16 CFR 1700.14(a)(10). The applicability of 16 CFR 1700.14(a)(10) to ingredients other than colestipol is not affected by this proposal. Products within the scope of this proposal must continue to be in special packaging until the effective date of any final exemption that may be issued.

In order to help ensure that the requested exemption will apply to as many similarly situated manufacturers as possible, the proposed exemption is phrased in terms of the generic name and total amount of the drug that is present in the package.

CONCLUSION

Having considered the petition, human experience data, and other medical and scientific literature, and having consulted with the Technical Advisory Committee on Poison Prevention Packaging as required by section 3 of the Poison Prevention Packaging Act of 1970, the Consumer Product Safety Commission concludes that an exemption from the requirement of special packaging at 16 CFR 1700.14(a)(10) should be proposed for colestipol in powder form in 5 gram packages.

Accordingly, under provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91-601; secs. 2(4), 3, 5; 84 Stat. 1670-72; 15 U.S.C. 1471(4), 1472, 1474) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92-573; sec. 30(a); 86 Stat. 1371; 15 U.S.C. 2079(a)), the Commission proposes that 16 CFR 1700.14 be amended by adding a new paragraph (a)(10)(xv) as follows (the introductory portion of paragraph (a)(10), although unchanged, is included for context):

§ 1700.14 Substances requiring special packaging.

(a) * * *

(10) *Prescription drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c), except for the following:

* * * * *

(xv) Colestipol in powder form in packages containing not more than 5 grams of the drug and containing no other substance subject to the provisions of this section.

(Secs. 2(4), 3, 5, Pub. L. 91-601, 84 Stat. 1670-1672 (15 U.S.C. 1471(4), 1472, 1474))

Interested persons are invited to submit on or before April 2, 1979, written comments regarding this proposed amendment. Comments received after this date will be considered if practicable. Comments and any accompanying data or material should be submitted, preferably in five copies, to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments may be supported by a memorandum or brief. Comments may be seen in the Office of the Secretary, 1111 18th Street, NW., Third Floor, Washington, D.C. 20207.

Dated: January 25, 1979.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 79-3187 Filed 1-30-79; 8:45 am]

[6355-01-M]

[16 CFR Part 1700]

HUMAN PRESCRIPTION DRUGS IN ORAL DOSAGE FORMS

Proposed Exemption of Erythromycin Ethylsuccinate Tablets From Child-Protection Packaging Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend the child-resistant packaging regulations to exempt erythromycin ethylsuccinate tablets in packages containing no more than 16 grams, total dosage, of the drug. This action is being taken because the information available to the Commission shows child-resistant packaging of this product to be unnecessary given its low oral toxicity and the lack of adverse human experience from accidental ingestions.

DATES: Comments on this proposed exemption should be submitted by April 2, 1979. If the Commission issues a final regulation granting an exemption, the Commission proposes such exemption to become effective on the date the final regulation is published in the FEDERAL REGISTER.

ADDRESS: Comments should be addressed to the Office of the Secretary, Consumer Product Safety Commission, 1111 18th Street, N.W., Third Floor, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT:

Dr. Fred Marozzi, Division of Safety Packaging and Scientific Coordination, Directorate for Engineering and Science, Consumer Product Safety Commission, Washington, D.C. 20207; (301) 492-6477.

SUPPLEMENTARY INFORMATION: Regulations issued under the Poison Prevention Packaging Act of 1970 (the "PPPA", 15 U.S.C. 1471-1476) establish child-protection packaging requirements for human oral prescription drugs in order to protect children from serious illness or personal injury resulting from handling, using, or ingesting these substances.

On December 5, 1977, the Consumer Product Safety Commission received a petition (PP 78-2) from Abbott Laboratories for the exemption from the child-protection packaging requirements for prescription drugs at 16 CFR 1700.14(a)(10) of E.E.S. Tm Chewable, Erythrocin (R) Ethyl Succinate Chewable Tablets, 200 mg and Pediamycin (R) Chewable Tablets, 200 mg, two brands of 200 mg erythromycin ethylsuccinate tablets produced by Abbott Laboratories and its subsidiary, Ross Laboratories. As reasonable grounds justifying an exemption, Abbott cited the extremely low toxicity of erythromycin ethylsuccinate, and the lack of adverse human experience from its use. In support of this, Abbott attached to its petition a description of the three known incidents of overdosage it had received since the drug was introduced in 1962, several sources from the medical literature citing its relative safety, and reports of tests with laboratory animals showing no deaths or signs in the animals at a dosage of up to 10/g/kg.

Abbott had previously submitted to the Commission an exemption petition covering this same drug, but action on that petition was ended when certain requested information was not provided. The Commission is treating the present request as a new petition. As to the present petition, Abbott's supporting documents make clear that an exemption is being sought only for packages of up to eighty, 200 mg tablets (16 grams, total dosage).

Erythromycin ethylsuccinate is an antibiotic, most often used in the treatment of skin and upper respiratory tract infections, or as a substitute for persons allergic to penicillin. Symptoms produced by overdosage include nausea, vomiting, diarrhea, and abdominal cramps. While these gastrointestinal disturbances cause discomfort, they are rarely severe. As currently marketed by Abbott and Ross Laboratories, erythromycin ethylsuccinate is packaged in cartons containing 50 tablets on a cardboard strip with a foil-polyester backing and a vinyl blister covering each tablet. An exemption, if granted, would allow Abbott (and any other company with a similar product) to eliminate the polyester from the backing, making the individual packages somewhat easier to open.

After considering the information available to it, the Commission has decided to propose an exemption from the child-resistant packaging requirements for the reasons discussed below.

GROUNDS FOR EXEMPTION

The Commission bases its decision to propose an exemption in part on the lack of any significant adverse human experience since 1962, when erythromycin ethylsuccinate was introduced. The petitioner submitted its own records showing only three reported in-

stances of overdosage, none of which resulted in any significant adverse effects. A Commission staff survey of various sources (including the Department of Health, Education, and Welfare National Clearinghouse for Poison Control Centers, the National Electronic Injury Surveillance System, and Poison Control Center Contract Data) revealed that out of 231 reported ingestions of erythromycin ethylsuccinate between 1975 and 1978, only 17 resulted in noticeable symptoms, and in none of these 17 cases was hospitalization required. In addition to the 17 cases with noticeable symptoms, there were two reported hospitalizations. The two were of unspecified duration and no symptoms were given.

The Commission also bases its decision on evidence showing that erythromycin ethylsuccinate has very low toxicity, and that ingestion of even an entire 80 tablet prescription would not be harmful. The data presented by the petitioner indicates that the extrapolated oral median lethal dose (LD 50) for 10 kg children is from 300 to 500 tablets. (Analysis of other experimental data and available pharmacological information, both animal and human, indicates that the oral toxicity of this product is such that this extrapolation may be considered to approximate the anticipated toxicological effect in humans.) Based on this information, an 80 tablet prescription, even if entirely ingested at one sitting by a child, would result in substantially less than a toxic dose. Further, it is unlikely a child could gain access to larger quantities, because prescriptions larger than 80 tablets remain subject to child-resistant packaging requirements.

The Commission solicited the opinion of the Food and Drug Administration (FDA) on the exemption request. Based on the low acute oral toxicity of the drug, FDA concluded that the exemption should be granted.

The Commission also received comments from nine members of the Technical Advisory Committee on Poison Prevention Packaging. Six of the nine favored granting an exemption. Three others recommended denial for various reasons. One reason was the possibility of allergic and drug reactions. Comments solicited from the Food and Drug Administration, however, indicate that allergic reactions to erythromycin, while known to happen, are not specifically related to overdosage. The other reasons cited for denial were (a) the lack of evidence that the easier-to-open blister packaging would sufficiently deter children; and (b) that the amount of erythromycin ethylsuccinate available (16 grams) was considered to be too high. The Committee members who recommended granting the exemption cited the relative low toxicity of the drug and its safety record.

Based on its evaluation of the available toxicity information and human experience data (including that reported to the National Clearinghouse for Poison Control Centers and the National Electronic Injury Surveillance System), as well as other medical and scientific literature, the Commission believes that erythromycin ethylsuccinate, administered orally in tablet form, each tablet containing no more than the equivalent of 200 milligrams erythromycin and in packages containing no more than eighty (80) tablets (16 grams, total dosage) does not pose a risk of serious personal illness or injury to children.

Conclusion

In view of the above finding and having consulted, pursuant to section 3 of the Poison Prevention Packaging Act of 1970 with the Technical Advisory Committee on Poison Prevention Packaging established under section 6 of the Act, the Consumer Product Safety Commission concludes that an exemption from the requirement of special packaging for erythromycin ethylsuccinate 200 mg tablets, dispensed in packages of no more than eighty (80) tablets (16 grams, total dosage) should be proposed at 16 CFR 1700.14(a)(10)(xvi), as set forth below. The Commission emphasizes that the proposed exemption is limited to erythromycin ethylsuccinate in the form and dosage described above. Products within the scope of this proposal remain subject to the child-protection packaging requirements until the effective date of any final exemption that may be issued.

Accordingly, pursuant to the provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91-601, secs. 2(4), 3, 5; 84 Stat. 1670-72; 15 U.S.C. 1471(4), 1472, 1474) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92-572, sec. 30(a); 86 Stat. 1371; 15 U.S.C. 2079(a)), the Commission proposes that 16 CFR 1700.14 be amended by adding a new paragraph (a)(10)(xvi) as follows (the introductory portion of paragraph (a)(10), although unchanged, is included for context):

§ 1700.14 Substances requiring special packaging

(a) * * *

(10) *Prescription drugs.* Any drug from human use that is in a dosage for intended for oral administration and that is required by Federal Law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c) except for the following:

* * * * *

(xvi) Erythromycin ethylsuccinate in tablet form, each tablet containing no more than the equivalent of 200 mg erythromycin dispensed in packages of no more than 80 tablets (16 grams, total dosage).

* * * * *

Interested persons are invited to submit written comments regarding this proposed amendment on or before April 2, 1979. Comments received after this date will be considered if practicable. Comments and any accompanying data should be submitted, preferably in five copies, to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments may be supported by a memorandum or brief. Comments may be seen in the Office of the Secretary, 1111 18th Street, NW., Third Floor, Washington, D.C. 20207.

Dated: January 25, 1979.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 79-3188 Filed 1-30-79; 8:45 am]

[6355-01-M]

[16CFR Part 1700]

EXEMPTION OF OGEN FROM CHILD PROTECTION PACKAGING REQUIREMENTS

Withdrawal of Proposed Rule

AGENCY: Consumer Product safety Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: In this document the Commission withdraws a proposed rule that would have exempted certain formulations of Ogen, a brand of piperazine estrone sulfate, from the child resistant packaging requirement issued under the Poison Prevention Packaging Act of 1970. The Commission is withdrawing the proposed rule at the request of the manufacturer, Abbott Laboratories, which has stopped distributing Ogen in the packaging in question.

FOR FURTHER INFORMATION CONTACT:

Philip Bechtel, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207 (202) 634-7770.

SUPPLEMENTARY INFORMATION: Under regulations at 16 CFR 1700.14(a)(10), issued under the Poison Prevention Packaging Act of 1970 (PPPA) (15 U.S.C. 1471 et. seq.),

human prescription drugs in oral dosage forms must be packaged in special (child resistant) packaging. In the FEDERAL REGISTER of March 19, 1976 (41 FR 11555), the Commission proposed an exemption for Ogen 1.25 21-Pak and Ogen 2.5 21-Pak. These products are manufacturer's mnemonic (memory-aiding) dispenser packages containing, respectively, 21 tablets of 1.5 and 3.0 milligrams of piperazine estrone sulfate per tablet. (Ogen is an estrogen-containing drug used in the treatment of hormone deficiency.) The Commission proposed the exemption as a result of a petition (PP 74-40) submitted by Abbott Laboratories on March 7, 1974 requesting the exemption. The Commission's decision to propose the exemption was based on the low toxicity and limited hazard potential of the product. The proposed exemption was limited to Abbott's brand of manufacturer dispenser packages containing not more than 21 tablets of either 1.5 or 3.0 milligrams of piperazine estrone sulfate per tablet. No other manufacturer's brands of piperazine estrone sulfate were covered by the proposal. The Commission received no comments in response to the proposal.

On December 14, 1978, Abbott Laboratories sent a letter to the Commission requesting that the proposal be withdrawn, since the product that would have been covered by the proposed exemption is no longer being distributed in this package. Based on this information, the Commission does not believe that an exemption from the requirement of special packaging is necessary for this product.

Accordingly, pursuant to provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91-601, secs. 2(4), 3, 5, 84 Stat. 1670-72; 15 U.S.C. 1471(4), 1472, 1474) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92-573, sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission withdraws the regulation proposed in the FEDERAL REGISTER on March 19, 1976 (41 FR 11555) that would have exempted Ogen 1.25 21-Pak and Ogen 2.5 21-Pak from the requirement of special packaging at 16 CFR 1700.14(a)(10)(vii).

Dated: January 25, 1979.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 79-3189 Filed 1-30-79; 8:45 am]