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federal register

THURSDAY, FEBRUARY 8, 1979

highlights

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

For workshops in Washington, D.C., see notice on inside front cover.

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HOW TO USE THE FEDERAL REGISTER WORKSHOPS

Washington, D.C., Workshops

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WHAT: Free Friday workshops presenting:

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2. The relationship between Federal Register and the Code of Federal Regulations.
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WHEN: February 9 or 23; March 9 or 23; or April 6 or 20—from 9–11:30 a.m.

WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

RESERVATIONS: Call Mike Smith, Workshop Coordinator, 202–523–5235.

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Title 3—
The President

Executive Order 12117 of February 6, 1979

Imports From Uganda

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for the consistent implementation of import restrictions imposed against Uganda by Section 5(c) of the Act of October 10, 1978 (92 Stat. 1051), it is hereby ordered as follows:

1-101. The Secretary of the Treasury shall administer those provisions of Section 5(c) of the Act of October 10, 1978 (Public Law 95-435; 92 Stat. 1051; 22 U.S.C. 2151 note) which prohibit a corporation, institution, group or individual from importing, directly or indirectly, into the United States or its territories or possessions any article grown, produced, or manufactured in Uganda. The Secretary of the Treasury shall issue such regulations that the Secretary deems necessary to implement those import restrictions. Prior to issuing those regulations the Secretary of the Treasury shall consult with the Secretary of State.

1-102. The Secretary of State shall advise the President whenever the Secretary believes that "the Government of Uganda is no longer committing a consistent pattern of gross violations of human rights" within the meaning of Section 5(c) of the Act of October 10, 1978.

1-103. If the President determines that the Government of Uganda is no longer committing a consistent pattern of gross violations of human rights, he shall so certify to the Congress. Thereafter, the Secretary of the Treasury shall revoke the regulations issued pursuant to this Order.

Jimmy Carter

THE WHITE HOUSE,
February 6, 1979.

[FR Doc. 79-4580
Filed 2-7-79; 11:44 am]

Billing code 3195-01-M

Executive Order 12118 of February 6, 1979

Administration of Security Assistance Programs

By the authority vested in me as President of the United States of America by Section 621 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2381), and Section 301 of Title 3 of the United States Code, in order to delegate certain responsibilities to the Secretary of State and the Secretary of Defense and to reserve others to the President, it is hereby ordered as follows:

1-101. Section 201(a) of Executive Order No. 10973, as amended, relating to the administration of foreign assistance, is further amended by deleting "(except chapter 4 thereof)" and inserting in lieu thereof "(except chapters 4 and 6 thereof)".

1-102. In Section 201 of Executive Order No. 10973, as amended, a new subsection (c) is added as follows:

"(c) Those functions under Section 634A of the Act, to the extent that they relate to notifications to the Congress concerning changes in programs under Part II of the Act (except chapters 4 and 6 thereof), subject to prior consultation with the Secretary of State.".

1-103. Section 201(d) of Executive Order No. 10973, as amended, is revoked.

1-104. Section 203(a) of Executive Order No. 10973, as amended, is further amended to read as follows:

"(a) Those under Section 502B of the Act.".

1-105. Section 401(c) of Executive Order No. 10973, as amended, is further amended by adding "515(f)," immediately after "506(a)," and by deleting "634(c), 663(a), and 669(b)(1)" and inserting in lieu thereof "633A, 663(a), 669(b)(1), and 670(b)(1)".

1-106. Section 401(g) of Executive Order No. 10973, as amended, is revised to read as follows:

"(g) Those under Section 607 of the Foreign Assistance and Related Programs Appropriations Act, 1979 (92 Stat. 1591), with respect to findings.".

1-107. Executive Order No. 11958 of January 18, 1977, entitled "Administration of Arms Export Controls," is amended in Section 1(a) by deleting "(c)(3) and (c)(4)" and inserting in lieu thereof "(c)(3), (c)(4), and (f)".

Jimmy Carter

THE WHITE HOUSE,
February 6, 1979.

[FR Doc. 79-4583
Filed 2-7-79; 11:51 am]

Billing code 3195-01-M

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 IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Navel Orange Reg. 452; Navel Orange Reg. 451, Amdt. 1]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period February 9-15, 1979, and increases the quantity of such oranges that may be so shipped during the period February 2-8, 1979. Such action is needed to provide for orderly marketing of fresh navel oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: The regulation becomes effective February 9, 1979, and the amendment is effective for the period February 2-8, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, (202) 447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under this marketing order, and upon other information, it is found that the limitation of handling of navel oranges, as hereafter provided, will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on February 5, and 6, 1979 to consider supply and market conditions and other factors affecting the need for regulation, and recommended quantities of navel oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for navel oranges remains good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of navel oranges. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 907.752 Navel Orange Regulation 452.

Order. (a) The quantities of navel oranges grown in Arizona and California which may be handled during the period February 9, 1979, through February 15, 1979, are established as follows:

(1) District 1: 850,000 cartons;

(2) District 2: 150,000 cartons;

(3) District 3: unlimited movement.

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

§ 907.751 [Amended]

Paragraph (a)(1) in § 907.751 Navel Orange Regulation 451 (44 FR 6350, 6351), is hereby amended to read:

(a) * * *

(1) District 1: 1,000,000 cartons;

* * * * *

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

Dated: February 7, 1979.

CHARLES R. BRADER,
Acting Director Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-4579 Filed 2-7-79; 11:37 am]

[3410-02-M]

[Amdt. 3]

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This emergency amendment relieves the Sunday packaging prohibition on February 4, 11, and 18, 1979, to allow the industry additional time to pack its marketable lettuce as poor weather in the production area is expected to interfere with lettuce harvesting. It will promote orderly marketing and benefit consumers by making additional lettuce available.

EFFECTIVE DATE: February 4, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Acting Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 447-4722.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 114 and Order No. 971 regulate the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. This program is effective under the Agricul-

tural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The amendment is based upon recommendations made on February 1 by the South Texas Lettuce Committee, which was established under the order and is responsible for its local administration. The industry needs additional time to package lettuce before cold weather in the production area adversely affects it. Therefore the committee requested relief on February 4, 11, and 18, 1979, from the Sunday packaging prohibition.

EMERGENCY FINDINGS: It is hereby found that the amendment which follows will tend to effectuate the declared policy of the act. It is further found that due to the emergency it is impracticable and contrary to the public interest to provide 60 days for interested persons to file comments and that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) this amendment must become effective immediately if producers and consumers are to derive any benefits from it, (2) compliance with this amendment will not require any special preparation on the part of handlers, and (3) this amendment relieves restrictions on the handling of lettuce grown in the production area.

Regulation, as amended. In § 971.319 (43 FR 53704, 58355; 44 FR 2165) the last sentence in the introductory paragraph is hereby amended by adding the following to it:

§ 971.319 Handling regulation.

* * *, except that the prohibition against the packing of lettuce on Sundays shall not apply on February 4, 11, and 18, 1979.

* * * * *

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

Effective date. Dated February 2, 1979, to become effective February 4, 1979.

NOTE.—This regulation has not been determined significant under Executive Order 12044.

WILLIAM J. HIGGINS,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-4287 Filed 2-7-79; 8:45 am]

[6210-01-M]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

PART 226—TRUTH IN LENDING

Publication in CFR of Supplements I Through VI to Regulation Z

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Publication in CFR of Supplements I through VI to Regulation Z.

SUMMARY: The Board is publishing in the CFR Supplements I through VI. These Supplements contain regulatory material concerning the calculation of annual percentage rates and certain State exemptions from the Truth in Lending Act. Publication in the CFR will make these regulations more available to the public, but does not change the substance or effect of the Supplements.

FOR FURTHER INFORMATION CONTACT:

Glenn E. Loney, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Telephone: (202) 452-3867.

SUPPLEMENTARY INFORMATION: The Board, after consultation with the Office of the Federal Register, has decided to publish in 12 CFR Part 226 (Regulation Z) Supplements I through VI, which were published in the FEDERAL REGISTER as final rules. Set forth in the table below are the dates of original publication and amendment, if any, in the FEDERAL REGISTER. The right hand column contains the section number in Part 226 for each of the Supplements. No substantive changes have been made in these Supplements.

Supplement I (34 FR 2017) February 12, 1969, § 226.40.
Supplement II (34 FR 12330) July 26, 1969, § 226.50; as amended at (35 FR 7550) May 15, 1970; (35 FR 10358) June 25, 1970; (35 FR 11992) July 25, 1970; (37 FR 24105) November 14, 1972, § 226.55.
Supplement IV (36 FR 1041) January 22, 1971, § 226.60.
Supplement V (41 FR 55329) December 20, 1976, § 226.70.
Supplement VI (43 FR 21319) May 17, 1978; as amended at (43 FR 22928) May 30, 1978, § 226.80.

Supplement I contains the general rule and equations for determining the annual percentage rate pursuant to § 226.5(b). Supplement II contains procedures and criteria for State exemption form Chapter 2 of the Truth in Lending Act. Supplement III contains current State exemptions from Chapter 2 of the Truth In Lending Act. Supplement IV contains procedures and criteria for State exemption from §§ 132-135 of the Truth in Lending Act. Supplement V contains procedures and criteria for State exemptions from the Fair Credit Billing Act. Supplement VI contains procedures and criteria for State exemptions from the Consumer Leasing Act.

Board of Governors, February 1, 1979.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 79-4318 Filed 2-7-79; 8:45 am]

[1505-01-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket No. 78-EA-71]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area; Pittstown N.J.

Correction

In FR Doc. 79-2950 appearing on page 5646 in the issue for Monday, January 29, 1979, second column, the EFFECTIVE DATE should read "January 29, 1979".

[1505-01-M]

[Airspace Docket No. 78-EA-76]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration and Revocation of Transition Areas: Harrisburg and Annville, Pa.

Correction

In FR Doc. 79-2951 appearing on page 5647, in the issue for Monday, January 29, 1979, third column, the EFFECTIVE DATE should read "January 29, 1979".

[1505-01-M]

[Airspace Docket No. 78-EA-102]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area: N. Philadelphia, Pa.

Correction

In FR Doc. 79-2953 appearing on page 5648, in the issue for Monday, January 29, 1979, first column, the EFFECTIVE DATE should read "January 29, 1979".

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket C-2949]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Art Instruction Schools, Inc., et al.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires a Minneapolis, Minn. firm engaged in the formulation and sale of home study courses, its subsidiary, Art Instruction Schools, Inc. (AIS), and its New York City advertising agency to cease misrepresenting the need or demand for AIS graduates; and the employment opportunities, potential earnings, and job placement assistance available to graduates. The companies would be further prohibited from misrepresenting student selectivity; the quality of their courses; and the lack of additional costs and cancellation penalties. The order would also require that prospective enrollees be provided with prescribed information relating to the job success of former students; and informed of cancellation and refund rights. Additionally, the order would require that the companies make proper restitution to former eligible students; maintain particular records; and institute a surveillance program designed to ensure compliance with the terms of the order.

DATES: Complaint and order issued Jan. 10, 1979.[1]

FOR FURTHER INFORMATION CONTACT:

Paul W. Turley, Director, 3R, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, Ill. 60603. (312) 353-4423.

SUPPLEMENTARY INFORMATION: On Thursday, November 2, 1978, there was published in the FEDERAL REGISTER, 43 FR 51031, a proposed consent agreement with analysis In the Matter of Bureau of Engraving, Inc., a corporation, Art Instruction Schools, Inc., a corporation, and Bozell & Jacobs, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; 13.10-1 Availability of merchandise and/or facilities; 13.10-5 Knowingly by advertising agent; § 13.15 Business status, advantages, or connections; 13.15-20 Business methods and policies; 13.15-35 Contracts and obligations; 13.15-195 Nature; 13.15-245 Prospects; 13.15-275 Stock, product, or service. § 13.55 Demand, business or other opportunities; § 13.160 Earnings and profits; § 13.90 History of product or offering; § 13.115 Jobs and employment service; § 13.125 Limited offers or supply; § 13.143 Opportunities; § 13.155 Prices; 13.155-5 Additional charges unmentioned; § 13.60 Promotional sales plan; § 13.175 Quality of product or service; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.250 Success, use or standing; § 13.285 Value. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records; § 13.533-55 Refunds, rebates and/or credits. Subpart—Delaying Or Withholding Corrections, Adjustments Or Action Owed: § 13.677 Delaying or failing to deliver goods or provide services or facilities. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1370 Business methods, policies, and practices.—Goods: § 13.1572 Availability of advertised merchandise and/or facilities; § 13.1610 Demand for or business opportunities; § 13.1625 Free goods or services; § 13.1650 History of product; § 13.1670 Jobs and employment; § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1755 Success, use or standing; § 13.1760 Terms and conditions; 13.1760-50 Sales contract; § 13.1775 Value; —Prices: § 13.1778 Additional costs unmentioned.—Promotional Sales Plans: § 13.1830 Promotional sales plans. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1854 History of products; § 13.1863 Limitations of product; § 13.1882 Prices; 13.1882-10 Additional prices unmentioned; § 13.1885 Qualities or properties; § 13.1892 Sales contract, right-to-cancel provision; § 13.1895 Scientific or other relevant facts; § 13.1905 Terms and conditions; 13.1905-50 Sales contract. Subpart—Offering Unfair, Improper and Deceptive Inducements To Purchase Or Deal: § 13.1935 Earnings and profits; § 13.1960 Free service; § 13.1995 Job guarantee and employment; § 13.2000 Limited offers or supply; § 13.2015 Opportunities in product or service; § 13.2063 Scientific or other relevant facts.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-4292 Filed 2-7-79; 8:45 am]

[6750-01-M]

[Docket C-2948]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Kelcor Corp., et al.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires a Dallas, Texas finance company to cease, in connection with the extension of consumer credit, failing to compute finance charges and provide relevant disclosures in the manner and form required by Federal Reserve System regulations.

DATES: Complaint and order issued January 8, 1979.[1]

FOR FURTHER INFORMATION CONTACT:

Juereta P. Smith, Director, 5R, Dallas Regional Office, Federal

[1] Copies of the Complaint and Decision and Order filed with the original document.

[1] Copies of the Complaint and Decision and Order filed with the original document.

Trade Commission, 2001 Bryan St., Suite 2665, Dallas, Texas 75201, (214) 749-3056.

SUPPLEMENTARY INFORMATION: On Wednesday, October 25, 1978, there was published in the FEDERAL REGISTER, 43 FR 49818, a proposed consent agreement with analysis In the Matter of Kelcor Corporation, a corporation, and C. K. Wingo, individually and as an officer of said corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been filed, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.55 Prices; 13.155-95 Terms and conditions; 13.155-95(a) Truth in Lending Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures. Subpart-Failing To Provide Foreign Language Translations: § 13.1052 Failing to provide foreign language translations. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1623 Formal regulatory and statutory requirements; 13.1623-95 Truth in Lending Act.—Prices: § 13.1823 Terms and conditions; 13.1823-20 Truth in Lending Act. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1852 Formal regulatory and statutory requirements; 13.1852-75 Truth in Lending Act; § 13.1905 Terms and conditions; 13.1905-40 Insurance coverage; 13.1905-60 Truth in Lending Act.

(Sec. 6, 38 Stat. 721 (15 U.S.C. 46). Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147 (15 U.S.C. 45, 1601, et seq.))

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-4365 Filed 2-7-79; 8:45 am]

[6450-01-M]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION

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

[Docket No. RM79-3]

Order Granting Rehearing for Purposes of Further Consideration and Denying Stay

JANUARY 29, 1979.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order granting rehearing of application for reconsideration of Section 270.203 of the NGPA Interim Regulations and denying stay.

SUMMARY: Consolidated Gas Supply Corporation filed an application on December 29, 1978, for reconsideration and stay of Section 270.203 of the Commission's interim regulations implementing the Natural Gas Policy Act of 1978. This order grants rehearing solely for purposes of further consideration of the regulation. Consolidated's application for stay is denied for lack of showing of good cause.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Mark Magnuson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 275-4286.

SUPPLEMENTARY INFORMATION: On December 29, 1978, Consolidated Gas Supply Corporation (Consolidated) filed an application for reconsideration and stay of Section 270.203 of the Commission's interim regulations implementing the Natural Gas Policy Act of 1978 (NGPA). On January 3, 1979, the Commission issued Order No. 21,[1] which prescribed a final regulation providing for a rehearing procedure for rules or orders issued under the NGPA. Inasmuch as there was no specific provision for filing petitions for rehearing of the NGPA rules at the time this application was filed, we will treat Consolidated's application for reconsideration as an application for rehearing under section 286.102 of our Regulations under the NGPA.

Since the regulation in question is an interim regulation and since the Commission wishes to consider public comments on the validity of all its interim regulations, we will grant Consolidated's application for rehearing solely for purposes of further consideration. This action does not constitute a grant or denial of the application on its merits in whole or in part. As provided in Section 1.34(d) of the Commission's Rules of Practice and Procedure, no answers to the applications for rehearing will be entertained by the Commission, since this order does not grant rehearing on any substantive issues.

In support of its motion for stay [2] applicant states that the regulation in question "has the impermissible effect of setting a lower ceiling price than that permitted by the NGPA," and that it would suffer irreparable injury in that it would be permanently deprived of revenues to which it is entitled under the NGPA.

We are unconvinced by Consolidated's allegations of irreparable harm. In the event a court determines that this regulation is unlawful, this Commission could authorize the collection of revenues denied by this provision through surcharges.[3] Accordingly, Consolidated has not shown good cause for a stay of § 270.203 of the Interim Regulations and we shall deny Consolidated's application for stay.

The Commission orders:

(A) Rehearing is granted solely for purposes of further consideration.

(B) Consolidated's application for stay is denied.

By the Commission. Commissioner Holden voted present.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4301 Filed 2-7-79; 8:45 am]

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[1] Docket No. RM79-12.

[2] Order No. 20, issued in Docket No. RM79-9 prescribes a procedure for applying for stay of interim regulations under the NGPA.

[3] See orders issued June 27, 1978, in Docket No. AR61-2 *et al.*, and July 31, 1978, in Docket No. AR69-1.

[6560-01-M]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

[FRL 1057-4; FAP 6H5147/R46]

PART 193—TOLERANCES FOR PESTICIDES IN FOOD ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Chlorpyrifos

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

ACTION: Final rule.

SUMMARY: This rule amends 21 CFR 193.85 by establishing a food additive regulation for the insecticide chlorpyrifos in food-handling establishments. The regulation was requested by Herculite Protective Fabrics Corp. This rule establishes a regulation permitting the use of chlorpyrifos in impregnated tape as general treatment in food-handling establishments.

EFFECTIVE DATE: Effective on February 8, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Frank Sanders, Product Manager (PM) 12, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC 20460 (202-426-9425).

SUPPLEMENTARY INFORMATION: On October 22, 1976, notice was given (41 FR 46645) that Herculite Protective Fabrics Corp., 1107 Broadway, New York, NY 10010, had filed a petition (FAP 6H5147) with the EPA. This petition proposed that 21 CFR 193.85 be amended by establishing a regulation permitting use of the insecticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate) in a controlled/release insect tape as a general treatment in food areas of food-handling establishments including, but not limited to, restaurants, grocery stores, bakeries, bottling plants, canneries, and grain mills. The controlled-release product shall be limited to a maximum of 10% by weight of the active ingredient.

Subsequently, the term "insect tape" was changed to "impregnated tape," and the second sentence was changed to read: "The active ingredient shall be limited to a maximum of 10% by weight of the controlled-release product." No comments were received by the Agency 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 regulation included a two-year rat feeding/oncogenicity study and a dog feeding study with no-observable-effect levels (NOEL) of 0.1 milligram (mg)/kilogram (kg) of body weight (bw)/day, a three-generation rat reproduction study with no effects to 1 mg/kg bw/day, and an acute delayed neurotoxicity study on hens (negative at up to 100 mg/kg bw).

Based on the two-year rat feeding/oncogenicity study with a 0.1 mg/kg bw/day NOEL and using a 10-fold safety factor, the acceptable daily intake (ADI) for man is 0.01 mg/kg bw/day. The theoretical maximal residue contribution (TMRC) in the human diet from the proposed tolerance does not exceed the ADI.

Desirable data that are lacking from the petition are a lifetime oncogenic study and a teratology study. The oncogenic study is expected to be completed by May 1979 and the teratology study is expected to be submitted in early 1979. The petitioner in a letter dated October 4, 1978, agreed to voluntarily delete the use of chlorpyrifos in food areas of food handling establishments from the label should the teratology and lifetime oncogenic study exceed the risk criteria for chronic toxicity in 40 CFR 162.11.

The metabolism of chlorpyrifos is adequately understood, and an adequate analytical method (PAM I multiresidue method with a flame photometric detector in a phosphorus mode) is available for enforcement purposes. Tolerances have previously been established (40 CFR 180.342) on a variety of raw agricultural commodities at levels ranging from 1 ppm to 0.01 ppm. A food additive regulation has also been established permitting use of chlorpyrifos for spot and/or crack and crevice treatment in food handling establishments. No actions are currently pending against continued registration of chlorpyrifos, nor are any other relevant considerations involved in establishing the proposed regulation. The pesticide is considered useful for the purpose for which the regulation is sought and it is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136). Therefore the regulation amending 21 CFR 193.85 is being promulgated as changed. Accordingly a food additive regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before March 12, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW, Washington, DC 20460. Such objections should be submitted in quintuplicate 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 February 8, 1979, 21 CFR 193.85 is amended as set forth below.

(Sec. 409(c)(1), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(1)).)

Dated: February 3, 1979.

JAMES M. CONLON,
Deputy Assistant Administrator for Pesticide Programs.

Part 193, Subpart A, § 193.85 is revised to read as follows:

§ 193.85 Chlorpyrifos.

The food additive chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] may be safely used in accordance with the following prescribed conditions.

(a) Direct application shall be limited solely to spot and/or crack and crevice treatment in food-handling establishments where food and food products are held, processed, prepared, or served. Spray concentration shall be limited to a maximum of 0.5% active ingredient. For crack and crevice treatment, equipment capable of delivering a pin-stream of insecticide shall be used. For spot treatments, a coarse, low-pressure spray shall be used to avoid atomization or splashing of the spray. Contamination of food or food-contact surfaces shall be avoided.

(b) Application via adhesive strips shall contain a maximum of 10% by weight of the controlled-release product in food-handling establishments where food and food products are held, processed, prepared, or served. A maximum of 36 strips (or 5.15 grams of chlorpyrifos) is to be used per 100 square feet of floor space. The strips are not to be placed in exposed areas where direct contact with food, utensils, and food-contact surfaces would be likely to occur.

(c) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

[FR Doc. 79-4391 Filed 2-7-79; 8:45 am]

[6560-01-M]

SUBCHAPTER E—ANIMAL FEEDS, DRUGS, AND RELATED PRODUCTS

[FRL 1057-3; FAP 6H5143/T41]

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Butachlor

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

ACTION: Final rule.

SUMMARY: This rule reextends a feed additive regulation permitting residues of the herbicide butachlor in rice bran and rice hulls. The reextension was requested by Monsanto Agricultural Products Co. This rule will permit the marketing of rice bran and rice hulls while further data is collected on the subject pesticide.

EFFECTIVE DATE: Effective on February 8, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC 20460 (202/755-7013).

SUPPLEMENTARY INFORMATION: On April 8, 1977, the EPA announced (42 FR 18620) that in response to a petition (FAP 6H5143) submitted by Monsanto Agricultural Products Co., 800 N. Lindbergh Boulevard, St. Louis, MO 63116, 21 CFR 561.55 was being established to permit the use of the herbicide butachlor (*N*-butoxymethyl) - 2 - chloro - 2',6' - diethylacetanilide) in a proposed experimental program involving application of the herbicide to growing rice with tolerance limitations of 1 part per million (ppm) for residues of the herbicide in rice hulls and 0.5 ppm in rice bran in accordance with an experimental use permit that was being issued concurrently under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136). This experimental program expired April 1, 1978. Subsequently, the tolerances were extended for one year (43 FR 2629). These tolerances will expire April 1, 1979.

Monsanto Agricultural Products Co. has requested a one-year reextension of these temporary tolerances both to permit continued testing to obtain additional data and to permit the marketing of food commodities affected by the application of the herbicide to the growing raw agricultural commodities rice and rice straw.

The scientific data reported and other relevant material have been evaluated, and it has been determined that the pesticide may be safely used in accordance with the provisions of the experimental use permit which is being issued concurrently under FIFRA. It has further been determined that since residues of the pesticide may result in rice hulls and rice bran from the agricultural use provided for in the experimental use permit, the feed additive regulation should be reextended along with the tolerance limitations. (A related document concerning the reextension of temporary tolerances for residues of the pesticide in or on rice and rice straw appears elsewhere in today's FEDERAL REGISTER.)

Accordingly, a feed additive regulation is amended as set forth below.

Any person adversely affected by this regulation may, on or before March 12, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708, 401 M St., SW, Washington, D.C. 20460. Such objections should be submitted in quintuplicate 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 February 8, 1979, 21 CFR Part 561 is amended as set forth below.

(Sec. 409(c)(1), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(1).))

Dated: February 2, 1979.

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

Section 561.55 is amended as follows:

§ 561.55 [Amended]

In § 561.55, the date in the eighth line is changed from "April 1, 1979" to "April 1, 1980."

[FR Doc. 79-4392 Filed 2-7-79; 8:45 am]

[6560-01-M]

[FRL 1056-8; FAP 6H5121/R42]

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Chlorpyrifos

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

ACTION: Final rule.

SUMMARY: This rule amends 21 CFR Part 561 by establishing feed additive tolerances for residues of the insecticide chlorpyrifos in or on sugar beet pulp and sugar beet molasses. The regulation was requested by Dow Chemical Corp. This rule establishes maximum permissible levels for residues of chlorpyrifos in or on dried sugar beet pulp and sugar beet molasses.

EFFECTIVE DATE: Effective on February 8, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Frank Sanders, Product Manager (PM) 12, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW., Washington, D.C. 20460 (202-426-9425).

SUPPLEMENTARY INFORMATION: On March 12, 1976, notice was given (41 FR 10709) that Dow Chemical Corp., PO Box 1706, Midland, MI 48640, had filed a petition (FAP 6H5121) with the EPA. This petition proposed that 21 CFR Part 561 be amended by establishing a regulation permitting combined residues of the insecticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate) and its metabolite 3,5,6-trichloro-2-pyridinol in or on dried sugar beet pulp intended for livestock feed at 1 part per million (ppm) and the sugar beet product molasses intended for animal feed at 3 ppm resulting from application of the insecticide to growing sugar beets. No comments were received by the Agency in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated, and it is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136 *et seq.*).

The toxicological data considered in support of the proposed tolerances included a two-year rat feeding/oncogenicity study and a dog feeding study with a no-observable-effect level (NOEL) of 0.1 milligram (mg)/kilogram (kg) of body weight (bw). Studies on delayed neurotoxicity and reproduction showed negative potentials. Based on the two-year chronic rat feeding study with 0.1 mg/kg bw NOEL on cholinesterase activity and using a safety factor of 10, the acceptable daily intake (ADI) for man is 0.01 mg/kg bw/day. The theoretical maximal residue contribution (TMRC) in the human diet from the proposed tolerances and the tolerances which have previously been established for resi-

dues of chlorpyrifos on a variety of raw agricultural commodities at levels ranging from 1.5 ppm to 0.01 ppm does not exceed the ADI.

Desirable data that are lacking from the petition are a teratology study and a second oncogenicity study. In a letter of February 17, 1978, the petitioner indicated that the teratology study will be completed by November 1978, and the lifetime oncogenicity study is expected to be completed by May 1979. The petitioner also agreed to voluntarily delete use of chlorpyrifos on almonds, apples, pears, plums (fresh prunes), sweet potatoes, and sugar beets from the label should the teratology and lifetime oncogenicity studies be found to exceed the risk criteria for chronic toxicity in 40 CFR 162.11. Although the oncogenicity evaluation of chlorpyrifos is not complete, it is concluded that, based on the available data, the risks are acceptable since the absence of an oncogenic potential is adequately shown in the two-year rat feeding/oncogenicity study.

The metabolism of chlorpyrifos is adequately understood, and an adequate analytical method (gas chromatography) is available for enforcement purposes. No actions are currently pending against continued registration of chlorpyrifos nor are there any other relevant considerations involved in establishing the proposed tolerances. The established tolerances for residues of chlorpyrifos in milk, meat, poultry, and eggs are adequate to cover the proposed uses.

The pesticide is considered useful for the purpose for which tolerances are sought. Therefore the regulation establishing tolerances of 1 ppm in or on sugar beet pulp and 3 ppm in sugar beet molasses by amending 21 CFR Part 561 is being promulgated as proposed. Accordingly a feed additive regulation is established.

Any person adversely affected by this regulation may, on or before March 12, 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 in quintuplicate 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 February 8, 1979, 21 CFR Part 561 is amended as set forth below.

(Sec. 409(c)(1), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(1)).)

Dated: February 5, 1979.

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

Part 561, Subpart A, is amended by establishing the new § 561.98 to read as follows:

§ 561.98 Chlorpyrifos.

Tolerances are established for combined residues of the insecticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate) and its metabolite 3,5,6-trichloro-2-pyridinol in the following processed feeds when present therein as a result of application of this insecticide to growing sugar beets:.

Feed:	*Parts per million*
Sugar beet pulp, dried	1
Sugar beet molasses	3

[FR Doc. 79-4394 Filed 2-7-79; 8:45 am]

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER VIII—OFFICE OF ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket R-79-558]

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

Payment of Insurance Benefits

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final Rule.

SUMMARY: This rule concerns the payment of insurance benefits for projects financed with tax-exempt obligations of Public Housing Agencies with HUD-insured mortgages. Payments of benefits for those projects are to be made in full. The 1% deduction generally applied to the payment of benefits in connection with the assignment of a mortgage insured under Section 221 will not be applicable.

EFFECTIVE DATE: March 12, 1979.

FOR FURTHER INFORMATION CONTACT:

John McIlwain, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-5945.

SUPPLEMENTAL INFORMATION: On July 14, 1978, the Department of Housing and Urban Development published proposed amendments to 24 CFR Parts 221, 811, 880 and 881. These amendments relate to the tax exemption of obligations of public housing agencies under Section 11(b) of the U.S. Housing Act of 1937. This publication makes final the revision to 24 CFR 221.762, which exempts projects financed with Section 11(b) obligations and insured pursuant to Section 221 of the National Housing Act from the 1% deduction from insurance benefits prescribed in 24 CFR 207.259(b)(2)(iv).

The Department received five comments concerning this proposal. Two were unequivocally in favor of the revision. Three expressed their approval of the proposal also, and felt that it should be extended to Section 11(b) projects insured under any provision of the National Housing Act. The sixth approved of the proposal, but felt that it should be extended specifically to Section 11(b) projects insured under Section 23 (elderly).

Since Section 221 is the principal insurance program for Section 8 family projects and it is these projects that have had the greatest difficulty in obtaining good bond ratings, the amendment is not being extended at this time. The question of extending it to other programs will be considered in redrafting the Part 811 regulations.

Findings of Inapplicability with respect to Environmental Impact have been prepared in accordance with HUD Handbook 1390.1. Copies of the Findings are available for inspection in the Office of the Rules Docket Clerk at the above address.

Accordingly, 24 CFR 221.762 is amended to add a new paragraph (c):

§ 221.762 Payment of insurance benefits.

* * * * *

(c) Projects financed with section 11(b) obligations. Where the funds for a mortgage loan are provided by obligations that are tax-exempt under section 11(b) of the U.S. Housing Act of 1937 (24 CFR Part 811), the one percent deduction from insurance benefits prescribed in § 207.259(b)(2)(iv) of this chapter shall not be applicable.

(Sec. 7(d). Department of HUD Act (42 U.S.C. 3535(d)))

Issued at Washington, D.C., October 26, 1978.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 79-4282 Filed 2-7-79; 8:45 am]

[3710-08-M]

Title 32—National Defense

CHAPTER V—DEPARTMENT OF THE ARMY

[AR 210-10]

SUBCHAPTER D—MILITARY RESERVATIONS AND NATIONAL CEMETERIES

PART 552—REGULATIONS AFFECTING MILITARY RESERVATIONS

Post Commander

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This is a complete revision of § 552.18 concerning administration by post commanders. It updates and clarifies pertinent responsibilities of an installation commander. Changes have been made throughout. Specifically, it provides policy for commanders to establish procedures to ensure that when blind persons are authorized to enter military facilities, their accompanying seeing-eye or guide dogs will not be denied entry. In addition, it adds § 552.25 to the table of sections. Section 552.25, "Entry Regulations for Certain Army Training Areas in Hawaii", was published in the October 12, 1978 issue of the FEDERAL REGISTER.

EFFECTIVE DATE: June 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Colonel G. R. Iverson, Director, Community Support, Office of The Adjutant General, Headquarters, Department of the Army, Washington, DC 20314, 202-693-0841.

By authority of the Secretary of the Army:

Dated: February 1, 1979.

ROME D. SMYTH,
Colonel, U.S. Army, Director, Administrative Management, TAGCEN.

Accordingly, 32 CFR Part 552 is amended as set forth below:

1. The table of sections is amended by new § 552.25, "Entry Regulations for Certain Army Training Areas in Hawaii".

2. § 552.18 is revised to read as follows:

POST COMMANDER

§ 552.18 Administration.

(a) *Purpose.* This section outlines the duties and prescribes the general authority and general responsibilities of an installation commander.

(b) *Applicability.* The regulations in this section are applicable to installations in the United States, and where appropriate, to oversea installations. Oversea commanders should consult with the appropriate judge advocate to determine to what extent the provisions of treaties or agreements, or the provisions of local law may make inapplicable, in whole, or in part, the provisions of these regulations.

(c) *General.* The installation commander is responsible for the efficient and economical operation, administration, service, and supply of all individuals, units, and activities assigned to or under the jurisdiction of the installation unless specifically exempted by higher authority. Activities will be designated as "attached activities" only when specifically designated by higher authority. The installation commander will furnish base operation support to all Army tenant activities except when the Department of the Army has given approval for the tenant to perform base operation functions. Reimbursement for such support will be in accordance with applicable regulations.

(d) *Motor vehicle and traffic regulations.* See AR 190-5, Motor Vehicle Traffic Supervision; AR 190-5-1, Registration of Privately Owned Motor Vehicles; AR 190-29, Minor Offenses and Uniform Violation Notices—Referred to US District Courts; AR 210-4, Carpooling and Parking Controls; AR 230-14, Registration and Licensing of Nonappropriated Fund Owned Vehicles; AR 385-55, Prevention of Motor Vehicle Accidents; and AR 600-55, Motor Vehicle Driver-Selection, Testing, and Licensing. A copy of the above documents may be obtained by writing to Headquarters, Department of the Army (DAAG-PAP-W), Washington, DC 20314.

(e) *Firearms.* The installation commander will publish regulations on the registration of privately owned firearms. See AR 608-4, Control and Registration of War Trophies and War Trophy Firearms. A copy of the above document may be obtained by writing to Headquarters, Department of the Army (DAAG-PAP-W), Washington, DC 20314.

(f) *Entry, exit, and personal search.* The installation commander will establish rules that govern the entry into and exit from the installation and the search of persons and their possessions as listed in paragraphs (f) (1),(2) and (3) of this section.

(1) The installation commander may direct authorized guard personnel, while in the performance of assigned duty, to search persons (including military personnel, employees, and visitors), and their possessions (including vehicles) when entering, during their stay, or when leaving facilities for which the Army has responsibility. These searches are authorized when based on probable cause that an offense has been committed or on military necessity. Instructions of commanders regarding searches should be specific and complete. When the person to be searched is a commissioned officer, or a warrant officer, the search should be conducted in private by or under the supervision of a commissioned officer, unless such is precluded by the exigencies of the situation. When the person to be searched is a noncommissioned officer, the search should be conducted in private by or under the supervision of a person of at least equal grade, unless such is precluded by the exigencies of the situation. If the situation precludes search by or under the supervision of an officer (or noncommissioned officer, as appropriate), the person conducting the search will notify a responsible commissioned officer (or noncommissioned officer, as appropriate), as soon as possible. Persons who are entering the installation should not be searched over their objection, but they may be denied the right of entry if they refuse to consent to the search. All persons entering facilities should be advised in advance (by a prominently displayed sign, AR 420-70, (Buildings and Structures)), that they are liable to search when entering the installation, while within the confines of the installation, or when leaving (AR 190-22, Search, Seizure and Disposition of Property). A copy of the above documents may be obtained by writing to headquarters, Department of the Army (DAAG-PAP-W), Washington, DC 20314.

(2) The installation commander may authorize and control hunting and fishing on a military installation under installation rules in accordance with applicable Federal, State, and local laws and Army regulations, and in harmony with cooperative plans with appropriate State and Federal conservation agencies (AR 420-74, Natural Resources—Land, Forest, and Wildlife Management). To detect violations of these rules, special guards may be posted and authorized to search persons (or possessions, including vehicles of individuals), based on military necessity. The installation commander may eject violators of game laws or post regulations and prohibit their reentry under 18 USC 1382. Violations of State laws which apply to military reservations according to the provisions of Section 13, Title 18, USC (Assimilative Crimes Acts), may be referred to the United States Magistrate in accordance with AR 190-29, Minor Offenses and Uniform Violation Notices—Referred to United States District Courts. Reports of violations of game laws will be reported to Feder-

al or State authorities. An installation commander may not require membership in a voluntary sundry fund activity as a prerequisite to hunting and fishing on the installation. Accounting for the collection and spending of fees for hunting and fishing permits is outlined in Chapter 12, AR 37-108, General Accounting and Reporting for Finance and Accounting Offices. A copy of the above documents may be obtained by writing to Headquarters, Department of the Army (DAAG-PAP-W), Washington, DC 20314.

(3) When the installation commander considers that the circumstances warrant its use, DA Form 1818 (Individual Property Pass), will be used to authorize military and civilian personnel to carry Government or personal property onto an installation or to remove it from an installation.

(4) Commanders will establish procedures to ensure than when blind persons are otherwise authorized to enter military facilities, their accompanying seeing-eye or guide dogs will not be denied entry. Such facilities include, but are not limited to: Cafeterias, snack bars, AAFES exchanges, retail food sales stores, medical treatment facilities, and recreational facilities. Seeing-eye or guide dogs will remain in guiding harness or on leash and under control of their blind masters at all times while in the facility. For purposes of safety and to prevent possible agitation of military police working dogs, seeing-eye or guide dogs will not be allowed in or around working dog kennels and facilities.

(g) *Official Personnel Register.* DA Form 647 (Personnel Register), is a source document that will be used at the lowest level of command having responsibility for strength accounting. The official register will be used for registering military personnel on arrival at or on departure from Army installations on permanent change of station, leave, or temporary duty. DA Form 647 may also be used for recording passes, visitors, etc. Registration of visists of less than 12 hours will be at the discretion of the commander except that registrations will be required when visits are at a place where United States troops are on duty in connection with a civil disorder.

(h) *Outside employment of DA Personnel.* See paragraph 2-6, AR 600-50 Standards of Conduct for Department of the Army Personnel. A copy of this document may be obtained by writing to Headquarters, Department of the Army (DAAG-PAP-W), Washington, DC 20314.

(i) *Preference to blind persons in operating vending stands.* As used in paragraphs (i), (1), (2), and (3) below, the term "vending stand" includes shelters, counters, shelving, display and wall cases, refrigerating apparatus, and other appropriate auxiliary equipment necessary for the vending of merchandise. The term "vending machine" means any coin-operated machine that automatically vends or delivers tangible personal property.

(1) The installation commander will give preference to blind persons when granting permission to civilians to operate vending stands on installations where stands may be operated properly and satisfactorily by blind persons licensed by a State agency. Legal authority for such action is contained in the Randolph-Sheppard Vending Stand Act (20 USC 2-107 et seq.). Commanders will cooperate with the appropriate State licensing agency in selecting the type, location, or relocation of vending stands to be operated by licensed blind persons, except that preference may be denied or revoked if the commander determines that—

(i) Existing security measures relative to location of the vending stand or to the clearance of the blind operator cannot be followed.

(ii) Vending stand standards relating to appearance, safety, sanitation, and efficient operation cannot be met.

(iii) For any other reasons which would adversely affect the interests of the United States or would unduly inconvenience the Department of the Army. Issuance of such a permit will not be denied because of loss of revenue caused by granting a rent-free permit for operating a vending stand to a blind person. However, the permit will not be granted if in the opinion of the responsible commander such action would reduce revenue below the point necessary for maintaining an adequate morale and recreation program. The commander should consider the fact that funds derived from certain nonappropriated fund activities such as post exchanges, motion picture theaters, and post restaurants are used to supplement appropriated funds in conducting the morale and recreation program.

(2) The preference established in paragraph (i)(1) of this section will be protected from the unfair or unreasonable competition of vending machines. No vending machine will be located within reasonable proximity of a vending stand that is operated by a licensed blind person if the vending machine vends articles of the same type sold at the stand, unless local needs require the placement of such a machine. If such is the case, the operation of, and income from the machine, will be assumed by the blind vending stand operator.

(3) So far as is practicable, goods sold at vending stands that are operated by the blind will consist of newspapers, periodicals, confections, tobacco products, articles that are dispensed automatically or are in containers or wrappings in which they were placed before they were received by the vending stand, and other suitable articles that may be approved by the installation commander for each vending stand location.

(4) If the commanders and State licensing agencies fail to reach an agreement on the granting of a permit for a vending stand, the revocation or modification of a permit, the suitability of the stand location, the assignment of vending machine proceeds, the methods of operation of the stand, or other terms of the permit (including articles which may be sold), the State licensing agency may appeal the disagreement, through channels, to the Secretary of the Army. Appeals will be filed by State licensing agencies with the installation commander who will conduct a complete investigation and will give the State licensing agency an opportunity to present information. The report of investigation with the appeal will be forwarded through channels to Headquarters, Department of the Army (DAPE-ZA), Washington, DC 20310, as soon as possible. A final decision by the Secretary of the Army will be rendered within 90 days of the filing of the appeal to the installation commander. Notification of the decision on the appeal and the action taken will be reported to the State licensing agency, the Department of Health, Education, and Welfare, and the Department of Defense (Manpower, Reserve Affairs, and Logistics).

(j) *Solicitation on military installations.* (1) Solicitation on installations may be permitted at the discretion of the commander under the provisions of AR 210-7, Commercial Solicitation on Army Installations. A copy of the above documents may be obtained by writing to Headquarters, Department of the Army (DAAG-PAP-W), Washington, DC 20314.

(2) The solicitation by a member as an agent for another person for the sale of any commodity on a military installation is prohibited. This prohibition does not pertain to activities sponsored by or approved by an installation commander, such as thrift shops, notices on bulletin boards, or the sale of personal property on one-time basis.

(3) The solicitation of commercial life insurance will be in accordance with the provisions of Part 276 of this title.

(4) Military personnel on active duty are prohibited from personal commercial solicitation and making sales to military personnel who are junior in grade or rank. This prohibition is applicable to activities on and off an installation, while the individual is in or out or uniform, and is on or off duty, and includes, but is not limited to, the personal solicitation and sale of life

and automobile insurance, stocks mutual as a funds, real estate, or any other commodities, goods, or services. As used in subparagraph (j) of this section, "personal commercial solicitation" refers to those situations in which a military member who is employed as a sales agent on commission or salary contacts prospective purchasers and suggests that they buy the commodity, real or intangible, that he/she is offering for sale. This prohibition is not applicable to the one-time sale by an individual of his/her own personal property or privately owned dwelling. It is not the intent of this regulation to discourage the off-duty employment of military personnel, but it is the intent to eliminate any and all instances that would appear to be coercive or intimidating, or that pressure was used by rank, grade, or position.

(k) *Request from private sector union representatives to enter installations.* (1) When labor representatives request permission to enter military installations on which private contractor employees are engaged in contract work to conduct union business during working hours in connection with the contract between the government and the contractor by whom union members are employed, the installation commander may admit these representatives, provided—

(i) The presence and activities of the labor representatives will not interfere with the progress of the contract work involved; and

(ii) The entry of the representatives to the installation will not violate pertinent safety or security regulations.

(2) Labor representatives are not authorized to engage in organizing activities, collective bargaining discussions, or other matters not directly connected with the Government contract on military installations. However, the installation commander may authorize labor representatives to enter the installation to distribute organizational literature and authorization cards to employees of private contractors, provided such distribution does not—

(i) Occur in working areas or during working times;

(ii) Interfere with contract performance;

(iii) Interfere with the efficient operation of the installation; or

(iv) Violate pertinent safety or security considerations.

(3) The determination as to who is an appropriate labor representative should be made by the installation commander after consulting with his/her labor counselor or judge advocate. Nothing in this regulation, however, will be construed to prohibit private contractors' employees from distibuting organizational literature or authorization cards on installation property if such activity does not violate the conditions enumerated in paragraph (k)(2) of this section. Business offices or desk space for labor organizations on the installation is not authorized to be provided for solicitation of membership among contractors' employees, collection of dues, or other business of the labor organization not directly connected with the contract work. The providing of office or desk space for a contractor is authorized for routine functions by the working steward whose union duties are incidental to his/her assigned job and connected directly with the contract work.

(4) Only the installation commander or a contracting officer can deny entry to a labor representative who seeks permission to enter the installation in accordance with paragraph (k) of this section. If a labor representative is denied entry for any reason, such denial will be reported to the Labor Advisor, Office of the Assistant Secretary of the Army (IL&FM), Washington, DC 20310. This report will include the reasons for denial, including—

(5) The provisions of paragraphs (k), (1), (2), (3), and (4) of this section on organizations representing private contractors' employees should be distinguished from activities involving organization and representation of Federal civilian employees. See CPR 711 for the functions, duties and obligations of an installation commander regarding Federal civilian employee unions.

(l) *Publication of telephone directories.* See Chapter 5, AR 105-23. A copy of this document may be obtained by writing to Headquarters, Department of the Army (DAAG-PAP-W), Washington, DC 20314.

(m) *Observance of labor laws on military installations.* (1) Installation and activity commanders will ensure that all his/her employers on the installation or activity are apprised of their obligation to comply with Federal, State, and local laws, including those relating to the employment of child labor. When an employer who is operating on the installation or activity is responsible to an authority other than the installation or activity commander, the commander will direct that the authority's representative apprise the employer of his/her obligations regarding labor law. This applies to employers in all activities, including nonappropriated fund activities established as Federal instrumentalities according to AR 230-1, Nonappropriated Fund System, concessionaires of such activities, and other private employers. A copy of the above document may be obtained by writing to Headquarters, Department of the Army (DAAG-PAP-W), Washington, DC 20314.

(2) Installation commander will cooperate fully with state or other governmental officials who bring to their attention complaints that children are employed on military installations or reservations under conditions that are detrimental to their health, safety, education, and well-being.

(n) *Hitchhiking.* Hitchhiking is prohibited by the Army. This does not preclude acceptance of offers of rides voluntarily made by individuals or properly accredited organizations nor does it preclude the use of properly authorized and established share-the-ride or similar stations which may be sanctioned by local military authorities. For personal safety, personnel should exercise caution at facilities, for example, by accepting rides only from persons they know or by traveling in groups. Similarly, drivers should use discretion when offering rides to personnel at share-the-ride stations. Drivers are prohibited from picking up hitchhikers.

(o) *Employment of civilian food service personnel.* See AR 30-1, The Army Food Service Program. A copy of this document may be obtained by writing to Headquarters, Department of the Army (DAAG-PAP-W), Washington, DC 20314.

[FR Doc. 79-4290 Filed 2-7-79; 8:45 am]

[4910-14-M]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 78-120]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Wappinger Creek, N.Y.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Consolidated Rail Corporation, the Coast Guard is changing the regulations governing the Conrail drawbridge across Wappinger Creek by requiring that advance notice be given at all times. This change is made because of limited requests for openings of the draw. This action will relieve the bridge owner of the burden of having a person available to open the draw at all times.

EFFECTIVE DATE: This amendment is effective on March 10, 1979.

FOR FURTHER INFORMATION CONTACT:

Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-0942).

SUPPLEMENTARY INFORMATION: On September 28, 1978, the Coast Guard published a proposed rule (43 FR 44551) concerning this amendment. The Commander, Third Coast Guard District, also published these proposals as a Public Notice dated October 27, 1978. Interested persons were given until October 30, 1978 and November 27, 1978, respectively, to submit comments.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are: Frank L. Teuton, Jr., Project Manager, Office of Marine Environment and Systems, and Mary Ann McCabe, Project Attorney, Office of the Chief Counsel.

DISCUSSION OF COMMENTS

One comment was received which had no objection to the proposal.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.190(f)(2) to read as follows:

§ 117.190 Navigable waters in the State of New York and their tributaries; bridges where constant attendance of draw tenders is not required.

* * * * *

(f) * * *

(2) Wappinger Creek, N.Y.; Conrail railroad bridge at New Hamburg. The draw shall open on signal from May 15 through October 15 if at least eight hours notice is given and from October 16 through May 14 if at least 24 hours notice is given.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; (33 U.S.C. 499, 49 U.S.C. 1655(g)(2)); 49 CFR 1.46(c)(5)).

Dated: January 31, 1979.

R. M. SCARBOROUGH,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[FR Doc. 79-4397 Filed 2-7-79; 8:45 am]

[4910-14-M]

[CGD 78-181]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Illinois River, Ill.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the regulations for the Peoria Terminal Company Railroad (C.R.I. & P. Ry.) bridge, mile 153.0, Illinois River, Pekin, Illinois, because the drawbridge has been removed. Notice and public procedure have been omitted from this action due to the removal of the bridge concerned.

EFFECTIVE DATE: March 10, 1979.

FOR FURTHER INFORMATION CONTACT:

Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-0942).

DRAFTING INFORMATION: The principal persons involved in drafting this revocation of regulations are Frank L. Teuton, Jr., Project Manager, Office of Marine Environment and Systems, and Mary Ann McCabe, Project Attorney, Office of the Chief Counsel.

In consideration of the above facts, Part 117 of Title 33 of the Code of Federal Regulations is amended by:

§ 117.605 [Amended]

1. Deleting from the table in § 117.605(a) the following words: "153.0" "Peoria Terminal Company Railroad (C.R.I. & P. Ry.), Pekin, Ill." "2.4" "21.6".

2. Deleting from § 117.605(b) the following words: "the Peoria Terminal Company Railroad bridge at Pekin, Illinois;".

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; (33 U.S.C. 499, 49 U.S.C. 1655(g)(2)) 49 CFR 1.46(c)(5))

Dated: January 31, 1979.

R. H. SCARBOROUGH,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[FR Doc. 79-4398 Filed 2-7-79; 8:45 am]

[4910-14-M]

[CGD 78-112]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Sheboygan River, Wis.

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: At the request of Donohue and Associates, Inc., on behalf of the city of Sheboygan, Wis., the Coast Guard is changing the regulations governing the Eighth Street bridge across the Sheboygan River. This change is made to accommodate periods of peak vehicular traffic. This action will accommodate the needs of vehicular traffic while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment is effective on March 10, 1979.

FOR FURTHER INFORMATION CONTACT:

Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-0942).

SUPPLEMENTARY INFORMATION: On September 18, 1978, the Coast Guard published a proposed rule (43 FR 41413) concerning this amendment. The Commander, Ninth Coast Guard District, also published these proposals as a Public Notice dated October 13, 1978. Interested persons were given until October 20, 1978 and November 13, 1978, respectively, to submit comments.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are: Frank L. Teuton, Jr., Project Manager, Office of Marine Environment and Systems, and Mary Ann McCabe, Project Attorney, Office of the Chief Counsel.

DISCUSSION OF COMMENTS

No comments were received.

As published in final form, this regulation has been changed from the proposal to clarify the fact that two hours advance notice is required for bridge openings from May 1 through October 30 from 10 p.m. to 6 a.m. This more clearly reflects the present requirements of § 117.652. It does not represent a change in the regulations, merely a clarification.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.652 (a) and (b) to read as follows:

§ 117.652 Sheboygan River, Wis.; Eighth Street Bridge at Sheboygan, Wis.

(a) From May 1 through October 30, from 6 a.m. to 10 p.m., the draw shall open on signal except that:

(1) From 6 a.m. to 8 a.m., 9 a.m. to 12 noon, 1 p.m. to 4 p.m., and 6 p.m. to 7 p.m., the draw need open to navigation only on the hour, quarter-hour, half-hour, and three-quarters hours.

(2) From 8 a.m. to 9 a.m., 12 noon to 1 p.m. and 4 p.m. to 6 p.m. the draw need open to navigation only on the hour and half-hour.

(3) Public vessels, vessels in distress, and state or local government vessels used for public safety shall be passed through the draw of this bridge as soon as possible at any time even though the closed periods may be in effect. The signal from these vessels is four blasts of whistle, horn, or by shouting.

(b) At all other times the draws shall open on signal if at least two hours notice is given.

* * * * *

(Section 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; (33 U.S.C. 499, 49 U.S.C. 1655(g)(2)); 49 CFR 1.46(c)(5))

Dated: February 1, 1979.

R. H. SCARBOROUGH,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 79-4399 Filed 2-7-79; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 1055-8; PP 4F1429/R181A]

SUBCHAPTER E—PESTICIDE PROGRAMS

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

CIPC; Correction

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

ACTION: Correction.

SUMMARY: This document corrects a final rule that appeared at page 52486 in the FEDERAL REGISTER of Monday, November 13, 1978, (FR Doc. 78-31746).

EFFECTIVE DATE: Effective on February 8, 1979.

FOR FURTHER INFORMATION, CONTACT:

Mr. Edward Gross, Program Support Division (TS-757), Office of Pesticide Programs, EPA, 401 M St., SW, Washington, DC 20460 (202/755-4854).

SUPPLEMENTARY INFORMATION: In FR Doc. 78-31746 appearing at page 52486 in the issue of Monday, November 13, 1978, the analytical method was incorrectly given as colorimetry. The correct analytical method is the derivatization of 3-chloroaniline with heptafluorobutyric anhydride and determination by electron-capture gas liquid chromatography. Therefore, in line 15 of the second full paragraph in column 1 of page 52487, "(colorimetry)" is changed to read "derivatization of 3-chloroaniline with heptafluorobutyric anhydride and determination by electron capture gas liquid chromatography" * * *

Dated: February 1, 1979.

JAMES M. CONLON,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-4372 Filed 2-7-79; 8:45 am]

[6560-01-M]

[FRL 1056-7; PP 6F1745, 6F1777, & 6F1786/R186]

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

Chlorpyrifos

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

ACTION: Final Rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide chlorpyrifos on sugar beet roots and tops; sweet potatoes; and almonds, almond hulls, apples, pears, and plums (fresh prunes). The regulation was requested by Dow Chemical Co. This rule establishes maximum permissible levels for residues of chlorpyrifos on the above raw agricultural commodities.

EFFECTIVE DATE: Effective on February 8, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Frank Sanders, Product Manager (PM) 12, Registration Division (TS-757), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC 20460 (202/426-9425).

SUPPLEMENTARY INFORMATION: On March 12, 1976, June 3, 1976, and June 14, 1976, notices were given (41 FR 10709, 22409, & 23998, respectively) that Dow Chemical Corp., PO Box 1706, Midland, MI 48640, had filed pesticide petitions (PP 6F1745, 6F1777, & 6F1786, respectively) with the EPA.

These petitions proposed that 40 CFR 180.342 be amended to establish tolerances for combined residues of the insecticide chlorpyrifos (*0,0*-diethyl *0*-(3,5,6-trichloro-2-pyridyl) phosphorothioate) and its metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodities sugar beet roots at 0.2 part per million (ppm) and sugar beet tops at 0.05 ppm (PP 6F1745); almonds, apples, pears, and plums (fresh prunes) at 0.05 ppm (PP 6F1777); and sweet potatoes at 0.1 ppm. (A related document establishing a feed additive regulation from residues of chlorpyrifos in or on dried sugar beet pulp and sugar beet molasses appears elsewhere in today's FEDERAL REGISTER.) No comments were received in response to this notice of filing.

The data submitted in the petitions and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances included a two-year rat feeding/oncogenicity study and a dog feeding study with a no-observable-effect level (NOEL) of 0.1 milligram (mg)/kilogram (kg) of body weight (bw). Studies on delayed neurotoxicity and reproduction showed negative potentials. Based on the two-year chronic rat feeding study with a 0.1 mg/kg bw NOEL on cholinesterase activity and using a safety factor of 10, the acceptable daily intake (ADI) for man is 0.01 mg/kg bw/day. The theoretical maximal residue contribution (TMRC) in the human diet from the proposed tolerances and tolerances which have previously been established for residues of chlorpyrifos on a variety of raw agricultural commodities at levels ranging from 1.5 ppm to 0.01 ppm does not exceed the ADI.

Desirable data that are lacking from the petition are a teratology study and a lifetime oncogenicity study. In a letter of February 17, 1978, the petitioner indicated that the teratology study will be completed by November 1978 and the lifetime oncogenicity study is expected to be completed by May 1979. The petitioner also agreed to voluntarily delete the use of chlorpyrifos on almonds, apples, pears, plums (fresh prunes), sweet potatoes, and sugar beets from the label should the teratology and lifetime oncogenicity studies be found to exceed the risk criteria for chronic toxicity in 40 CFR 162.11. Although the oncogenicity evaluation of chlorpyrifos is not complete, it is concluded that based on the available data, the risks are acceptable since the absence of an oncogenic potential is adequately shown in the two-year rat feeding/oncogenicity study.

The metabolism of chlorpyrifos is adequately understood, and an adequate analytical method (gas chromatography) is available for enforcement purposes. No actions are currently pending against continued registration of chlorpyrifos nor are there any other relevant considerations involved in establishing the proposed tolerances. The established tolerances for residues of chlorpyrifos in milk, meat, poultry, and eggs are adequate to cover the proposed uses.

The pesticide is considered useful for the purpose for which tolerances are sought, and it is concluded that the tolerances established by amending 40 CFR 180.342 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 12, 1978, file written objections with the Hearing Clerk, EPA, Rm. M-3708, 401 M St., SW, Washington DC 20460. Such objections should be submitted in quintuplicate 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 February 8, 1979, Part 180 is amended as set forth below.

Dated: February 5, 1979.

(Sec. 408(d)(2), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)(2))).

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

Section 180.342 is amended by alphabetically inserting almonds, almond hulls, apples, pears, plums (fresh prunes) and sugar beet tops at 0.05 ppm; sugar beet roots at 0.2 ppm; and sweet potatoes at 0.1 ppm in the table to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

Commodity:	Parts per million
Almonds	0.05
Almonds, hulls	0.05
Apples	0.05
* * * * *	
Beets, sugar, roots	0.2
Beets, sugar, tops	0.05
* * * * *	
Pears	0.05
Plums (fresh prunes)	0.05
* * * * *	
Sweet potatoes	0.1

* * * * *

[FR Doc. 79-4393 Filed 2-7-79; 8:45 am]

[6560-01-M]

[FRL 1057-1; OPP-300017A]

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

Exemption from Requirement of a Tolerance for an Inert Ingredient in Pesticide Formulations

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

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for the inert ingredient 1,2-benzisothiazolin-3-one. The proposal was submitted by ICI United States. This regulation permits the use of the exempted ingredient in pesticide products.

EFFECTIVE DATE: Effective on February 8, 1979.

FOR FURTHER INFORMATION CONTACT:
Mr. David L. Ritter, Hazard Evaluation Division (TS-769), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington DC (202-426-2680).

SUPPLEMENTARY INFORMATION: On October 19, 1978, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (43 FR 48658) to amend 40 CFR 180 by exempting from tolerance requirements the inert ingredient 1,2-benzisothiazolin-3-one in pesticide formulations of *O,O*-diethyl *O*-(2-diethylamino-6-methyl-4-pyrimidinyl) phosphorothioate when applied to the raw agricultural commodity melons at no more than 0.1 percent of the formulation under provisions of Section 4(e) of the Federal Food, Drug, and Cosmetic Act. No requests for referral to an advisory committee were received by the Agency with regard to this notice.

Two comments were received in response to the notice. One comment corrected the formulation "*O,O*-diethyl *O*-(2-diethylamino-6-methyl-4-pyrimidinyl" to read "5-butyl-2-(ethylamino)-6-methyl-4(3*H*)pyrimidinone" and "1,3-Benzisothiazolin-3-one" in the proposed regulation to read "1,2-Benzisothiazolin-3-one." The other comment requested that the restrictions limiting 1,2-Benzisothiazolin-3-one to use in 5-butyl-2-(ethylamino)-6-methyl-4(3*H*)pyrimidinone when applied to melons at no more than 0.1 percent of the formulation be removed.

After consideration of the comments and evaluation of the data, the Agency has determined that the corrections should be made as indicated but that the restrictions should not be removed because a broader use of 1,2-benzisothiazolin-3-one will require additional information not available at this time, Therefore, until such time as the additional information has been received and evaluated, it is concluded that the exemption from the requirement of a tolerance should be established as proposed in the FEDERAL REGISTER of October 19, 1978, with corrections and that the amendment to the regulations will protect the public health.

Any person adversely affected by this regulation may, on or before March 12, 1979, file written objections with the Hearing Clerk, EPA, Room M-3708, 401 M Street, SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and should specify both 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 February 8, 1979, Part 180, Subpart D, is amended as set forth below.

Dated: February 5, 1979.

(Sec. 408(e), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).

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

Part 180, subpart D, is amended by adding the new section 180.1044 to read as follows:

§ 180.1044 1,2-Benzisothiazolin-3-one; exemption from the requirement of a tolerance.

1,2-Benzisothiazolin-3-one is exempt from the requirement of a tolerance when used as a preservative-stabilizer in formulations of 5-butyl-2-(ethylamino)-6-methyl-4 (3*H*) pyrimidinone when applied to the raw agricultural commodity melons at no more than 0.1 percent of the formulation.

[FR Doc. 79-4395 Filed 2-7-79; 8:45 am]

[6560-01-M]

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

[FRL 1040-7]

PART 440—ORE MINING AND DRESSING POINT SOURCE CATEGORY

Clarification of Regulations

AGENCY: Environmental Protection Agency.

ACTION: Clarification of effluent guideline limitations.

SUMMARY: This notice is to clarify the scope and intent of the provisions governing storm water which were promulgated as part of the effluent guideline limitations for the Ore Mining and Dressing Point Source Category on July 11, 1978 (43 FR 29771). Its purpose is to make it clear that those provisions do not apply to diffuse storm water and runoff, but apply only to point source discharges. The agency believes this clarification to be necessary because, after promulgation of the regulations, it was brought to EPA's attention that the provisions are capable of being inter-

preted in a manner not consistent with their intent.

DATE: The regulations in this part were effective on July 11, 1978.

FOR FURTHER INFORMATION CONTACT:

Barry S. Neuman, Office of General Counsel, Water and Solid Waste Division (A-131), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-755-0753.

On July 11, 1978, effluent guideline limitations were promulgated for the Ore Mining and Dressing Point Source Category. 43 FR 29771 (1978). With respect to the Base and Precious Metals Subcategory established thereunder, these regulations provide, in part:

"There shall be no discharge of process waste water from mines and mills which employ dump, heap, in situ or vat-leach processes for the extraction of copper from ores or ore waste materials [in net evaporation areas]." 43 FR at 29775, § 440.22(a)(3) (1978).

The regulations also contain a provision of general applicability that:

"Any excess water, resulting from rainfall or snowmelt, discharged from facilities designed, constructed and maintained to contain or treat the volume of water which would result from a 10-year 24 hour precipitation event shall not be subject to the limitations set forth in 40 CFR 440." 43 FR at 29777-78, § 440.81(c) (1978).

The term "ten-year 24-hour precipitation event" is defined, in turn, as:

"the maximum 24-hour precipitation event with a probable re-occurrence interval of once in 10 years as defined by the National Weather Service and Technical Paper No. 40, 'Rainfall Frequency Atlas of the U.S.,' May 1961, and subsequent amendments, or equivalent regional or rainfall probability information developed therefrom." 43 FR at 29778, § 440.82(d).

After the promulgation of the regulations, it was suggested that the above provisions are ambiguous in several respects, and that, when the provisions are read together, they may be interpreted in a manner not consistent with their intent. This clarification is intended to remove such ambiguity.

The regulations are not intended to require the operator to collect and contain diffuse storm runoff which would not otherwise be collected in or does not otherwise drain into a point source. Rather, the regulations are concerned with water that has been collected. For example, the regulations would apply to process water, impregnated with metal values, that the operator has collected in holding facilities after application to the leach dump. The regulations require that water containing such contaminated leach solutions not be discharged.

The regulations also are meant to apply to storm precipitation and runoff which may, on occasion, drain into or be channeled to the holding facility, and commingle with the leach solution. The regulations govern storm precipitation and runoff which enters such a holding facility, and it is in this context that the 10-year 24-hour storm provision applies.

Taken together, then, the regulations are intended to require that, if a holding facility in which contaminated leach solution is held is designed, constructed and maintained to hold a volume of water equal to (1) all process water applied by the operator to an active leach area plus (2) a volume of storm water which, during a 10-year 24-hour storm event, falls on the area which drains into such holding facility and precipitates directly on such facility, then any excess water discharged from the holding facility as a result of the rainfall or snowmelt is not subject to the no-discharge requirement and may be discharged.

A question has also been raised with respect to the interrelationship of the 10-year 24-hour storm provision and effluent limitations governing mine drainage set forth at 43 FR at 29775, § 440.22(a)(1).

The term "mine drainage" is defined as "any water drained, pumped or siphoned from a mine." 43 FR at 29778, § 440. 82(c) (1978). The term "mine" is defined as:

"an active mining area, including all land and property placed upon, under or above the surface of such land, used in or resulting from the work of extracting metal ore from its natural deposits by any means or method * * *" *Id;* § 440.82(b).

"Active mining area", in turn, is deifned as:

"A place where work or other activity related to the extraction, removal or recovery of metal ore is being conducted * * *" *Id.*, § 440.82(a).

Thus, the regulations distinguish between active mining areas and areas where leaching activities are carried on.

Under the regulations, mine drainage is intended to include all water which contacts an "active mining area * * *" and which naturally flows into a "point source"—that is, a discernible, confined and discrete conveyance—or is collected in, or channeled or diverted to, a point source as a result of acts of the mine operator. All water which contacts an "active mining area * * *" and either does not flow, or is not channeled by the operator, to a point source, is considered runoff, and it is not the regulations' intent to require the mine operator to collect and treat such runoff.

This requirement, however, must also be read in conjunction with the 10-year 24-hour storm provision set forth at § 440.81(c). If an impoundment, holding or treatment facility is designed, constructed and maintained to contain or treat the volume of mine drainage which would result from a 10-year 24-hour precipitation event, excess water discharged from such facility as a result of rainfall or snowmelt is not subject to the regulations. Again, "mine drainage" as used in the preceding sentence means water which contacts an "active mining area * * *" and either flows, or is diverted or channeled by the operator to, a point source.

Thus, the regulations were and are not intended to require the mine operator to collect and treat diffuse runoff which contacts an "active mining area * * *" and is not presently discharged from or collected in a point source.

The foregoing explanation applies to the requirements of the promulgated effluent limitations; the appropriate permitting authority, of course, retains the authority, under various provisions of the Clean Water Act, to impose more stringent requirements. In addition, storm runoff not covered by these regulations may be subject to the provisions of Section 304(e) of the Clean Water Act.

For further information contact: Barry S. Neuman, Office of General Counsel, Water and Solid Waste Division (A-131), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, 202-755-0753.

Dated: February 2, 1979.

BARBARA BLUM,
Acting Administrator.

[FR Doc. 79-4431 Filed 2-7-79; 8:45 am]

[6820-24-M]

Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER E—SUPPLY AND PROCUREMENT

[FPMR Amdt. E-229]

PART 101-25—GENERAL

Subpart 101-25.3—Use Standards

ACQUISITION AND USE OF ELECTRIC TYPEWRITERS

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation requires agencies to establish definitive policies, procedures, and limitations for the acquisition and use of electric typewriters to ensure that agencies procure only the lowest priced electric

typewriters necessary to meet their needs. A review of agency procurement practices indicated that the changes in this regulation were necessary.

EFFECTIVE DATE: February 8, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. John I. Tait, Director, Regulations and Management Control Division, Office of the Executive Director, Federal Supply Service, General Services Administration, Washington, DC 20406 (703-557-1914).

SUPPLEMENTARY INFORMATION: Notice of a proposal to amend the Federal Property Management Regulations to require agencies to establish specific standards for the acquisition and use of electric typewriters was published in the FEDERAL REGISTER on September 7, 1977 (42 FR 44823). Suggestions received pursuant to that notice were evaluated and, where feasible, are reflected in this final rule.

Each agency shall forward a copy of its implementing regulation required by § 101-25.302-3(a) to the General Services Administration, Office of Acquisition Policy (mailing address: General Services Administration (AP), Washington, DC 20405), by May 9, 1979.

The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

Section 101-25.302-3 is revised as follows:

§ 101-25.302-3 Electric typewriters.

(a) Each executive agency shall establish definitive policies, procedures, and standards for the acquisition and use of electric typewriters in consonance with the requirement to provide each typing station with the lowest cost electric typewriter that will meet minimum needs. Procurement of all electric typewriters shall be in accordance with the provisions of §§ 101-26.408-2 through 101-26.408-4 concerning acquisition of the lowest delivered price item from multiple-award Federal Supply Schedule contracts. Typewriters with specialized, elaborate, or sophisticated features shall be acquired only if they are the lowest priced available typewriters with or without those features, or if those features are indispensable to perform the required work. Approval for acquiring typewriters in the latter category shall be granted only as provided in paragraph (b) of this section.

(b) When establishing standards for determining the typewriter to be acquired, the following criteria shall be used:

(1) Generally, the acquisition of typewriters shall be limited to standard-type-bar, single-pitch machines or single-element machines. Agencies should establish minimum daily usage factors for acquisition of each special feature exceeding this description.

(2) Acquisition of typewriters with special features required for unique functions shall be justified in writing by the head of the agency or an authorized representative of the head of the agency, and that justification shall be made a part of the purchase file. Special features on typewriters include but are not limited to the following:

(i) Decimal tab keys or statistical keyboard;

(ii) Multiple-pitch capability; and

(iii) Proportional spacing.

(3) The acquisition of typewriters must reflect the work requirements of the office. For example, if 20 percent of the typing workload requires the use of typewriters with multiple pitch, then 100 percent of the typewriters need not have that particular feature.

(4) Typewriters with self-correcting features should not be considered economical unless a high percentage of the work necessitates first-time original copies.

(5) Whenever practicable, typewriters with specialized features should be pooled within an activity and made available if the features are used only occasionally.

(6) Typewriters with internal memory that do not record on movable magnetic media shall be acquired under the provisions of Subpart 101-11.9.

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

Dated: January 23, 1979.

JAY SOLOMON,
Administrator of General Services.

[FR Doc. 79-4293 Filed 2-7-79;8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19528; Docket No. 20774; Docket No. 21182; RM-2829; FCC 79-38]

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

New or Revised Classes of Interstate and Foreign Message Toll Telephone Service (MTS) and Wide Area Telephone Service (WATS); Specifying Standard Plugs and Jacks for the Connection of Telephone Equipment to the Nationwide Telephone Network; Specifying Standards for and Means of Connection of Telephone Equipment to Lamp and/or Annunciator Functions of Systems

AGENCY: Federal Communications Commission.

ACTION: Reconsideration of Rule Making; Adoption of Final Rules.

SUMMARY: The Commission resolved all outstanding petitions seeking reconsideration of decisions involving interconnection of telephone terminal equipment and systems to the telephone network, in Dockets Nos. 19528, 20774 and 21182. Briefly, this unified order affirms the basic policies of the telephone equipment registration program and its Part 68 (of the FCC's rules) rules, while increasing manufacturers' and consumers' flexibility in such areas as: allowing the use of extension cords; allowing licensed professional engineers to supervise wiring installation (in addition to supervisors who have authority from equipment manufacturers); removing equipment-room wiring from certain limitations; and adopting a new procedure for using "standard" plug/jack configurations.

EFFECTIVE DATE: March 9, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Michael S. Slomin, Policy and Rules Division, Common Carrier Bureau (202-632-9342).

SUMMARY MEMORANDUM OPINION AND ORDER [1]

In the matters of Proposals for New or Revised Classes of Interstate and Foreign Message Toll Telephone Service (MTS) and Wide Area Telephone

[1] Because of the length of the Memorandum Opinion and Order, it has not been published in the FEDERAL REGISTER, though it is on file. Copies of the original can be obtained from FCC's Public Information Office, Room No. 202, 1919 M St., N.W., Washington, D.C. 20554 (202) 632-7260.

Service (WATS); Docket No. 19528, 43 FR 16480, April 19, 1978; Revision of Part 68 of the Commission's Rules to Specify Standard Plugs and Jacks for the Connection of Telephone Equipment to the Nationwide Telephone Network; Docket No. 20774, 42 FR 12056, March 2, 1977; and Amendment of Part 68 of the Commission's Rules (Telephone Equipment Registration) to Specify Standards for and Means of Connection of Telephone Equipment to Lamp and/or Annunciator Functions of Systems, Docket No. 21182, 43 FR 16519, April 19, 1978, RM-2829.

The Commission has resolved all outstanding petitions for reconsideration in its three telephone equipment registration proceedings and adopted changes to increase consumer flexibility and the options available to equipment manufacturers and suppliers.

It said that over the past several years it had established a telephone equipment registration program that allowed consumers to use a broad variety of telephone equipment while providing appropriate protection of the nationwide telephone network from harm.

The Commission noted that Docket 19528 was the primary vehicle for adoption of this program and the program was implemented in three basic orders.

In the 1975 First Report, the program was initially made applicable to extension telephones, data equipment and ancillary equipment. In the 1976 Second Report, the program was extended to encompass main telephones, Private Branch Exchange (PBX) and key telephone systems, although because of outstanding issues related to protecting the network from premises wiring aberrations, only interim procedures were adopted in that order. In the 1978 Third Report, more comprehensive procedures were adopted for PBX and key telephone system registration and for their related premises wiring.

Because appellate litigation was pending on the Docket 19528 decisions, the Commission said, several allied proceedings addressing related matters were established. Thus, it said, while Docket 19528 adopted a policy of requiring FCC-registered equipment to be connected using standard plugs and jacks, the actual plugs and jacks were adopted in another proceeding, Docket 20774.

Similarly, the Commission said, while Docket 19528 adopted a policy of limiting the registration program to connections to the telephone network, another proceeding, Docket 21182, addressed whether the program should be extended in scope to encompass connections to other equipment.

The Commission said while the three proceedings had been treated as procedurally distinct, they did to some extent address common issues.

The Commission noted it had four goals in mind in the registration program:

—Assurance of adequate protection of the telephone network;
—Minimization of governmental intrusion into the equipment design, innovation and installation process;
—Promotion of the use of informal, industry-wide processes, where feasible to resolve technical issues; and
—Maximization of consumer flexibility and choice.

With these concepts in mind, the Commission said it would not expand the scope of the registration program in the Docket 21182 decision to directly encompass equipment-to-equipment connections, although it would make a very limited class of "components"—extension cords, adapters and patching panels—directly encompassed by the registration program to promote consumer flexibility.

It also adopted a new tariff mechanism as an alternative to the present approach of specifying "standard" plug/jack configurations in the rules. It said although the present approach worked, every time a new configuration was desired by the industry, a lengthy rulemaking process had to be initiated. The FCC said the new method would permit a new configuration to be used in a matter of weeks, if there was no controversy over it.

The Commission said the petitions and comments indicated that the Third Report's technical standards for premises wiring were practical and reasonable. It pointed out no party had claimed they were in any way burdensome and only minor perfecting changes were proposed. The Commission said it would adopt only those changes that would promote flexibility and innovation. Therefore, it specified that wiring used in equipment rooms, to which the general public has no access, would be exempted from some of the limitations of the rules.

The FCC said the only issue over which there was controversy concerned the institutional incentives that were adopted in the Third Report to assure that individual installations of premises wiring in fact conformed to the Commission's rules. It noted the Third Report adopted several complementary approaches to premises wiring. Basically, it said, an equipment manufacturer may choose to design equipment so that the wiring cannot affect the telephone network, or it may choose not to do so. If the manufacturer makes the latter choice and thereby exposes the telephone network electrically to the wiring itself, certain controls over the wiring are warranted. One such set of controls was a definition of acceptable technical standards, specified in Part 68 of the rules. Another such set of controls was procedures that assure that the wiring in fact would conform to the stated technical standards.

The FCC said the Third Report adopted an approach of establishing institutional incentives toward proper wiring. The equipment's manufacturer is required, in effect, to license installation supervisors by granting authority to assure that the wiring will conform to Commission rules.

The Commission said that rather than using government controls over the adequacy of installation personnel, it created an environment where registrants would select appropriately-trained personnel who are competent to assure installation consistent with the technical standards in the FCC's rules, to assure adequate network protection with minimal government interference with efficient equipment design and installation techniques.

The Commission said comments filed indicated that in the time period shortly after the Third Report was released, several equipment manufacturers appeared to be unwilling to extend the authority required in the rules of assuring proper wiring if their equipments were not inherently protective. Because of this, the FCC said, the comments requested that this element of the Third Report's program of controls over wiring be deleted.

The Commission pointed out, however, that:

—Proponents of deletion of that section of the rules offered no alternative proposal that would adequately create the desired incentives toward proper wiring;
—The potential for network harm from wiring that is performed improperly is high because of the wiring's physical exposure to commercial power wiring and grounded surfaces;
—Equipment manufacturers are now apparently entering the rule-required relationships, which indicates that the requirement is not unworkable; and
—If, as proponents of deleting that section of the rules are claiming, wiring poses no real danger to the telephone network, they should not be at all reluctant to indirectly accept limited responsibility for premises wiring.

The Commission said it would adopt an alternative to the existing supervisor/manufacturer relationship which will create a similar incentive toward proper wiring, and allow consumers an alternative method of dispensing with unnecessary protective apparatus if a particular manufacturer is no longer

in business, or if it chooses not to enter the required relationship with an installation supervisor. The new alternative allows a professional engineer licensed in the state where the wiring is performed to supervise and certify the wiring's adequacy.

It noted that this new alternative would meet all the registration program's objectives because a licensed professional engineer would have ample technical ability to use and interpret the FCC's wiring technical requirements, and the possibility of professional liability or loss of the professional license would create the desired incentives towards proper wiring. Moreover, engineer licensing by the states is already in place and does not require establishment of new bureaucracies or expansion of government intrusion in this field.

In sum, the Commission said the amendments it was adopting would result in no material changes in its policies concerning terminal equipment and system registration. It said that the changes adopted would increase consumer flexibility and the options available to equipment manufacturers and suppliers. It said it would be promoting industry-wide cooperation and installation efficiency by establishing the new mechanism whereby "standard" plug/jack configurations could be adopted and used expeditiously, rather than after months of formal rulemaking.

Finally, the Commission extended the transition period during which nonregistered "grandfathered" communications systems such as PBX and key telephone systems could continue to be installed, in recognition that the present period was too short. Also, the Commission changed the date for eligibility for transition period procedures to coincide with the effective date of the Third Report. The transition period will now end on January 11, 1980. PBX and key telephone systems are now eligible if of a type similar to designs connected to the telephone network as of June 1, 1978.

This action, which amends Part 68 of the rules becomes effective March 9, 1979.

(Secs. 1, 2, 4, 201-205, 208, 215, 218, 313, 314, 403, 404, 410, 602; 48 Stat as amended; 1064, 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 152, 154, 201-205, 208, 215, 213, 313, 314, 403, 404, 410, 602.)

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO.
Secretary.

Part 68 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. In § 68.2, paragraph (c) is amended as follows:

§ 68.2 Scope.

* * * * *

(c) *Grandfathered systems (including, but not limited to, PBX and key telephone systems).* (1) Entire systems, including their equipment, premises wiring, and protective apparatus (if any) directly connected to the telephone network on June 1, 1978, may remain connected to the telephone network for life without registration, unless subsequently modified, except for modifications allowed under § 68.2(c)(3).

(2) New installations of equipments may be performed (including additions to existing systems) up to January 1, 1980 without registration of any equipments involved. *Provided,* That these equipments are of a type directly connected to the telephone network as of June 1, 1978. These equipments may remain connected to the telephone network for life without registration, unless subsequently modified, except for modifications allowed under § 68.2(c)(3).

(3) Modifications to systems and installations involving unregistered equipment:

(i) Use of other than fully-protected premises wiring is a modification under § 68.2. As an exception to the general requirement that no modification is permitted to unregistered equipment whose use is permitted under § 68.2 certain modifications are authorized herein.

(ii) Other than fully-protected premises wiring may be used if it is qualified in accordance with the procedures and requirements of 68.215. Since there is no "registrant" of unregistered equipment, the training and authority required by § 68.215(c) will have to be received from the equipment's manufacturer.

(iii) Existing separate, identifiable and discrete protective apparatus may be removed, or replaced with apparatus of lesser protective function, provided that any premises wiring to which the telephone network is thereby exposed conforms to § 68.2(c)(ii) above. Minor modifications to existing unregistered equipments are authorized to facilitate installation or premises wiring, so long as they are performed under the responsible supervision and control of a person who complies with § 68.215(c). Since there is no "registrant" of unregistered equipment, the training and authority required by § 68.215(c) will have to be received from the manufacturer of the equipment so modified.

2. In § 68.3 (Definitions), paragraph (1), sub-section (1) is amended as follows:

§ 68.3 Definitions.

* * * * *

(1) *Premises Wiring.* * * *

(1) *Fully-Protected Premises Wiring.* Premises wiring which is either:

(i) No greater than 25 feet in length (measured linearly between the points where it leaves equipment or connector housings) and registered as a component of and supplied to the user with the registered terminal equipment or protective circuitry with which it is to be used. Such wiring shall either be pre-connected to the equipment or circuitry, or may be so connected by the user (or others) if it is demonstrated in the registration application that such connection by the untrained will not result in harm, using relatively fail-safe means.

(ii) A cord which complies with the previous sub-section and which is extended *once* by a connectorized FCC-registered extension cord which itself complies with the previous sub-section. Extension cords may not be used as a substitute for wiring which for safety reasons should be affixed to or embedded in a building's structure.

(iii) Wiring located in an equipment room with restricted access, provided that this wiring remains exposed for inspection and is not concealed or embedded in the building's structure, and that it conforms to § 68.215(d).

(iv) Electrically behind registered (or grandfathered) equipment, system components or protective circuitry which assure that electrical contact between the wiring and commercial power wiring or earth ground will not result in hazardous voltages or excessive longitudinal imbalance at the telephone network interface.

3. Section 68.104(c), previously reserved, is hereby adopted as follows:

§ 68.104 Means of connection.

* * * * *

(c) *Tariff Description.* As an alternative to description in Subpart F of these rules, connections to the telephone network may be made through standard plugs, and standard telephone company-provided jacks or equivalent described in nationwide telephone tariffs: *Provided,* That these means of connection otherwise comply with paragraphs (a) and (b) of this section.

4. Section 68.200 is amended by adding a new paragraph (h), as follows:

§ 68.200 Application for equipment registration.

* * * * *

(h) Abbreviated registration requirements for extension cords, cross-connect panels, and adapters:

(1) An extension cord consists of a male connector, a female connector, and wiring between them which is no longer than 25 feet in length. A cross-connect panel consists of a male connector, a female connector (or multiples thereof) and relatively fail-safe means for achieving cross connections of tip/ring and other pairs carried on the connectors; such means shall be switches, pluggable devices, or patch cords (or equivalent), and shall be so insulated as to not expose telephone network connections (or points having a conducting path thereto) excessively. An adapter consists of a male connector (non-standard) and a female connector (standard) housed in one mechanical assembly.

(2) Devices which are eligible for registration under this sub-section must be passive, contain no sources of power, and through internal switching or internal conductive paths create only open-circuited or short-circuited states.

(3) These devices need only be evaluated for compliance with §§ 68.304 and 68.130, under the stresses specified in § 68.302. Extension cords shall be considered "hand-held items normally used at head height." Electrical stresses and longitudinal imbalance testing should be applied with the following terminations substituted for the equipment with which these devices are used:

(i) Longitudinal surges, longitudinal imbalance. Open circuit; and 600 ohms metallic resistance with 150 ohms longitudinal resistance.

(ii) Metallic surges. Open circuit; and 600 ohms metallic resistance.

(4) These devices need not be labelled as specified in § 68.300 if they are identified as follows. They may be identified either on an outside surface, or on a tag which is permanently affixed to an outside surface, with the following information: "FCC Registration Number ———." (The proper number should be included.)

5. In § 68.215, paragraph (c) is amended by adding a new subparagraph (4), and paragraphs (d) and (e) are amended to read as follows:

§ 68.215 Installation of other than "fully protected" premises wiring.

* * * * *

(c) * * *

(4) Or, in lieu of paragraph (c)(1)-(3) of this section, is a licensed professional engineer in the jurisdiction in which the installation is performed.

(d) *Workmanship and material requirements*—(1) *General.* Wiring shall be installed so as to assure that there is adequate insulation of telephone wiring from commercial power wiring and grounded surfaces. Wiring is required to be sheathed in an insulating jacket in addition to the insulation enclosing individual conductors (see below) unless located in an equipment enclosure or in an equipment room with restricted access; it shall be assured that this physical and electrical protection is not damaged or abraded during placement of the wiring. Any intentional removal of wiring insulation (or a sheath) for connections or splices shall be accomplished by removing the *minimum* amount of insulation necessary to make the connection or splice, and insulation equivalent to that provided by the wire and its sheath shall be suitably restored, either by placement of the splices or connections in an appropriate enclosure, or equipment rooms with restricted access, or by using adequately-insulated connectors or splicing means.

(2) *Wire.* Insulated conductors shall have a jacket or sheath with a 1500 volt rms minimum breakdown rating, except when located in an equipment enclosure or an equipment room with restricted access. This rating shall be established by covering the jacket or sheath with at least six inches (measured linearly on the cable) of conductive foil, and establishing a potential difference between the foil and all of the individual conductors connected together, such potential difference gradually increased over a 30 second time period to 1500 volts rms, 60 Hertz, then applied continuously for one minute. At no time during this 90 second time interval shall the current between these points exceed 10 milliamperes peak.

NOTE.—This requirement is patterned after § 68.304.

(3) *Places where the jacket or sheath has been removed.* Any point where the jacket or sheath has been removed (or is not required) shall be accessible for inspection. If such points are concealed, they shall be accessible without disturbing permanent building finish (e.g. by removing a cover).

(4) * * *

(5) * * *

NOTE.—The total current in all conductors of multiple conductor cables may not exceed 20% of the sum of the individual ratings of all such conductors.

(6) * * *

(e) *Documentation requirements.* A notarized affidavit and one copy thereof shall be prepared by the installation supervisor in advance of each operation associated with the installation, connection, reconfiguration and removal of other than fully-protected premises wiring (except when accomplished functionally using a cross-connect panel), except when involved with removal of the entire premises communications system using such wiring. This affidavit and its copy shall contain the following information:

(1) * * *

(2) The name of the registrant(s) (or manufacturer(s), if grandfathered equipment is involved) of any equipment to be used electrically between the wiring and the telephone network interface, which does not contain inherent protection against hazardous voltages and longitudinal imbalance.

(3) A statement as to whether the supervisor complies with § 68.215(c). Training and authority under § 68.215(c)(2)-(3) is required from the registrant (or manufacturer, if grandfathered equipment is involved) of the first piece of equipment electrically connected to the telephone network interface, other than passive equipments such as extensions, cross-connect panels, or adapters. In general, this would be the registrant (or manufacturer) of a system's common equipment.

(4) * * *

(5) * * *

(6) * * *

(7) The manufacturer(s); a brief description of the wire which will be used (model number or type); its conformance with recognized standards for wire if any (*e.g.*, Underwriters Laboratories listing, Rural Electrification Administration listing, "KS-" specification, etc.); and a general description of the attachment of the wiring to the structure (*e.g.*, run in conduit or ducts exclusively devoted to telephone wiring, "fished" through walls, surface attachment, etc.).

(8) * * *

(9) * * *

* * * * *

6. Section 68.304 is amended by revising note (a) thereto, and by adding a new note (e), as follows:

§ 68.304 Leakage current limitations.

NOTES

(a) If, in any operational state, one of the telephone connections or auxiliary leads has an intentional conducting path to earth ground, that lead may be excluded from the leakage current test in that operational state. Connections excluded for this reason must comply with the requirements of § 68.306(c) in addition to other applicable rules. However, leakage current tests between telephone connections and auxiliary leads are required unless both points have intentional conducting paths to earth ground.

* * * * *

(e) For multiple-unit equipment interconnected by cables, which is evaluated and registered as an interconnected combination or assembly, the specified 10 milliamperes peak maximum leakage current limitation,

other than between power connection points and other points, may be increased as described here to accomodate cable capacitance. The leakage current limitation may be increased to (10N+0.04L) milliamperes, peak, where L is the length of interconnecting cable in the leakage path in feet, and N is the number of equipment units which the combination or assembly will place in parallel across a telephone connection. However, all combinations of electrical connections requiring this increased leakage current limitation and involving point (3) surfaces (exposed conductive surfaces) must comply with the requirements of § 68.306(c) in addition to other applicable rules.

7. Section 68.306(a) is amended by adding additional language, as follows:

§ 68.306 Hazardous voltage limitations.

(a) *General.* Under no condition of failure of registered terminal equipment or registered protective circuitry, or of equipment connected thereto, which can be conceived to occur in the handling, operation or repair of such equipment or circuitry, shall the open circuit voltage on telephone connections or auxiliary leads exceed 70 volts peak for more than one second, except for voltages for network control signaling and supervision, which in any case, should be consistent with standards employed by the telephone companies.

* * * * *

8. Section 68.502 is amended to delete several sub-sub-sections, as follows:

§ 68.502 Configurations.

(b) *Series configurations.* * * *
(6) [Deleted]
(e) *Data configurations.* * * *
(7) [Deleted]
(8) [Deleted]

[FR Doc. 79-4413 Filed 2-7-79; 8:45 am]

[6712-01-M]

PART 73—RADIO BROADCAST SERVICES

Reregulation of Radio and TV Broadcasting; Correction

AGENCY: Federal Communications Commission.

ACTION: Correction—Final Rules.

SUMMARY: This erratum is issued to correct Section 73.99, to delete incorrect text which reads "See § 73.1735", and to insert paragraphs (a) through (i)—the entire text of the rule—which was inadvertently omitted, as adopted on September 22, 1978, and published in the FEDERAL REGISTER on October 4, 1978, at 43 FR 43852.

EFFECTIVE DATE: November 1, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Steve Crane, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

In the matter of reregulation of radio and TV broadcasting. Erratum.

Released: February 1, 1979.

In the above-captioned *Order,* FCC 78-681, adopted September 22, 1978, and published in the FEDERAL REGISTER on October 4, 1978, at 43 FR 45842, the text of Section 73.99 in paragraph 24 of Appendix A is incorrectly stated as "See § 73.1735." It should be corrected to read:

§ 73.99 Presunrise service authorizations (PSA).

(a) In order to afford the maximum uniformity in early morning operations compatible with interference considerations, the following classes of AM broadcast permittees and licensees are eligible to request presunrise service authority (PSA):

(1) Class II stations operating on clear channels, except those operating on Canadian I-A clear channels and those located east of cochannel U.S. Class I-A stations.

(2) Class III stations.

(b) When issued, a PSA will permit:

(1) Class II stations operating on Mexican and Bahamian I-A clear channels to commence operation with their daytime antenna systems at 6 a.m. local time, and to continue such operation until the sunrise times specified in their basic instruments of authorization; and other Class II stations, where eligible under paragraph (a)(1) of this section, to commence operation with their daytime or critical hours antenna systems either at 6 a.m. local time, or at the time of sunrise at the westernmost Class I station located east of the Class II station (whichever is later), and to continue such operation until the sunrise times specified in their basic instruments of authorization: *Provided,* That the permissible power to be specified in the PSA shall not exceed 500 watts (or the authorized daytime or critical hours power, if less than 500 watts), or such lesser power as may be determined by computations made pursuant to paragraph (c) of this section.

(2) Class III stations to commence operation with their daytime antenna systems at 6 a.m. local time, and to continue such operation until local sunrise: *Provided,* That the permissible power, to be specified in the PSA, shall not exceed 500 watts or such lesser power as may be determined on the basis of calculations made pursuant to paragraph (c) of this Section.

(c) Notwithstanding the provisions of §§ 1.571 and 1.580 of this chapter, requests for PSA's shall be treated as proposals for minor changes in existing facilities and, as such, are not subject to the procedural requirements or remedies applicable to applications for new facilities and major changes therein. PSA requests shall be submitted by letter, signed in the manner specified in § 1.513 of this chapter, with the following information:

(1) Name, call letters, and station location.

(2) For Class II stations operating on clear channels other than Class I-A clear channels, a showing that objectionable interference as determined by the Standard Broadcast Technical Standards (§§ 73.182 to 73.190), or by the engineering standards of the NARBA (whichever is controlling), will not be caused within the 0.5 mV/m 50 percent skywave contour of any domestic Class I-B stations, or of a Class I-B station in any country signatory to the NARBA, where the Class II stations are located east of the Class I-B station; for Class II stations operating on Mexican Class I-A clear channels, and for Class II stations located east of co-channel Mexican Class I-B stations, a showing under the engineering standards of the United States/Mexican Agreement that the Class II station does not produce a signal in excess of 25 uV/m 10 percent skywave at any point on the co-channel Mexican Class I station's 0.5 mV/m 50 percent skywave contour which falls on Mexican territory, or more than 50 uV/m 10 percent skywave at any point on the Mexican border or boundary where the signal of the Mexican Class I station exceeds 0.5 mV/m 50 percent skywave in strength. In addition, the applicant must show that foreign Class II stations (if any) assigned to the same channel as the U.S. Class II station will receive full protection under the standards for nighttime operation set forth in the applicable agreement. If the foregoing protections cannot be achieved by the Class II station while operating with 500 watts, a showing may be submitted to establish the level to which power must be limited to preclude objectionable interference: *Provided,* That, in relation to Canadian Class II stations, the permissible power level may be established in the manner described in paragraph (c)(3) of this section by the use of Figure 12 of § 73.190.

NOTE: PSA applicants for the Bahamian I-A clear channel (1540 kHz) need not submit the nighttime interference study required of other PSA applicants under this subparagraph. Instead, the FCC will assign a power and time of commencement of presunrise operation consistent with the provisions of the U.S.-Bahamian presun-

rise agreement (1974) and the protection requirements of U.S. I-B and foreign Class II full-time station assignments on this frequency.

(3) For Class III stations, a showing that co-channel stations in foreign countries will receive full treaty protection. If such protection cannot be achieved on the basis of 500-watt operation, calculations may be submitted to establish the level to which power must be reduce to preclude objectionable interference: *Provided,* That, with respect to Canadian Class III stations, such power level may be established by a showing that the radiation at the pertinent vertical angle toward co-channel Canadian stations does not exceed that defined in Figure 12 of § 73.190. If the latter showing cannot be made on the basis of 500-watt operation, calculations may be submitted to establish the level to which power must be reduced in order to limit radiation at the pertinent vertical angle to the values specified in Figure 12 of § 73.190.

(4) A description of the method whereby any proposed power reduction will be achieved.

(d) Calculations made under paragraph (c) of this section shall not take outstanding PSA's into account, nor shall the grant of a PSA confer any degree of interference protection on the holder thereof.

(e) Operation under a PSA is not mandatory, and will not be included in determining compliance with the requirements of § 73.71. To the extent actually undertaken, however, presunrise operation will be considered by the FCC in determining overall compliance with past programming representations and station policy concerning commercial matter.

(f) The PSA is secondary to the basic instrument of authorization and may be suspended, modified, or withdrawn by the FCC without prior notice or right to hearing, if necessary to resolve interference conflicts, to implement agreements with foreign governments, or in other circumstances warranting such action.

(g) The PSA will be issued for a term coinciding with the current basic instrument of authorization and, unless surrendered by the holder or suspended, modified or withdrawn by the FCC will have continuing or renewed effect under succeeding instruments.

(h) The issuance of a PSA is intended to indicate the waiver of §§ 73.45, 73.182, and 73.188 where the operation might otherwise be considered as technically substandard. Further, the requirements of paragraphs (a)(5), (b)(2), (c)(2), and (d)(2) of § 73.1215 concerning the scale ranges of transmission system indicating instruments are waived for PSA operation except for the radio frequency ammeters used in determining antenna input power. A station having an antenna monitor incapable of functioning at the authorized PSA power when using a directional antenna shall take the monitor reading using unmodulated carrier at the authorized daytime power immediately prior to commencing PSA operations. Special conditions as the FCC may deem appropriate may be included in the PSA to insure operation of the transmitter and associated equipment in accordance with all phases of good engineering practice.

(i) In the event of permanent discontinuance of presunrise operation, the PSA shall be forwarded to the FCC's Washington office for cancellation, and the Engineer in Charge of the radio district in which the station is located shall be notified accordingly.

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

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 79-4263 Filed 2-7-79; 8:45 am]

[6712-01-M]

[BC Docket No. 78-271; RM-3044]

PART 73—RADIO BROADCAST SERVICES

Television Broadcast Station in DeKalb, Ill; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein substitutes noncommercial television Channel *33 for *48 at DeKalb, Illinois, at the request of the Northern Illinois Public Telecommunications Corporation. The station would provide for a noncommercial educational television service to the northern region of Illinois which is not now receiving such service

EFFECTIVE DATE: March 19, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (DeKalb, Illinois). Report and order (proceeding terminated).

Adopted: February 1, 1979.

Released: February 2, 1979.

1. The Commission has before it the *Notice of Proposed Rule Making,* adopted August 24, 1978, 43 FR 39593, in response to a petition filed by Northern Illinois Public Telecommunications Corporation ("NIPTC"). The *Notice* proposed substituting reserved TV Channel *33 for existing reserved Channel *48 at DeKalb, Illinois. Channel *48 is unoccupied and no applications are pending for its use. Supporting comments were filed by NIPTC.[1]

2. DeKalb (pop. 32,949), in DeKalb County (pop. 71,654),[2] is located in north central Illinois, approximately 90 kilometers (55 miles) west of Chicago. Channel *48 is the only television channel assigned to DeKalb.

3. NIPTC states that its purpose is to enable northwestern counties of Illinois to participate in the state educational television network. It notes that the northwestern region of Illinois is the largest area in the state not covered by educational television service. NIPTC claims that in order to provide the maximum educational television service to this vast region, the best possible signal should be used. It believes that use of Channel *33 could achieve this purpose.

4. As long as an appropriate transmitter site is selected, Channel *33 can be assigned in compliance with the Commission's distance separation requirements and other technical criteria. NIPTC has reaffirmed its intention to file for the use of this channel as a noncommercial educational assignment, if assigned. NIPTC notes that a transmitter site for the proposed station may be chosen in a large area west of DeKalb which provides adequate flexibility to avoid a short-spacing.[3]

5. We have carefully considered the proposal and conclude that it would be in the public interest to assign Channel *33 to DeKalb, Illinois, and to delete the present Channel *48 assignment. The proposed assignment would confer a substantial benefit upon the public by enabling petitioner to provide a noncommercial educational television service to the northwestern region of Illinois which is not presently receiving such service. In addition, we note that less preclusion would result from the assignment of Channel *33 than exists with the present Channel *48 assignment.

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[1] NIPTC filed a Motion to Accept late-filed comments in support of its proposal. Since there has been no objection to our acceptance of these comments, and no other parties would be affected thereby, we are granting NIPTC's Motion and will accept its comments.

[2] Population figures are taken from the 1970 U.S. Census.

[3] Therefore, any application for use of the channel should specify a site meeting the spacing requirements of Section 73.610 of the rules.

6. Accordingly, pursuant to authority contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules, it is ordered, That, effective March 19, 1979, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the city listed below, to read as follows:

City	Channel No.
DeKalb, Illinois	*33

7. *It is further ordered,* That this proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 79-4412 Filed 2-7-79; 8:45 am]

[6712-01-M]

PART 87—AVIATION SERVICES

Editorial Amendments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: We are deleting a provision in our rules that established the bandwidth permitted in the band 10550-10680 MHz. Since we have no other rules in the Aviation Services regarding operations in this band this provision is unnecessary and should be deleted. This action will delete this section of our rules.

EFFECTIVE DATE: February 9, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Kemp J. Beaty, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION: In the Matter of Editorial amendment of § 87.67 of the Commission's rules.

Adopted: January 25, 1979.

Released: January 26, 1979.

1. Section 87.67(b)(2) of our rules has a provision relating to the maximum bandwidth for stations operating in the 10550 to 10680 MHz band. Since the Aviation Services have no authorizations or other rules regarding operations in this band the provision in this section of our rules is unnecessary.

2. We are deleting this section from our rules. Therefore, under the authority of Section 4(i) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's rules, we are amending § 87.67(b)(2) as shown below. Since this amendment is editorial in nature, the public notice, procedure and effective date provisions of the Administrative Procedure Act, 5 U.S.C. 553, are not applicable.

3. Regarding questions on matters covered in this document contact Kemp J. Beaty, telephone 202-632-7197.

4. In view of the above: *it is ordered,* That the rule amendment set forth below is adopted effective February 9, 1979.

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

FEDERAL COMMUNICATIONS COMMISSION,
R. D. LICHTWARDT,
Executive Director.

Part 87—Aviation Services.

Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is amended to read as follows:

§ 87.67 [Amended]

In § 87.67, paragraph (b)(2) is revoked, and paragraph (b)(1) is renumbered as paragraph (b).

[FR Doc. 79-4411 Filed 2-7-79; 8:45 am]

[4910-59]

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 75-03; Notice 6]

PART 571—MOTOR VEHICLE SAFETY STANDARDS

Bus Window Retention and Release

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

ACTION: Interim final rule and request for comments.

SUMMARY: This notice adopts as an interim final rule and proposes the amendment of Standard No. 217-76, *Bus Window Retention and Release,* to modify several of the requirements applicable to rear emergency doors in school buses with gross vehicle weight ratings (GVWR) less than 10,000 pounds. The notice responds to a petition from the Ford Motor Company requesting changes in the location of the emergency release mechanism, modification of the size of the parallelepiped testing device, and changes in the location of the emergency exit identification. The agency by this notice makes final on an interim basis some of the changes which are reasonable and which would not result in any lessening of the safety of school buses. The agency also solicits comments on these interim changes.

DATES: Comments must be received on or before March 25, 1979. Since this requirement will relieve some restrictions currently imposed by the standard, the NHTSA has determined that it is in the public interest to make the changes effective immediately on an interim basis. The final rule, which will respond to the comments received on this notice, will be effective upon publication in the FEDERAL REGISTER.

ADDRESS: Comments should refer to the docket number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Williams, Crashworthiness Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2264).

SUPPLEMENTARY INFORMATION: This notice makes final on an interim basis some minor changes to Standard No. 217-76, *Bus Window Retention and Release,* as the standard applies to small van-type school buses. The notice also solicits comments on these changes. Ford Motor Company petitioned the agency to amend some of the requirements pertaining to rear emergency doors of school buses with gross vehicle weight ratings less than 10,000 pounds. Ford argued that some of the rear exit requirements of the standard were more appropriate for larger school buses (10,000 pound GVWR and above) than they were for smaller school vehicles. The agency tentatively agrees with Ford and adopts the changes outlined below.

Ford first asked that the parallelepiped measuring device be reduced in width from 24 inches to 22 inches. The purpose of the parallelepiped measuring device is to test the size of the opening of an emergency door. Standard No. 217 requires the use of a rear emergency door in small school vehicles that is sufficiently wide to permit the easy exit of the school bus passengers. Ford argued that the existing requirement provides for an unnecessarily wide exit in van-type vehicles. Ford pointed out that the shoulder width for a 50th percentile dummy (Part 572 of the agency's regulations) is 18.4 inches. A 50th percentile dummy approximates the average size of an adult male. Accordingly, Ford suggested that since the average size of an

adult male is almost 6 inches narrower than the required rear emergency exit and that school buses usually transport children that are even smaller than the average adult male, the current 24-inch requirement is unnecessarily stringent. For the reasons discussed below, the agency tentatively agrees.

The existing requirement was designed to provide adequate room in large school buses for two children to exit abreast. The purpose was to ensure that the occupants of such buses could exit them quickly. Van-type school buses carry substantially fewer occupants and thus do not need the same size opening to permit quick exit. Further, the NHTSA is concerned that its existing requirement is somewhat design restrictive as it applies to van-type school buses. It discourages, for example, the use of double rear emergency doors in favor of a single rear emergency door even though double rear emergency doors may be as safe as or even safer than single ones. Since the agency seeks to create safety standards that are not more design restrictive than necessary and since the agency can see no diminution of safety resulting from this change, the NHTSA tentatively amends the standard to require rear exits in small school vehicles accommodate a 22-inch parallelepiped device instead of the 24-inch parallelepiped currently specified.

In connection with the parallelepiped device, Ford indicated that their vehicle would not comply with the requirements even if reduced to 22 inches if the agency requires the device to remain flat on the floor as it is being removed from the vehicle. The NHTSA has indicated by interpretation that it is permissible to lift the device slightly (1 inch) to overcome small protusions near the floor of the vehicle. The agency permits this testing procedure, because the purpose of the test is to provide an adequate escape area in an exit. Small protrusions near the floor of an emergency door particularly those near the sides of the door would not hinder the escape of passengers from a vehicle in an emergency.

Regarding the rear door emergency exit, Ford suggested that the agency alter the emergency release mechanism location requirements of paragraph S5.3.3 of the standard for van-type vehicles. The existing requirements specify the location of the rear interior and exterior release mechanisms. The release mechanism requirements were adopted to provide release handles that are easily accessible in the event of an accident. However, it appears that the current requirements are more appropriate for larger school vehicles where the release mechanism could easily be located beyond the reach of smaller students attempting to open the door in an emergency. Location does not appear to be a safety problem with respect to smaller school vehicles, however, since they are of a size such that the location of release mechanisms would not fall in an inaccessible area. Accordingly, the NHTSA tentatively amends the standard to remove the requirements for rear emergency exit release mechanism location on buses with GVWRs less than 10,000 pounds.

The NHTSA cautions manufacturers that the removal of exit release mechanism location requirements for small buses does not permit the placement of release mechanisms in inaccessible areas. The intent of Standard No. 217 is to provide sufficient emergency exits that are easily accessible. Placement of an exit release mechanism in a location that would be difficult to reach, such as behind a seat, would violate the standard's intent and might be considered a safety-related defect.

Ford also suggested that the NHTSA modify another interior rear emergency release mechanism requirement. Currently, the regulation requires that the interior release mechanism employ an upward motion for release. The purpose of this requirement is to make it more difficult for emergency exit doors to be opened accidently while a vehicle is in operation. Ford recommended an alternative to the upward motion release mechanism. It suggested that the agency permit a manufacturer, at its option, to use the upward motion or to use a push or pull type release mechanism.

The NHTSA considers it necessary to require the installation of release mechanisms that are not susceptible to accidental opening. The agency concludes that devices that release emergency doors simply by pushing on a release mechanism are subject to accidental release if, for example, someone were to fall against them. Accordingly, the NHTSA denies that portion of Ford's recommendation that would allow this alternative. However, the agency tentatively considers release mechanisms that are operated by a pulling motion to be an option that can be as safe as release mechanisms operated by an upward motion. This is particularly true if the release mechanism is recessed in the door surface. Accordingly, for smaller school vehicles, the agency tentatively modifies the standard to permit release mechanisms that operate by pulling when such mechanisms are recessed.

In a final recommendation, Ford suggested that the agency modify the emergency identification requirement of the standard. It suggested that the label be located centrally on the exit. Currently, the identification requirement mandates the location of the emergency exit sign at the top of or directly above the emergency exit. The agency has interpreted this requirement to allow the labeling of exits on the top half of the exit or immediately above the exit. This interpretation allows a label to be located near the center of an exit. Accordingly, the NHTSA does not see any reason to modify the language of the requirement at this time and denies this aspect of the petition. The agency notes for clarity, however, that although the identification sign may be located on the top half of the exit, it cannot be placed in such a manner that it is not easily visible. For example, the exit identification sign cannot be placed behind a seat.

Since these amendments relieve some restrictions in the safety standard and may reduce school bus costs without lessening vehicle safety, the NHTSA finds for good cause that an immediate amendment of the requirement is in the public interest.

In accordance with the discussion above, the agency amends Standard No. 217-76, *Bus Window Retention and Release*, of Volume 49 of the Code of Federal Regulations, Part 571 as set forth below.

1. Section S5.3.3 has the first sentence revised to read:

S5.3.3 When tested under the conditions of S6, both before and after the window retention test required by S5.1, each school bus emergency door shall allow manual release of the door by a single person, from both inside and outside the bus passenger compartment, using a force application that conforms to paragraphs (a) through (c) except a school bus with a GVWR less than 10,000 pounds does not have to conform to paragraph (a).

2. Section S5.3.3 paragraph (b) is amended by the addition of the following at the end of the paragraph:

Buses with a GVWR less than 10,000 pounds shall provide interior release mechanisms that operate by either an upward or pull-type motion. The pull-type motion shall be used only when the release mechanism is recessed in such a manner that the handle, lever, or other activating device does not protrude beyond the rim of the recessed receptacle.

3. Section S5.4.2.2 is revised by changing the phrase "24 inches wide" to read "22 inches wide".

Interested persons are invited to submit comments on the interim final rule. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but

not required that 10 copies be submitted.

All comments must be limited to not more than 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15-page limit. The limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been released to the public.

All comments received before the close of business on the comment closing date indicated will be considered, and will be available for examination in the public docket at the address above both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

The principal authors of this notice are Robert Williams of the Crashworthiness Division and Roger Tilton of the Office of Chief Counsel.

(Secs. 103, 119, Pub. L. 89-563; 80 Stat. 718 (15 U.S.C. 1392, 1407); Sec. 202, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1392); delegations of authority at 49 CFR 1.50.)

Issued on February 5, 1979.

JOAN CLAYBROOK,
Administrator.

[FR Doc. 79-4402 Filed 2-6-79; 8:58 am]

[4910-59-M]

[Docket No. 70-12; Notice 23]

PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

Amendment of Rule

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

ACTION: Amendment of rule.

SUMMARY: Congress has recently amended the National Traffic and Motor Vehicle Safety Act of 1966 (the Safety Act) to exempt manufacturers of retreaded tires from the registration requirements of the Act. This notice makes conforming amendments to the regulations implementing the tire registration requirments of the Act. The amendment is being published as a final rule without notice and opportunity for comment and is effective immediately, rather than 180 days after issuance, since the agency lacks discretion on the manner of implementing this Congressional mandate.

EFFECTIVE DATE: February 8, 1979.

FOR FURTHER INFORMATION CONTACT:

Arturo Casanova, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-1715).

SUPPLEMENTARY INFORMATION: Congress has recently enacted the Surface Transportation Assistance Act of 1978, Pub. L. 95-599. Section 317 of that Act amends the Safety Act by exempting manufacturers of retreaded tires from the registration requirements of section 158(b) of the Safety Act.

This amendment modifies the requirements of Part 574 to specify that manufacturers of retreaded tires are not subject to the mandatory registration requirements set forth in that Part. Manufacturers of retreaded tires are free to continue voluntarily registering the tires, and the agency encourage these manufacturers to provide some means for notifying purchasers in the event of a recall of tires that do not comply with Federal safety standards or contain a safety-related defect. However, this choice will be left to the individual retreaders.

The remaining obligations of retreaders under Part 574 are set forth in §§ 574.5 and 574.6, which provisions are not affected by this amendment. Those sections require that the retreader label contain certain information on its tires. These provisions allow a retreader who determines that some of its tires do not comply with a Federal safety standard or contain a safety-related defect to warn the public of that fact, and indicate the label number of the affected tires.

Since Congress has amended the Safety Act to exempt the manufacturers of retreaded tires from the registration requirements, this amendment of Part 574 is published without notice and opportunity for comment. The Administrator finds good cause for forgoing these procedures in this instance, because Congress has specifically mandated this action, and the agency has no authority to disregard a legislative mandate. For the same reason, this amendment is effective immediately, rather than 180 days after issuance.

The agency has reviewed the impacts of this amendment and determined that they will reduce costs to the manufacturers. Further, the agency has determined that the amendment is not a significant regulation within the meaning of Executive Order 12044

The program official and attorney principally responsible for the development of this amendment are Arturo Casanova and Stephen Kratzke, respectively.

In consideration of the foregoing, 49 CFR Part 574, Tire Identification and Recordkeeping, is amended to read as set forth below.

AUTHORITY: Sections 103, 108, 112, 119, 201, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1397, 1401, 1407, 1421); secs. 102, 103, 104, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1411-1420); Stat. 2689 (15 U.S.C. 1418); delegation of authority at 49 CFR 1.51.

Issued on January 31, 1979.

JOAN CLAYBROOK,
National Highway Traffic Safety Administrator.

PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

1. Section 574.1 is revised to read as follows:

§ 574.1 Scope.

This part sets forth the method by which new tire manufacturers and new tire brand name owners shall identify tires for use on motor vehicles and maintain records of tire purchasers, and the method by which distributors and dealers of new tires shall record and report the names of tire purchasers to the new tire manufacturers and new tire brand name owners. This part also sets forth th method by which retreaders and re-

treaded brand name owners shall identify retreaded tires for use on motor vehicles.

2. Section 574.3 is amended by deleting § 574.3(c)(2) and (3) and adding a new § 574.3(c)(2), (3), and (4), to read as follows:

§ 574.3 Definitions.

* * * * *

(c)(1) * * *

(2) "New tire brand name owner" means a person, other than a new tire manufacturer, who owns or has the right to control the brand name of a new tire or a person who licenses another to purchase new tires from a new tire manufacturer bearing the licensor's brand name.

(3) "Retreaded tire brand name owner" means a person, other than a retreader, who owns or has the right to control the brand name of a retreaded tire or a person who licenses another to purchase retreaded tires from a retreader bearing the licensor's brand name.

(4) "Tire purchaser" means a person who buys or leases a new tire, or who buys or leases for 60 days or more a motor vehicle containing a new tire for purposes other than resale.

3. Section 574.7 is revised to read as follows:

§ 574.7 Information requirements—new tire manufacturers, new tire brand name owners.

(a) Each new tire manufacturer and new tire brand name owner (hereinafter referred to in this section and § 574.8 as "tire manufacturer" unless specified otherwise), or his designee, shall provide forms to every distributor and dealer of his tires who offers these tires for sale or lease to tire purchasers, by which the distributor and dealer may record the information appearing in paragraphs (a)(1), (a)(2), and (a)(3) of this section. Forms conforming in size and similar in format to Figure 3 shall be provided to those dealers who request them, or if a dealer prefers, he may supply his own form as long as it contains the required information, conforms in size, and is similar in format to Figure 3.

* * * * *

4. Section 574.8 is revised to read as follows:

§ 574.8 Information requirements—tire distributors and dealers.

(a) * * *

(b) Each tire distributor and each dealer selling tires to tire purchasers shall forward the information specified in § 574.7(a) to the tire manufacturer, or person maintaining the information, not less than every 30 days. However, a distributor or dealer who sells less than 40 new tires, of all makes, types, and sizes during a 30-day period may wait until he sells a total of 40 new tires, but in no event longer than 6 months, before forwarding the tire information to the respective tire manufacturers or their designees.

(c) Each distributor and each dealer selling new tires to other tire distributors and dealers shall supply to the tire distributor or dealer to whom he sells new tires a means to record the information specified in § 574.7(a), unless such a means has been provided to that distributor or dealer by another person or by a manufacturer.

* * * * *

5. Section 574.9 is revised as follows:

§ 574.9 Requirements for motor vehicle dealers.

(a) Each motor vehicle dealer who sells a used motor vehicle for purposes other than resale, who leases a motor vehicle for more than 60 days, that is equipped with new tires is considered, for purposes of this part, to be a tire dealer and shall meet the requirements specified in § 574.8.

(b) Each person selling a motor vehicle to first purchasers for purposes other than resale, that is equipped with new tires that were not on the motor vehicle when shipped by the vehicle manufacturer is considered a tire dealer for purposes of this part and shall meet the requirements specified in § 574.8.

6. Section 574.10 is revised to read as follows:

§ 574.10 Requirements for motor vehicle manufacturers.

Each motor vehicle manufacturer, or his designee, shall maintain a record of the new tires on or in each vehicle shipped by him to a motor vehicle distributor or dealer, and shall maintain a record of the name and address of the first purchaser for purposes other than resale of each vehicle equipped with such tires. These records shall be maintained for a periods of not less than 3 years from the date of sale of the vehicle to the first purchaser for purposes other than resale.

[FR Doc. 79-4147 Filed 2-7-79; 8:45 am]

[7035-01-M]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Third Rev. Service Order No. 1315-A]

PART 1033—CAR SERVICE

Demurrage and Free Time on Freight Cars

AGENCY: Interstate Commerce Commission.

ACTION: Third Revised Service Order No. 1315-A.

SUMMARY: Third Revised Service Order No. 1315 provides demurrage charges for covered hopper cars. This order also sets forth free-time and other requirements in connection with demurrage. A supplement to Freight Tariff 4-K became effective February 1, 1979, providing higher charges for demurrage than under the service order. Third Revised Service Order No. 1315 is vacated effective 11:59 p.m., February 2, 1979.

DATES: Effective 11:59 p.m., February 2, 1979.

FOR FURTHER INFORMATION CONTACT:

J. K. Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone (202) 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The Order is printed in full below.

Decided: February 2, 1979.

Upon further consideration of Third Revised Service Order No. 1315 (44 FR 4951), and good cause appearing therefor:

It is ordered. § *1033.1315 Third Revised Service Order No. 1315* (Demurrage and free time on freight cars) is vacated effective 11:59 p.m., February 2, 1979.

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

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

By the Commission, Railroad Service Board, members Robert S. Turk-

ington, Leonard J. Schloer and William F. Sibbald.

H. G. HOMME, JR.,
Secretary.

[FR Doc. 79-4400 Filed 2-7-79; 8:45]

[7035-01-M]

[Ex Parte No. MC-105]

PART 1062—REGULATIONS GOVERNING SPECIAL APPLICATION PROCEEDINGS FOR FOR-HIRE MOTOR CARRIERS

Ex-Water Traffic [1]

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The rules adopted in this document establish a simplified certification procedure for all motor common carriers of property who wish to provide motor carrier service within the commercial zone of a port city for a shipment having a prior or subsequent movement by maritime carrier. This rule should improve intermodal (ocean-land) operations.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Peter Metrinko, (202) 275-7885.

SUPPLEMENTARY INFORMATION: The purpose of the regulations adopted in this case is to provide a simplified certification process for motor common carriers seeking authority to transport shipments of property within the commercial zone of port cities where the shipments have a prior or subsequent movement by maritime carrier.

THE STATUTORY SITUATION

Commission regulations and our general statutory framework demonstrate the relative unimportance of regulating incidental or short haul transportation of property. Section 10526(b)(1) (formerly section 203(b)(8)) exempts the transporation of property wholly within a municipality, between contiguous municipalities, or within a zone (the "commercial zone") adjacent to and commercially part of these municipalities, except when the transportation is under common control, management, or arrangement for continuous carriage to outside points. Section 10523 (formerly section 202(c)) exempts the transportation of freight in the performance of transfer, collection, and delivery services within the defined terminal areas of railroads and express companies, motor carriers, inland water carriers, and freight forwarders subject to our jurisdiction. Furthermore, section 1052 (a)(8) (formerly section 203(b)(7a)) provides an exemption for the transportation of persons or property when incidental to transportation by aircraft.

However, no regulatory exemption is provided for local pickup and delivery services performed entirely within a commercial zone of a port city where the local service is provided as part of a through movement with a maritime carrier not subject to the Interstate Commerce Act. See *Consolidated Freightways, Inc., Ext.—Seattle, Wash.*, 74 M.C.C. 593 (1958). Thus, water carriers subject to the jurisdiction of the Federal Maritime Commission are not accorded the benefit of a statutorily created exempt terminal area in which motor carriers may conduct local collection and delivery services without regulatory restraints.

In *Consolidated Freightways, supra*, at 597, the Commission noted that Congress probably intended to exempt from economic regulation all purely local operations in enacting the terminal area and commercial zone exemptions in the Act, 49 U.S.C. 10523 and 49 U.S.C. 10526(b)(1). But the common arrangement between maritime carriers and local motor carriers for continuous carriage renders the commercial zone exemption of the Act unavailable. A regulated motor carrier may perform some local service under current rules under the commercial zone exemption. Where the shipper or receiver, or a private ocean carrier makes arrangements with the local motor carrier, no authority from this Commission is necessary for the intraport movement. See *Service Transp. Co. Contracts and Agreements*, 44 M.C.C. 419 (1945). However, the practical problem is that often local transporation is arranged by the FMC regulated ocean carrier.

No economic justification has been advanced for this anomalous situation and it appears that the lack of an exemption for this type of intraport movement is the result of oversight. The adopted regulations would rectify the current situation where an FMC authorized carrier is obligated to employ the service of motor carriers having specific authority to serve points within the commercial zone of a port city, but where Commission regulated and private water carriers are not.

While there is no specific exemption for this type of traffic, the general provisions of the Act makes it clear that we have the power and the duty to correct this competitively discriminatory situation. The transportation policy of the Commission, 49 U.S.C. 10101, is to ensure coordinated transportation and provide for the impartial regulation of the modes of transportation, preserving the inherent advantage of each mode. The continued regulation of this intraport, ex-water traffic runs counter to this transportation policy, and to the entire exempt versus non-exempt economic regulatory structure of the Act.

BACKGROUND OF THIS PROCEEDING

The notice instituting this proceeding presented three approaches for dealing with the inequitable situation described. The first option would have exempted from our regulations a certain class of motor carriers lawfully engaged in operations solely within a single State. The proposed exemption would have applied to the transportation of shipments having prior or subsequent movement by maritime carrier and moving by motor carrier within the commercial zone of a port city, or any portion of the zone not extending beyond the boundaries of the State in which the port city is located.

In that previous notice we realized that there might be legal and practical problems using the single State exemption portion of the Act, 49 U.S.C. 10525 (formerly 204(a)(4a)). There are important instances where the commercial zone of a port city extends beyond the boundaries of a single State. The Commission suggested as a second option that, for purposes of bringing our proposal under the single State exemption, the multiple State commercial zone of these port cities be viewed as a single entity. Many parties had reservations about this method, and upon further legal analysis, we decline this approach.

The third option was to implement a simplified certification procedure for carriers wishing to operate within these port, multi-State commercial zones. This would require a prospective general finding that the public convenience and necessity require simplified certification for the incidental transportation of shipments having a prior or subsequent movement by maritime carriers and moving by motor vehicle only within the commercial zone of a port city. This last approach has proven to be the best one. The problems with using the single State exemption section of the Act are discussed below.

Our review of the public comments persuades us that all motor common carriers should be able to take advantage of a simplified certification procedure. We see no reason to adopt separate approaches for single State and multi-State carriers by use of both the single State exemption and simplified certification procedure. The policy reasons which dictated this proceeding apply to all motor common carriers.

[1] Formerly entitled *Single State Exemption—Ex-Water traffic.*

SINGLE STATE EXEMPTION—IMPRACTICAL

There are two general reasons why we did not pursue the single State exemption.[2] It is too narrow in scope, and uniform regulation of transportation requires that we allow multi-State motor carriers to participate in any certification procedure.

The basic intent in adopting these rules is to correct an anomaly in the regulatory structure and simplify the entry process in an area where no significant contribution is made by employing economic analysis in individual application proceedings.

A critical problem with using the single State exemption approach is that the carrier must be operating solely within a single State. Several parties questioned, quite correctly, why multi-State carriers should be treated differently in reaching a solution.

A second major problem with use of this exemption is that in the event the required finding is made, the Commission is directed to issue a certificate of exemption to the motor carrier which shall exempt it from compliance with the Act's motor carrier provisions. The historic interpretation of the exemption is that the motor carrier is a single unit and the exemption connotes all the operations of that carrier. See *Grubbs Exemption Application*, 30 M.C.C. 561, 563 (1941). When combined with the single State operational requirement, the end result would be that a carrier wishing to take advantage of the exemption would be precluded from expanding its operations. In sum, the exemption approach would merely carve an exception into the anomaly and would be of little use to the great majority of carriers.

THE PUBLIC CONVENIENCE AND NECESSITY

The public convenience and necessity require the adoption of the rules set forth at 49 CFR 1062.3, see *Chemical Leaman Tank Lines, Inc.* v. *United States*, 368 F. Supp. 925 (D. Del. 1973). The test for analyzing public convenience and necessity is found in *Pan-American Bus Lines Operation*, 1 M.C.C. 190 (1936). That test asks whether there is a public need for the proposal, whether that need can be met by existing carriers, and whether the proposal will impair the operations of existing carriers in a manner contrary to the public interest.

The test is one of balance. A major consideration is whether the advantages to the public outweigh the disadvantages, real or potential, to existing carriers. *All American Bus Lines, Inc., Common Carrier Application*, 18 M.C.C. 755, 776-777 (1939). This balancing of benefits to the public against harm to existing motor carriers' service was deemed to embody the concept of public convenience and necessity in the Supreme Court decision in *Bowman Transp.* v. *Arkansas-Best Freight System*, 419 U.S. 281, 293, 298 (1974). It is not sufficient to determine only if existing service is adequate. See *United States* v. *Dixie Express*, 389 U.S. 408 (1967). Finally, we cannot ignore the possible benefits to the public from increased competition which grants of new authorities likely will foster, *P. C. White Truck Line, Inc.*, v. *United States*, 551 F. 2d 1326 (D.C. Cir. 1977).

These legal requirements are only part of the picture. Overall Commission policies must be considered. Present main concerns of the Commission include promoting administrative efficiency, competition, and intermodalism. *Cf. Entry Control of Brokers*, 126 M.C.C. 476, 496 (1977). With all these factors in mind, we can proceed to an examination of the evidence of record.

Comments were received from diverse interests, including 40 motor carriers, 9 associations, 4 shippers, 3 governmental bodies (including the Federal Maritime Commission), 4 water carriers, and 4 miscellaneous interests. Also of special interest were the comments of 9 port commissions.

Certificated motor carriers generally opposed any opportunities for expansion of service. Only two motor carriers, D. D. Jones Transfer and Warehouse Co., Inc., and Overoad Containers Service, Inc., provided any specific information as to adverse effects that might be suffered.

There was a large amount of support for entry relaxation from users of the services and port commissions. For example, the Port Authority of New York and New Jersey believes there should be a general commercial zone exemption available. This would foster intermodal development. Similar statements of approval came from the ports of Lake Charles, LA, Milwaukee, WI, Pascagoula, MS, Baton Rouge, LA, Houston, TX, Mobile, AL, and the Indiana Port Commission. Only the Delaware River Port Authority opposed relaxation, stating that it appeared there was a sufficient supply of carriers serving that port.

The U.S. Departments of Justice and Transportation supported entry relaxation. The Federal Maritime Commission agreed that there should be equal treatment of motor carriers performing collection and delivery services for all water carriers.

A number of parties, including the Port of Lake Charles, detailed instances where it was difficult to find enough carriers to serve the port. Meehan Seaway Service, Ltd., pointed out that import and export traffic moves in large quantities, so that there are sudden and large needs for equipment. Totem Ocean Trailer Express, Inc. (TOTE) repeated this, pointing out its own special problems in maintaining a scheduled Alaskan run while trying to find sufficient carriers to load its ships. Its own shipping customers have been constant complainers about the lack of motor equipment and TOTE lists examples of the numbers of trailers that could not be shipped on schedule owing to a lack of equipment.

Several parties mentioned business operational features that would be improved by entry relaxation. Outboard Marine Corp., a manufacturer of marine and lawn care equipment, noted that carriers of smaller size are faced with a heavier burden in attempting to obtain certificates and it believes that simplified licensing would be a boon to small carriers. Valley Transfer & Storage, Inc., a Washington intrastate motor carrier, noted its frustration in having equipment in a port city that must often be deadheaded.

Based on the review of the overall record, we believe that there is a need for the proposal, which will benefit the public. As pointed out, regulation in this area is an anomaly. Similar areas of transportation have long since been exempt because the transportation is incidental or local in nature. Relaxation of entry through a simplified certification process will mean equal treatment for all water carriers. A Commission regulated water carrier should not have a larger pool of equipment to draw from based solely on the fact that one Federal agency regulates its activities rather than another.[3] The decision here will aid in standardizing treatment of water carriers.

We expect that many local noncertificated carriers will apply for authority under the simplified entry procedures described in the rules. A larger pool of equipment in the ports will mean that carriers like TOTE will be more assured of having adequate supplies of equipment available, so that its ships can travel fully loaded. Our decision is consistent with our general policy to foster advances in intermodal service. See *CTI-Container Transport International, Inc., Freight Forwarder Application*, 341 I.C.C. 169, 199 (1972); *Emery Air Freight Corp. Freight Forwarder Application*, 339 I.C.C. 17, 37 (1971); *Marine Stevedoring Corporation Common Carrier Ap-*

[2] General discussions of the exemption can be found in *Knickerbocker Warehousing Corp. Exemption Application*, 99 M.C.C. 293 (1965), and *Motor Carrier Operation in the State of Hawaii*, 84 M.C.C. 5 (1960).

[3] Under existing rules, if a shipper or private carrier makes the arrangements for the local transportation, it can use any motor carrier. However, it is common for the FMC carrier to make the arrangements, simply because it is in a better position to do so.

plication, 119 M.C.C. 514, 521 (1974); *Service Transfer, Inc., Contract Carrier Application*, 117 M.C.C. 506, 514 (1972); *Investigation of Piggyback Service Regulations*, 355 I.C.C. 841 (1977); and *Entry Control of Brokers, supra*, at 504.

The public will also be aided by increased administrative efficiency. The Commission is in the midst of a comprehensive program to make its procedures more efficient. In specific areas, such as broker entry control and the transportation of waste products, the Commission has specifically examined whether the entire scope of the existing application procedure was necessary. Where a part was unnecessary, it was deleted. These type actions have many beneficial effects. Case processing is faster, requiring less time and money spent by all parties concerned. Applicants for authority only have to meet standards of proof which in a real sense affect service and public needs.

The simplified certification process retains important protections for the shipping public. Atlantic Container Line, while opposing the general proposal, stated that, as an FMC carrier, it has come to rely on the dependability of I.C.C. carriers. It argues that the certification process insures that the motor carrier is operationally fit, maintains insurance, and has adequate capitalization. ACL points out that ocean carriers have high investments in equipment (containers and chassis), and it must use carriers that will protect its investment.

We agree with ACL's basic position about the need to assure that fit, properly insured carriers perform these operations. Our simplified procedures here only forgo the necessity of examining local market conditions in each application. In every instance under the adopted rules, operations may begin only following the service of a certificate which will be issued if the applicant demonstrates its fitness, financial and otherwise, and complies with the following requirements set forth in the Code of Federal Regulations: insurance (49 CFR Part 1043), designation of process agent (49 CFR Part 1044), and tariffs (49 CFR Part 1307).

But, as detailed immediately below, there is no significant evidence that entry into these local markets to provide incidental, short haul service requires that an applicant should have to go through every facet of the application process, i.e., to present evidence about local markets and competitive needs. While there may be a few instances where existing carriers lose revenues because of added competition, this does not strike a balance with the overall needs of the transportation industry and the shipping public.

There was little evidence, except in isolated instances, as to whether or not the transportation service needs involved in this area can be met by existing carriers. Several parties, as recited, did experience difficulties in finding equipment and the port commissions (with one exception) believed that additional supplies of equipment were necessary for the continued viability of the maritime industry.

Stability of the transportation industry is an important aspect of our regulation. It is not the function of the Commission to insulate carriers from competition, but to insure the greatest level of competition possible in an atmosphere of stability.

Rulemaking proceedings have as a partial function the solicitation of evidence from the affected existing carriers as to whether or not they will be adversely affected by a change in our regulations. Existing carriers are in a unique position to present this information. The Commission cannot base decisions on theories or supposed adverse effects, *Cf. Passenger Brokers Affiliated with Motor Carriers*, 128 M.C.C. 354, 357-358 (1977). We have not received hard evidence that adverse effects would occur, *Cf. Investigation of Piggyback Service Regulations, supra*, at 852. Only two carriers offered any specific evidence on this issue and only one of those offered any past correlations between the addition of new services and its own corresponding competitive difficulties. This is a meager amount of weight to balance against the positive effects adoption of the rules will bring. It is clear that the benefits to the public far outweigh the adverse effects that might occur.

The General Accounting Office's Report to the Congress, "ICC's Expansion of Unregulated Motor Carrier Commercial Zones Has Had Little or No Effect on Carriers and Shippers", is consistent with our findings that there will be little, if any, adverse effects on existing carriers. That report commented on our recent expansion of commercial zones in *Commercial Zones and Terminal Areas*, 128 M.C.C. 422 (1976). It found that the expansion had little or no effect on most carriers' volume of shipments, rates, revenue, interlining, and other aspects of operations. Those findings are helpful here, for the situation is analogous.

In sum, we believe our adopted rules will benefit the public. These benefits include elimination of unnecessary regulatory constraints, greater administrative efficiency, and promotion of intermodalism. There was no substantial evidence that the adopted rules will adversely affect the ability of existing carriers to perform service.

ENVIRONMENTAL CONSIDERATIONS

We do not believe that the adopted rules will have a significant effect on the quality of the environment. Initially, it should be noted that individual OP-OR-9 applications will still be filed, which will result in continued reporting requirements on the possibility of there being major environmental impacts and on the feasibility of the proposed operation. The adopted regulations merely make the certification process simpler, since it is no longer necessary to prove a need for the service and to discuss local economic and competitive effects. The probable result of this proceeding will be a marginal increase in the amount of equipment available for the ex-water shipments. The Commission ruling requiring certification for this transportation has been in effect for many years. In that time many carriers have received specific authority to serve ports in the manner described.

There is the possibility that long distance carriers who transport traffic to a distant port city, instead of deadheading to another point for a return load, might find it profitable to transport temporarily this ex-water traffic if there is a need for equipment at the port. Multi-State carriers, with this consideration in mind, might seek certification at a number of port cities they presently serve in point-to-point service (but which port cities they are unable to serve in transporting this local, ex-water traffic, compare *Consolidated, supra*).

Some representations were made that local surpluses of motor vehicle equipment might result. In the long run, the supply of this equipment will adjust to service demands and resultant fuel use will remain relatively constant. It should be recalled that we are dealing with local transportation, unlike typical line haul movements where surpluses of equipment might lead to extensive deadheading.

Water carriers' loading practices might be advantaged by having a larger source of equipment where previous shortages existed, but any savings here would be in the form of labor costs.

In sum, the amount of fuel used or the efficiency of operations will not be significantly altered under these rules.

DEFINITION OF MARITIME CARRIER

The scope of the initial proposal covered vessel operating water common carriers regulated by the Federal Maritime Commission, as well as non-vessel operating common carriers (NVOCC). This has been extended to the adopted rules. However, a word of caution is necessary. These rules do not affect the responsibility of NVOCC's to obtain freight forwarder authority from this Commission where

it is necessary. Where these NVOCC's arrange for the motor transportation of the shipper's cargo, they require appropriate ICC authority, see *Compass, Nippon, and Transmarine—Investigation,* 344 I.C.C. 246 (1973), and *IML Sea Transit, Ltd.* v. *United States,* 343 F. Supp. 32, 42 (N.D. Calif. 1972), aff'd 409 U.S. 1002 (1972), rehearing denied, 409 U.S. 1118 (1973).

SPECIAL APPLICATION PROCEDURES

Recently the Commission adopted rules in Ex Parte No. 55 (Sub-No. 25), published in the FEDERAL REGISTER on December 13, 1977, which revised the OP-OR-9 application forms for permanent motor common carrier authority and 49 CFR 247(f)(2) which pertains to unopposed application proceedings. The special rules adopted here will entail only minor modifications in the way operating rights are normally processed and reviewed under these expedited procedures.

Applicants will use the OP-OR-9 application form. At the top of the form applicants shall label the application EX-WATER, which will indicate to our staff that special handling is necessary.

The sole issue upon which an application under these rules can be protested is the applicant's fitness to perform the proposed service. This encompasses safety and financial ability to perform the operation.

However, we shall require each applicant to provide a certification of support from a supporting party for each port city it wishes to serve (in appropriate circumstances, one party may support service to multiple port cities, but this should be clearly explained in the certification of support). The purpose of this minimal support requirement is to ensure that applicants have legitimate plans to serve port cities named. We do not want carriers making blanket applications, which will only require needless energy spent in processing applications. Existing carriers must be given a fair opportunity to offer evidence on a carrier's operational fitness, and their task will be unfairly and unnecessarily complicated if local carriers intending only to serve one or two ports make laundry list applications. We should point out that this tendency should be arrested by the fact that compliance for larger applications is more complex. Please note that applicants *may* request authority to serve more than one port city in a single application.

Protests will be allowed only on the issue of fitness. They will be due within 30 days of the FEDERAL REGISTER publication of an applicant's proposal. Fitness protests must contain specific facts, and a statement relying solely on unsupported allegations or generalized statements may be rejected. Protests must be served upon the applicant or applicant's representative.

Applicant will be allowed to file a reply statement. This must be filed within 20 days from the last due date for the filing of statements in opposition.

If protests are filed and the case is not assigned for oral hearings, the case will immediately be submitted to a review board for consideration under the modified procedure. If an application is unopposed and is not assigned for oral hearing, it will be processed in accordance with the expedited procedures used in unopposed cases.

If the application is granted, the applicant, upon compliance with the pertinent sections of the Act, will receive a certificate of public convenience and necessity.

FINDINGS

We find that the present and future public convenience and necessity require service by motor carriers of property in the transportation of shipments within the commercial zone of a port city, where the shipments have a prior or subsequent movement by maritime carrier.

THE NEW RULES

Accordingly, we add § 1062.3 to Part 1062 of Title 49 of the Code of Federal Regulations, as follows:

§ 1062.3 Special procedures governing applications to transport property in which applicants seek motor common carrier operating authority to perform service within the commercial zone of a port city, where a shipment has a prior or subsequent movement by maritime carrier.

(a) *Scope.* These special rules govern the filing and handling of applications in which an applicant is seeking a certificate of public convenience and necessity authorizing it to perform service within the commercial zone of a port city for a shipment having a prior or subsequent movement by maritime carrier. A maritime carrier is a water common carrier subject to the jurisdiction of the Federal Maritime Commission (FMC) as defined in the Shipping Act, 1916. The term includes nonvessel operating common carriers (NVOCC).

(b) *Applications.* Except as otherwise provided in these special rules, applicants shall file applications which are in the format of, and contain the information called for, in the form of application and in instructions prescribed by the Commission for applications for certificates of motor common carrier authority. Applicants may file for authority to serve more than one port city commercial zone in a single application; but the application must include shipper support, as required in subsection (c) of these special rules, for each port to be served.

(c) *Shipper support.* An applicant shall file a certification of support (the Appendix to the application) for each port city for which authority is sought. It is permissible for a single shipper to support service at more than one port, but the circumstances under which this is possible must be included in the Appendix.

(d) *Special instructions.* Applicants shall comply with the following special instructions in filling out their applications: (1) Authority must be sought as a common carrier. (2) The commodity authorization sought must be for general commodities (but not to include Classes A and B explosives). (3) The points to be served shall be described in this way: "Between points in the commercial zone of (name of city and State), restricted to traffic having a prior or subsequent movement by water." (4) The top of the first page of each application form shall be labeled "EX-WATER" by the applicant. It is not necessary to fill out paragraph IV and VII(a) of the application. The answer to VII(b) in the application must be "no", since only local operations are contemplated under these special rules.

(e) *Caption summary and notice.* Applicants shall submit a caption summary of the authority sought with each application and shall use the following format for each summary:

MC (Sub-). Applicant: Name, address. Representative: Name, address. To operate as a *common carrier,* by motor vehicle, between points in the commercial zone of (name of city and state), restricted to traffic having a prior or subsequent movement by water.

Every caption summary will be published by this Commission in the FEDERAL REGISTER to give notice of application filed under these special rules.

(f) *Protests and requests for hearings.* (1) Protests will be accepted only upon the issue of applicant's fitness to perform the proposed operations, and protests containing only unsupported or generalized allegations may be rejected. Protests must be filed within 30 days after the date notice of the filing of the application is published in the FEDERAL REGISTER. Every protest must contain a certification that it has been served upon the applicant or applicant's representative. The original and one copy of the protest must be filed with the Commission. (2) Any request for an oral hearing shall be supported by a specific explanation why the evidence to be presented cannot reasonably be submitted in the form of affidavits.

(g) *Replies.* Applicant may reply to the protest. Replies are due within 20 days from the date the protest is due.

The original and one copy of the reply must be filed with the Commission. The reply shall certify that it has been served upon the protestant or protestant's representative.

(h) *Processing.* (1) After all statements are received in a protested case which is not assigned for oral hearing, the file will be referred to a review board for processing under the Commission's modified procedure (Rules 43-52 of the Rules of Practice). However, only the original and one copy of any statement made pursuant to rule 49 must be filed with the Commission. (2) In an unprotested case which is not assigned for oral hearing, the application will be determined based upon the information submitted with the application form.

(49 U.S.C. 10321, 10921 and 10922, and 5 U.S.C. 553 and 559.)

Dated: January 22, 1979.

By the Commission, Chairman O'Neal, Vice-Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-4401 Filed 2-7-79; 8:45 am]

[4310-55-M]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 33—SPORT FISHING

Opening of Certain National Wildlife Refuges in North Carolina, South Carolina, and Tennessee, to Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to sport fishing of certain national wildlife refuges in North Carolina, South Carolina, and Tennessee is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. The name of each affected refuge and the special regulations for each refuge are set forth below.

EFFECTIVE DATES: See the dates listed for each refuge under Supplementary Information below.

FOR FURTHER INFORMATION CONTACT:

The Area Manager or appropriate Refuge Manager at the address or telephone number listed below:

William C. Hickling, Area Manager, U.S. Fish and Wildlife Service, 279 Federal Building, Asheville, N.C. 28801. Telephone: 704-258-2850 Ext. 321.

Steven W. Frick, Refuge Manager, Mattamuskeet National Wildlife Refuge, Rt. 1, Box N-2, Swanquarter, N.C. 27885. Telephone: 919-926-4021.

Jerry L. Holloman, Refuge Manager, Pee Dee National Wildlife Refuge, P.O. Box 780, Wadesboro, N.C. 28710. Telephone: 704-694-4424.

Marvin T. Hurdle, Refuge Manager, Carolina Sandhills National Wildlife Refuge, Route 2, Box 130, McBee, South Carolina 29101. Telephone: 803-335-8401.

George R. Garris, Refuge Manager, Cape Romain National Wildlife Refuge, Rt. 1, Box 191, Awendaw, S.C. 29429. Telephone: 803-928-3368.

Paul Ferguson, Refuge Manager, Santee National Wildlife Refuge, Box 158, Summerton, S.C. 29148. Telephone: 803-478-2217.

Samuel W. Barton, Refuge Manager, Cross Creeks National Wildlife Refuge, Route 1, Box 229, Dover, Tennessee 37058. Telephone: 615-232-7477.

James C. Bryant, Refuge Manager, Hatchie National Wildlife Refuge, Box 187, Brownsville, Tennessee 38012. Telephone: 901-772-0501.

Wendell C. Crews, Refuge Manager, Reelfoot (and Lake Isom) National Wildlife Refuge, P.O. Box 98, Samburg, Tennessee 38254. Telephone: 901-538-2481.

SUPPLEMENTARY INFORMATION:

GENERAL

Sport fishing on portions of the following refuges shall be in accordance with applicable State and Federal regulations, subject to additional special regulations and conditions as indicated. Portions of refuges which are open to sport fishing are designated by signs and/or delineated on maps. Special conditions applying to individual refuges and maps are available at refuge headquarters or from the Office of the Area Manager (addresses listed above).

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires that before any area of the refuge system is used for forms of recreation not directly related to the primary purposes and functions of the area, the Secretary must find that: (1) Such recreational use will not interfere with the primary purposes for which the area was established; and (2) funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these refuges were established. Funds are available for the administration of the recreational activities permitted by these regulations.

§ 33.5 Special regulations; sport fishing for individual wildlife refuge areas.

NORTH CAROLINA

MATTAMUSKEET NATIONAL WILDLIFE REFUGE

Sport fishing on the Mattamuskeet National Wildlife Refuge, N.C., is permitted on approximately 40,000 acres. Sport fishing and bow fishing seasons extend from March 1, 1979 through November 1, 1979, except the following areas are open to bank fishing during the entire year: (a) State Highway 94 Causeway; (b) in the immediate vicinity of the Lake Landing Water Control Structure; and (c) in the immediate vicinity of the Outfall Canal Water Control Structure at Mattamuskeet Lodge.

(1) Herring (alewife) dipping will be permitted from March 1 through May 15 from the canal banks and water control structures in the immediate vicinity of the following locations: (a) Waupoppin Canal control structure—from ½ hour before sunrise to ½ hour after sunset. (b) Outfall Canal and Lake Landing control structures—from ½ hour before sunrise to 10 p.m., local time.

(2) Boats and outboard motors permitted except in areas posted closed to motorboat use. Airboats are prohibited.

PEE DEE NATIONAL WILDLIFE REFUGE

Sport fishing on the Pee Dee National Wildlife Refuge, North Carolina, is permitted on approximately 20 acres. The sport fishing season is year-round on Brown Creek within 100 yards of Brown Creek Bridge on U.S. Highway 52; from April 1, 1979, through September 30, 1979 on Brown Creek within 100 yards of both Bennett Bridge on SR-1627 and lower Brown Creek Bridge on SR-1634; and from April 1, 1979 through September 30, 1979 on Sullivan Pond (Anson County), Little Pond (Anson County), Andrews Pond (Richmond County), and on the Pee Dee River (Anson and

Richmond Counties) in areas designated by public fishing area signs.

Fishing is permitted from sunrise to sunset. Only bank fishing is permitted, except in Andrews Pond. Jon boats, up to 14 feet, and canoes will be permitted in Andrews Pond. All motors are prohibited.

Only cane poles and rods and reels are permitted. Trotlines, set hooks, and nets are prohibited in Refuge ponds.

Parking is permitted only in those areas designated as being reserved for parking. Vehicles are not permitted on dams and levees.

No special refuge permit is required. State license must be carried on the person and exhibited to Federal or State officers upon request.

Firearms, camping, open fires and night use are prohibited.

SOUTH CAROLINA

CAPE ROMAIN NATIONAL WILDLIFE REFUGE

Sport fishing on the Cape Romain National Wildlife Refuge, South Carolina, is permitted on approximately 610 acres. The sport fishing season on the refuge extends from March 15, 1979 through September 30, 1979.

Fishing is permitted during daylight hours only. Boats with electric motors are permitted. Other motors are prohibited. Boats must be removed from the refuge at the close of each day. Moore's Landing will be open daily from 5:00 a.m. until 8:00 p.m. EST, for launching and loading boats, at the high tide ramp only. Camping, littering, dogs, and weapons are prohibited.

CAROLINA SANDHILLS NATIONAL WILDLIFE REFUGE

Sport fishing on the Carolina Sandhills National Wildlife Refuge, South Carolina, is permitted on approximately 150 acres. The fishing season is year-round on the Black Creek Bridge areas on State Road 33, State Road 145, and U.S. Highway 1; from March 12, 1979, through October 6, 1979, on Martins Lake, and Pools A, B, C, D, G and H; and from March 12, 1979 through September 8, 1979, on Lake 17, and Pools J and L; and from July 23, 1979, through December 31, 1979 on Lake Bee.

Fishing is permitted from official local sunrise until ½ hour after official sunset. Unpowered boats and boats with electric motors are permitted only in Martins Lake, Lake 17, and Lake Bee. Other type motors are prohibited. All other areas are open only for bank fishing within posted areas. Fish baskets, nets, set hooks, and trotlines are prohibited.

SANTEE NATIONAL WILDLIFE REFUGE

Sport fishing on the Santee National Wildlife Refuge, South Carolina, is permitted on approximately 12,000 acres. Sport fishing is permitted year-round except that Cantey Bay, Black Bottom and Savannah Branch are closed from November 1, 1979 to February 28, 1980. Waters within all land units (Cuddo, Pine Island, Bluff and Dingle Pond) are closed to fishing. The overnight mooring of boats on the refuge is prohibited.

TENNESSEE

CROSS CREEKS NATIONAL WILDLIFE REFUGE

Sport fishing on the Cross Creeks National Wildlife Refuge, Tennessee, is permitted on approximately 3,260 acres. The open season for Elk and South Cross Creek Reservoirs and the 15 smaller refuge ponds extends from April 1, 1979, through September 15, 1979. Sport fishing on Barkley Lake is open year-round.

Fishing is permitted in designated areas from 30 minutes before sunrise to 30 minutes after sunset, except on Barkley Lake, which is open 24 hours per day. Outboard motor size is limited to 6 horsepower or less in Elk and South Cross Creek Reservoirs and the smaller impoundments. Motor size is not restricted in Barkley Lake. Methods of fishing the two reservoirs and impoundments are limited to rod and reel and/or pole and line.

Overnight camping and/or overnight mooring of boats are prohibited on the refuge. For their safety, fishermen must follow designated routes of travel while on the refuge, and use the parking areas as provided.

All State regulations must be obeyed while fishing on refuge reservoirs as well as that portion of Barkley Lake within the refuge. Fishing license must be carried on the person, to be exhibited to Federal or State officers upon request. No special refuge permit is required.

HATCHIE NATIONAL WILDLIFE REFUGE

Sport fishing on the Hatchie National Wildlife Refuge, Tennessee, is permitted on approximately 150 acres. The sport fishing season extends from April 1, 1979, through October 31, 1979.

Fishing is permitted during daylight hours only. Overnight camping is prohibited. The refuge is closed to all use from 30 minutes past sunset until 30 minutes before sunrise.

Boats powered with electric outboard motors are permitted. Gasoline motors are prohibited. Boats must be removed from refuge no later than November 7, 1979.

Methods of fishing are limited to pole and line, or rod and reel, using natural or artificial baits. Setlines, jugs, etc. are not permitted. Vehicles may be used on refuge roads and trails to reach fishing areas, except those indicated by signs as closed. Footpaths may be used to reach all lakes from Hatchie River. Firearms are prohibited.

LAKE ISOM NATIONAL WILDLIFE REFUGE

Sport fishing on the Lake Isom National Wildlife Refuge, Tennessee, is permitted on approximately 750 acres. The sport fishing season on the refuge extends from March 16, 1979, through September 30, 1979.

Fishing with bows and arrows is prohibited at all times. Boats with motors of not more than 6 horsepower may be used. Public use of the refuge is limited to the hours between sunrise and sunset unless otherwise allowed by a refuge permit.

REELFOOT NATIONAL WILDLIFE REFUGE

Sport fishing on the Reelfoot National Wildlife Refuge, Tennessee, is permitted on approximately 9,092 acres. The fishing season on that portion of the refuge located north of Upper Blue Basin extends from February 15, 1979, through October 23, 1979. The fishing season on that portion of the refuge located south of Upper Blue Basin extends from January 21, 1979, until the day preceding opening of the 1979 waterfowl season. Fishing with bows as arrows is prohibited at all times. Boats with motors of not more than 10 horsepower may be used. Public use of the refuge is limited to the hours between sunrise and sunset unless otherwise allowed by a refuge permit.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

Dated: February 2, 1979.

CHARLES K. BAXTER,
Acting Area Manager.

[FR Doc. 79-4294 Filed 2-7-79; 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.

[3410-07-M]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[7 CFR Part 1933]

Self-Help Technical Assistance Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration gives notice to all interested parties that it has scheduled a meeting to discuss alternatives, consider public comments and in general provide for material input from interested persons and organizations concerning the Self-Help Technical Assistance Grant Regulations.

TIME & DATE: From 8:30 A.M. to 12:30 P.M. on March 1, 1979. (Meeting will be extended, if necessary.)

PLACE: Jefferson Auditorium, U.S. Department of Agriculture, South Building, 14th & Independence Avenue, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Mr. Thomas F. Gerlitz, Phone: 202-447-7207.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration is considering amending FmHA Instruction 1933-I (Part 1933, Subpart I) concerning Self-Help Technical Assistance Grants. The Agency provides the following information concerning Technical Assistance Grants:

I. BACKGROUND

1. Several proposals have been received for Self-Help TA Grants to repair or rehabilitate existing homes. These proposals are inconsistent with existing procedures in the following areas:

a. Development work involved less than 700 hours of labor input.

b. "Mutual" self-help where families work on each other's homes may not be feasible.

c. Some families cannot provide the labor needed.

d. Use of Section 504 funds is proposed.

2. We also receive Self-Help TA Grant requests proposing new construction using sectional homes or prefabricated components. Less than 700 hours or participation would be needed to complete these homes resulting in the grantee possibly developing more projects per year.

3. Proposals are being considered for development of a contract training program for Self-Help T.A. Grantees. Possible approaches might include:

a. A national or regional training contract.

b. Contracts for the development of management system models for use by umbrella-type or franchise organizations in assisting local Self-Help Groups.

4. FmHA updated its Self-Help Technical Assistance Grant Regulations in 1978. Those attending the public meeting might wish to propose further improvements to the T.A. Program.

II. ISSUES

1. Section 523 permits Self-Help TA Grants to develop new housing and repair and rehabilitate existing housing. How should the repair and rehabilitation aspect of the program be implemented?

2. Procedure requires Self-Help participants to contribute at least 700 hours of labor for each house. Should a change be made to accommodate a greater variety of projects?

3. Procedure permits mutual Self-Help Projects. Is this a correct interpretation of the law?

4. Should persons be permitted to participate in a Self-Help Housing Project if they are unable to contribute their own labor?

5. Can Self-Help TA repair and Rehabilitation Program participants use Section 504 loan and grant funds instead of Section 502 funds?

6. Can CETA employees substitute any of the labor input of the families who are elderly or disabled?

7. Another option to consider involves using mutual Self-Help concepts for major construction work and permitting individual self-help for the balance of the work.

8. What kind of training is needed by Self-Help Grantees, especially in light of program eligibility requirements?

9. If an umbrella or franchise approach is utilized, how should these regional groups be trained?

10. Should FmHA adopt uniform or flexible management and training guidelines?

Dated: February 2, 1979.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 79-4283 Filed 2-7-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Parts 2, 271]

[Docket No. RM79-19]

FIRST SALE OF NATURAL GAS PRODUCED FROM PRUDHOE BAY UNIT OF ALASKA FOR TRANSPORTATION THROUGH THE ANGTS

Proposed Rulemaking and Statement of Policy

Issued February 2, 1979.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed Rulemaking and Statement of Policy.

SUMMARY: The Federal Energy Regulatory Commission (the Commission) hereby gives notice of a proposal to amend Part 271, Subchapter H of its interim regulations promulgated under the Natural Gas Policy Act of 1978 (NGPA). The proposed amendment would permit those involved in the first sale of natural gas produced from Prudhoe Bay, Alaska for transportation through the Alaska Natural Gas Transportation System (ANGTS) to apply for adjustments pursuant to section 502(c) of the NGPA in the event of special hardship, inequity, or an unfair distribution of burdens. This amendment is made with respect to the Commission's declining to exercise its discretion under section 110 of the NGPA to permit applications for additions to the maximum lawful price for costs born by the seller of such gas. The Commission also gives notice of a proposal to promulgate a statement of policy under the Natural Gas Act that, absent a showing that the public convenience and necessity would otherwise be served, the purchase of natural gas from Prudhoe Bay, Alaska for transportation through the ANGTS should be of processed gas capable of immediate entry into the transportation system. Therefore, the Commission will approve only those applica-

tions for certificates of public convenience and necessity to construct the ANGTS or for the transportation or sale of gas transported through the ANGTS, which do not require the assumption by the applicant or subsequent purchaser of processing or other related costs save to the extent such costs are allowed pursuant to Commission action taken under its regulations permitting adjustments made under section 502(c) of the NGPA.

DATES: Notice of intent of participate, by February 15, 1979. Written comments filed and served, by March 5, 1979. Reply comments filed and served, by March 19, 1979.

ADDRESSES: All filings should reference Docket No. RM79-19 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. All comments and reply comments to be served pursuant to address supplied on the service list.

FOR FURTHER INFORMATION CONTACT:

John Adger, Director, Alaska Natural Gas Project Office, Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, D.C. 20426, (202) 275-3827.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (Commission) is considering an amendment to its interim regulations implementing the Natural Gas Policy Act (NGPA), 43 FR 56448, December 1, 1978 and the establishment of a policy concerning the recovery of certain "production-related" costs as defined in the NGPA. The amendment to the regulations deals exclusively with first sales of natural gas produced from the Prudhoe Bay Unit of Alaska for transportation through the Alaska Natural Gas Transportation System (ANGTS).[1] The policy statement reflects the public's interest in the matter of establishing responsibility for bearing production-related costs for that gas.

The policy sets forth the general proposition that the recovery of any "production-related" costs by those making applications for certificates of public convenience and necessity under the Natural Gas Act are restricted to those costs permitted by the Commission pursuant to an adjustment granted under section 502(c) of the NGPA in the event of special hardship, inequity, or an unfair distribution of burdens. The policy which is proposed would apply only to certificates involving the purchase or transport of natural gas produced from Prudhoe Bay for transportation through the ANGTS applied for pursuant to the Natural Gas Act.

The proposal is within the Commission's discretion under section 110 of the NGPA. Our decision is also based upon the Natural Gas Act (NGA) 15 U.S.C. 717 *et seq*; the Alaska Natural Gas Transportation Act of 1976 (ANGTA) (15 U.S.C.A. 719 *et seq.*) (Supp. 1978) and the *Decision and Report to Congress on the Alaska Natural Gas Transportation System* submitted to the Congress by the President.[2]

The Commission solicits opinions, data, and views from interested parties and the general public on the Commission's assessment of the public interest in the matter of assigning responsibility for conditioning the Prudhoe Bay gas pipeline entry. The Commission also solicits comments on the mechanisms proposed to implement that assessment.

A. BACKGROUND

The ANGTA represents a legislative substitution of a Presidential decision with Congressional approval in lieu of the ongoing Federal Power Commission procedure regarding construction of the ANGTS. The ANGTA also contained specific requirements for the contents of that decision. The *Decision*, forwarded to and approved by the Congress in late 1977, was the product of the process set out in the ANGTA.

The facilities comprising the ANGTS were identifed specifically in the *Decision*.[3] However, certain questions important to the implementation of the selected system remained for future resolution. Paramount was the question of a field price for the gas. As noted in the *Decision*:

> Final financing for an Alaska natural gas transportation project cannot be arranged until the producer-owners of the Prudhoe Bay gas execute sales contracts. Without such contracts, no gas can be transported, and financing consequently would be unobtainable. Producers cannot be expected to negotiate sales contracts until a price has been established with a reasonable degree of certainty. If this project is to proceed expeditiously, the field price of the gas should be established as soon as possible. (*Decision* at 44)

The maximum lawful price for Prudhoe Bay gas was established by section 109 of the NGPA, thereby overcoming the disability referred to and providing the opportunity for the negotiation of sale contracts for the Prudhoe Bay gas.

Other concerns are also important, including the assignment of responsibility for processing the gas prior to injection into the ANGTS. The Commission's amendments and statement of policy herein proposed are designed to implement the NGPA, the ANGTA, and the *Decision*, and thereby to resolve some residual issues and provide a climate for the rapid conclusion of contract negotiations.

B. ISSUES FOR COMMISSION CONSIDERATION

One of the remaining issues affecting the contracting process relates to conditioning the gas for entry into the ANGTS. There are two questions: (1) Who is to bear the responsibility for the construction and operation of the necessary conditioning facilities; and, (2) what costs, if any, for conditioning should be permitted to be passed through to the consumer?

1. RESPONSIBILITY FOR THE CONDITIONING FACILITIES.

The responsibility for preparing the Prudhoe Bay gas for entry into the ANGTS has been an issue throughout the consideration of the system. It has been obvious that processing and conditioning facilities would be required in order to condition the gas for transportation.[4] None of the three gas pipeline proposals which were presented to the Federal Power Commission provided for the construction and operation of such facilities: all three assumed that the facilities were the responsibility of the producers. Prudhoe Bay producers, on the other hand, argued that the required "* * * conditioning steps—lowering carbon dioxide content, providing high pipeline inlet pressure, chilling, providing extremely thorough water removal, and maintaining close control of condensable hydrocarbon content—are all designed to minimize the investment and operating cost of the pipeline" and should therefore be part of the gas pipeline system.[5]

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[1] Pursuant to the Department of Energy Organization Act, 42 U.S.C.A. 7101 *et seq.* (Supp. 1977), most of the powers formerly exercised by the FPC were transferred to the Commission. By delegation order dated December 5, 1977, the Secretary of Energy transferred to the Commission all necessary powers respecting the ANGTS. 42 FR 61491 (December 5, 1977).

[2] Executive Office of the President, Energy Policy and Planning, *Decision and Report to Congress on the Alaska Natural Gas Transportation System* (September 1977) [hereinafter cited as *Decision*]. Issued pursuant to section 7 of the ANGTA, 15 U.S.C. 719c (1976), and approved by Joint Resolution of Congress, H.R. J. Res. 621, Pub. L. No. 95-158, 91 Stat. 1268 (1977), the *Decision* has the full force of law.

[3] For example, section 3 of the *Decision* states at page 13, "The facilities which are to be covered are those in the U.S. which are adequate for a throughput of up to 2.4 bcfd and are included in the revised Alcan filing submitted to the Federal Power Commission (FPC) on March 8, 1977."

[4] Federal Energy Regulatory Commission, *Comments on the "Decision and Report to Congress on the Alaska Natural Gas Transportation System"*; 19-34 (October 1977) [hereinafter cited as *Comments*].

[5] *See, e.g., Natural Gas Pipeline from Alaska: Joint Hearings Before the Commerce*

Footnotes continued on next page

The question of whether the processing facility is included in the ANGTS was answered in the *Decision* in the negative. The *Decision* in Section 2 ("Description of the Nature and Route of the Approved System") stated: "The proposed Alcan pipeline will commence on the discharge side of the gas conditioning plant facilities in the Prudhoe Bay Field." (*Decision* at 6) Additionally, the system description in Section 3 states that the first compressor station for the ANGTS will be located 75 miles after the point of commencement of the system. (*Decision* at 17) The necessary conclusion is that the gas will enter the ANGTS compressed to its maximum allowable operating pressure. As chilling to prevent degradation of the permafrost is to be done at compressor stations (*Decision* at 17), there is also the inference (given the location of the first compressor station) that the gas is to leave the conditioning plant sufficiently chilled to be transported over the first 75 miles of permafrost without warming to a temperature above the freezing point of water. Finally, there is the explicit reference that "[t]he facilities which are to be covered are those in the U.S. which * * * are included in the revised Alcan filing submitted to the Federal Power Commission (FPC) in March 8, 1977." (*Decision* at 13) The facilities provided in that filing assume that the gas entering the system will have been conditioned to a certain quality, and compressed and chilled prior to entry.[6]

2. ALLOWANCES FOR CONDITIONING COSTS

Having established that the processing facility would not be part of the ANGTS, that does not determine whether the producers or the pipeline should build the plant or who should pay for its operation. Therefore, the second principal issue which the Commission must consider is whether gas consumers should bear any portion of the costs of preparing the gas for pipeline entry. The Commission must address this issue in deciding whether to allow producers to include in the price of the gas costs over and above the maximum lawful price; or whether any of such charges, if paid by purchasers of the gas, could be passed through to consumers.

The Decision, in relevant part (Section 6—Pricing of Alaska Gas), took note of the difficulty in determining a cost-based price for the Prudhoe Bay gas because of its association with oil in the reservoir. It also observed that the Administration's proposed National Energy Act (NEA), then before Congress, would obviate that difficulty by shifting from cost-based pricing to a series of price ceilings determined by statute. The *Decision* then called "for enactment of a gas pricing approach similar to that contained in the National Energy Plan." (Decision at 46)

An amended version of the National Energy Act had passed the House of Representatives and was being considered by the Senate at the time of the *Decision*. That version allowed for possible increases, if allowed by the Commission, in the ceiling prices established by the statute to cover costs of gathering, conditioning, and compressing the gas for pipeline entry.

The Report which accompanied the *Decision* contained a discussion of the economic viability of the ANGTS.[7] Because of the possibility that the Commission might provide some allowance for costs of gathering, conditioning, and compression, that discussion used a range of 0 to 30 cents per MMBtu (1975 dollars) for a potential add-on in estimating the "city gate" or wholesale price of the gas.[8] However, the *Decision* clearly left determination of the appropriate amount of any such allowance to the discretion of the Commission.[9]

In its comments on the *Decision*, the Commission addressed the question of possible allowances for costs of gathering and conditioning.[10] The Commission recognized that a field price would have to be established either through legislation or through rate-making proceedings before any determination could be made with regard to possible allowances for gathering and conditioning. As the Congress had not completed its deliberation on the National Energy Act, at the time of the Commission's comments on the *Decision*, the Commission could only discuss the factors it might consider if called upon to reach a determination regarding possible allowances. (*Comments* at 34-35)

The comments noted that although there will be a variety of costs associated with producing, gathering, and conditioning the gas for pipeline entry, there will also be substantial revenues available from these activities to offset those costs. Since the Prudhoe Bay gas is produced in association with oil, the Commission's comments contemplated that costs could be allocated among sales of gas, oil and natural gas liquids (NGL's), and looked to the gas sales contracts for the initial division of revenues and costs between producers and transporters. The Commission could then determine if an allowance for costs of processing and conditioning was warranted.

The NGPA, as finally passed by Congress, provided both a maximum lawful price for the first sale of Prudhoe Bay gas (section 109) and Commission discretion regarding treatment of "certain production-related costs" (section 110). The legislative history of section 110 makes it clear that, while the Commission's authority to permit producers or other first sellers to charge an amount in excess of the maximum lawful price is discretionary, this authority should, when possible, be exercised in light of "prevailing industry practice."[11]

"[P]revailing industry practice" as to functions usually performed by the producer can be determined by reference to existing contracts and sales for those areas having a history of natural gas production and sales. It was on this basis that the Commission's interim regulations were structured. (43 FR

Footnotes continued from last page
Subcomm. on Energy and Power of the House Comm. on Interstate and Foreign Commerce and the Interior Subcomm. on Indian Affairs and Public Lands of the House Comm. on Interior and Insular Affairs, 95th Cong., 1st Sess., Ser. No. 95-79, at 446 (1977) (statement of L. G. Rawl, Executive Vice-President, Exxon, U.S.A.) [hereinafter House Hearings].

[6] Alcan Pipeline Project 48" Alternative Proposal, Docket No. RM77-6. The revised Alcan filing describes a system which would transport natural gas processed to the following standards: (1) 1% carbon dioxide by volume; (2) 0.6% nitrogen by volume; (3) 1138 Btu/cuft gross heating value; and (4) a hydrocarbon dew point of −10° F at 1000 psi. (Alcan Pipeline Project 48" Alternative Proposal at § 3, p. 3; Docket No. RM77-6). This revised filing referenced an initial filing in which the following additional specifications were enumerated: (1) a maximum water content of 0.2 pounds per million cubic feet; (2) a sulphide content of no more than 0.25 grains per 100 cubic feet; and (3) a total sulphur content of 10 grains per 100 cubic feet. Alcan Pipeline Co., FPC Gas Tariff, Original Vol. 1, Exhibit No. AP-16, at Original Sheet No. 112 (Docket No. CP75-96, *et al.*).

[7] *See Report* accompanying the President's *Decision*, at 93-98. While not adopted by the Congress in its joint resolution on the *Decision*, the *Report* was submitted to them with the *Decision*. It may thus be considered as relevant legislative history. *See Midwestern Gas Transmission Co.* v. *FERC*, No. 78-1753, slip op. at 11-12, n. 23 (D.C. Cir., Nov. 2, 1978)

[8] The actual costs of gathering and conditioning were estimated to be about 30 cents per MMBtu (1975 dollars). The range presented was intended to cover the spectrum of possibilities between a Commission determination that no add-on be provided and a determination that all these costs should be passed on to gas consumers.

[9] *See, e.g., Decision* at 95: "When the cost of service price of the Alcan project is added to a wellhead price of $1.45 to $1.75 per mmbtu (*depending on the amount the FPC will allow producers for their processing costs*), the wholesale or "city gate" price of the gas should be about $2.50 to $2.80 per mmbtu in constant 1975 dollars." (emphasis added). *See also* the statements of DOE Secretary Schlesinger in discussing the Decision before the House, House Hearings, supra note 5, at 219, 224-26, 234, 280-81.

[10] *Comments* at 19-34.

[11] 124 Cong. Rec. H13118 (Daily ed. Oct. 14, 1978). (Statement of the Hon. John D. Dingell.)

56490) There is, however, no such history for Prudhoe Bay, since the production from that area has never come under contract. For this reason, the Commission's discretion to consider the add-on of production-related costs for this producing area is not bound by considerations which prevailed for conventional producing areas.

C. Commission Assessment of the Public Interest

The Commission believes that there is adequate information in the *Decision*, the Report accompanying it, and the legislative history to draw some preliminary conclusions regarding responsibility for the gas conditioning facilities at Prudhoe Bay and the need for any special allowances to the producers for the costs of construction and operation of those facilities. The Commission in this section outlines these conclusions and puts forward specific proposals to achieve the distribution of costs and benefits which conform to these conclusions.

1. Responsibility for the Conditioning Plant

It is the Commission's view that the Prudhoe Bay producers should be responsible for the construction and operation of the required conditioning facility. Providing the ANGTS with pipeline quality gas is the responsibility of the producers.[12] Therefore, the public interest will best be served if the producers bear these costs.[13] This conclusion is based on the premise that the producers will contract with purchasers for the sale of Prudhoe Bay gas at not less than the maximum lawful price set by section 109 of the NGPA. If the parties agreed to a sales price lower than the section 109 (NGPA) ceiling with the pipeline paying for some processing costs, the Commission would not necessarily oppose such and outcome provided the total price paid for pipeline quality gas did not exceed the section 109 (NGPA) price.[14] In any event, the financial responsibility for the construction and operation of the plant facilities rests with the producers.

An additional consideration in this determination is the risk of reduced gas deliverability and the potential for reducing this risk. Producer responsibility for the processing facilities is one answer. The ANGTS was designated for a throughput of up to 2.4 billion cubic feet per day. (*Decision* at 13) That these facilities will be efficiently used, and that natural gas will be available to ensure that efficient use, is a proper concern of the Commission. There has been a question as to whether the producers might be able to provide some type of throughput guarantee to reduce the pipeline's and the consumer's exposure to the risk of reduced deliverability.[15] The Commission believes that producer responsibility for the gas conditioning facility would provide some deliverability protection. Should underutilization of a producer-owned facility result from reduced deliverability from the Prudhoe Bay field, the producers, who have the ability to explore for new sources of gas, will have an additional incentive to find and produce such gas as is necessary to maximize the use of the plant. If this result occurs, greater volumes available for transportation will make for a more efficient operation of the ANGTS.

The Commission believes that the specific language of the *Decision* in its description of the ANGTS and the potential for ensuring the system some form of deliverability protection forms the basis for a definitive Commission finding that the conditioning facilities should be the responsibility of the producers. If the producers should engage some third party to perform the conditioning function, the Commission must be satisfied that deliverability protection similar to direct producer responsibility is provided to gas consumers.

2. Costs of Gathering and Conditioning

In issuing proposed regulations to implement section 110 of the NGPA for lower-48 producing areas, the Commission included quality standards which would have to be exceeded in order for the Commission to consider an allowance for production-related costs above the NGPA maximum lawful price (43 FR 56574-77 (Dec. 1, 1978)). These standards were based upon experience in the lower-48 producing areas. For gas sales made from Prudhoe Bay there is no such experience. In lieu thereof, we have the *Decision*, its description of the system, and its references to the filings containing appropriate quality standards to rely on. (*See* note 6 above.) For this reason, the Commission believes that the quality standards used for the lower-48 are inapplicable for gas delivered to the ANGTS.

As with the Commission's interim regulations for the lower-48 producing area, the Commission believes that costs of delivering "pipeline quality gas" to the ANGTS should be covered by the first sale price ceilings which are provided by the NGPA. With respect to Prudhoe Bay, it is the *Decision* and not prevailing industry practice that determines the quality standards. (*Supra*, note 6) Therefore, the Commission declines to exercise its discretion under section 110 of the NGPA to permit an adjustment for production-related costs of the Prudhoe Bay gas.

We do not believe on the basis of available information, that a refusal to allow production-related costs in excess of the ceiling price established in section 109 of the NGPA will work no hardship on the producers. Such information as is available suggests that the NGPA's section 109 price is adequate to compensate the producers for the costs of producing, gathering and conditioning the gas for sale to the ANGTS at the prescribed standards. The Department of the Interior, as part of a study of alternative transportation systems completed in December of 1975, evaluated the incremental costs of producing and conditioning the gas for sale.[16] That study estimated those costs, including an appropriate return on equity investment, to be 47 cents/MMBtu (1975 dollars). Additionally, the Federal Power Commission, in its *Recommendation to the President*, estimated the costs of gathering and conditioning at about 50 cents/MMBtu (1975 dollars).[17] If these estimates of costs are close to being correct, then the $1.45 per MMBtu (1977 dollars) provided by section 109 of the NGPA would appear more than adequate to cover the incremental costs associated with gas sales, plus a reasonable profit.[18] The Commission

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[12] *See* statement of Secretary Schlesinger testifying on the *Decision* in *Alaska Natural Gas Transportation System: Hearings before the Senate Comm. on Energy and Natural Resources*, 95th Cong., 1st Sess., No. 95-73, at 12-13. Similar treatment to that proposed here was afforded in the Commission's interim regulations implementing section 110 of the NGPA, 43 FR 56489-92 (Dec. 1, 1978).

[13] To the extent the pipeline were called upon to finance the plant, pay for its operation, or expend funds above the section 109 (NGPA) price to obtain pipeline quality gas, there might be an adverse effect on the financability of the project or the marketability of the gas to the consumer. Even the possibility of such an impact would be detrimental and alien to the public good.

[14] The only consideration to be added is with respect to the incremental pricing provisions of section 203(a)(8) of the NGPA. The Commission welcomes the submission of comments on this point.

[15] *See, e.g.*, Federal Power Commission, *Recommendation* to the President, at I-57, XII-7, 8 (May 1, 1977) [Hereinafter FPC Recommendation]. For field performance, the producers' response to this issue has been that any deliverability guarantee on their part would be essentially useless because the rate of production is controlled by the Alaska state conservation authority. The producers reiterate their assertion that any performance guarantee for the facility, like the facility itself, is not their responsibility.

[16] U.S. Dept. of the Interior, *Alaska Natural Gas Transportation Systems, A Report to the Congress Pursuant to Public Law* 93-153 (Dec. 1975).

[17] FPC Recommendations at XII-33, 34 n. 52.

[18] In this regard, the Commission notes that the $1.45 maximum level price applicable for the first sale of this gas, adjusted for inflation to April of 1979, is $1.672 per MMBtu.

solicits opinions, data and views regarding the costs of producing and conditioning this gas and the adequacy of the section 109 (NGPA) price to cover the incremental costs of gas production and conditioning for transportation in the ANGTS without inflicting hardship, creating inequity, or unfairly distributing to producers a burden.

D. SPECIFIC PROPOSALS.

In this section, specific mechanisms are proposed in order to implement the policy expressed herein for the purpose of protecting the public interest in the assignment of responsibility for the construction and operation of the processing facilities. These mechanisms are: (1) An amendment to the presently effective interim regulations to make section 502(c) of the NGPA applicable to Prudhoe Bay gas to provide an opportunity for relief if the Commission's perceptions of the distributions of production-related costs and benefits associated with producing and conditioning the Prudhoe Bay gas are not borne out; and (2) a policy statement under the NGA to govern certain aspects of future pipeline certification proceedings. The latter is required in order to make clear the Commission's interpretation that the facilities, and their associated costs, required to bring the gas to pipeline quality are the responsibility of the producers and not the pipeline company purchasers and transporters of the gas. The rationale for this interpretation and its public interest basis has been discussed above. We look to the submissions of opinions, data and views in response to this notice.

The proposed amendment would amend the Commission's current interim regulations to make the section 502(c) adjustment procedures available to those engaged in the sale and purchase of natural gas produced from Prudhoe Bay for transportation through ANGTS. The regulations would then provide for an adjustment if a special hardship, inequity, or an unfair distribution of burdens resulted.

Section 110 grants the Commission discretion to allow a price in excess of the maximum lawful price for permissible production-related costs borne by the seller. The scope of this statutory discretion does not reach the case of a sale at the maxumum lawful price where there are production-related costs but they are not borne by the seller. This raises the possibility that untreated Prudhoe Bay gas may be sold at the maximum lawful price.[19] Such a sale of untreated Prudhoe Bay gas would have several undesirable consequences. It would shift gas processing costs from producers to consumers, thereby increasing the city-gate price of the gas and adversely affecting its marketability. In addition, certain production-related costs required for oil production, attendant to the production of the Prudhoe Bay gas but not related to gas sales, could be improperly shifted to the gas purchaser. (See *Comments* at 19–34.)

It is the Commisson's opinion that such a shift to the consumer of production-related costs would not be in the public interest because it would materially increase the cost of this gas to the consumer. For these reasons, the Commission declines to exercise its discretionary authority under section 110 to permit a first seller to charge a price in excess of the maximum lawful price permitted under section 109 for production-related costs.

Although the Commission's "conditional" certificate for the building of the ANGTS was issued pursuant to sections (5)(A)(2) and 9 (a) and (b) of the ANGTA, a final certificate authorizing construction and operation must be issued pursuant to section 7 of the Natural Gas Act (NGA), 15 U.S.C. 717f(c).[20] In assessing the certification of the project which the statute requires, the Commission must consider the public convenience and necessity. A necessary part of this consideration is the assessment of the financeability of the ANGTS and the marketability and availability of the gas to be transported through it. The proper distribution of the processing costs impacts these considerations.

Mindful of the considerations inherent in the President's *Decision* on its approval of the ANGTS, and pursuant to the Commission's statutory authority,[21] the Commission intends to implement a policy that in its consideration of certificates for the construction of the ANGTS, or for the purchase or transportation of gas through the ANGTS, no cost of construction, purchase, or transportation which includes costs of processing the Prudhoe Bay gas will be certificated absent a determination made under section 502(c) of the NGPA that the cost is one properly allocable to the price of the gas. Such a policy will allocate production-related costs in a manner consistent with the Commission's view of the public interest, and will enhance the financeability of the ANGTS, assist marketability of the gas involved, avoid the complications of incremental pricing, and comply with congressional dictates which touch upon this gas and its transportation through the ANGTS.[22]

The policy which the Commission proposes would apply only to certificates which involve the purchase or transportation of natural gas produced from the Prudhoe Bay Field for transportation through the ANGTS. The issuance of the certificates will proceed according to the prescriptions of the NGA.

E. WRITTEN COMMENT PROCEDURES

The Commission invites interested persons to submit written data, views, and other information concerning the matters set forth in this notice. An original and 14 copies should be filed by March 5, 1979. Comments should be submitted to the Federal Energy Regulatory Commission, Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426 and should reference Docket No. RM79-19. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, 825 North Capitol Street, NE., Washington, D.C., during regular business hours.

Because of the complexity and importance of the issues presented in this notice, the Commission intends that those participating in this proceeding should serve their comments on other participants, and have an opportunity to respond to the initial comments made in response to this notice. In order for this to take place, any participant intending to file initial comments to this notice shall notify the Secretary of the Commission in writing on or before February 16, 1979 of the intent to participate. A service list will then be prepared and mailed to those who have stated an intention

[19] *See, e.g.*, 124 Cong. Rec. S16257 (daily ed. Sept. 27, 1978) (exchange between Senators Gravel and Jackson).

[20] Order Vacating Prior Proceedings and Issuing Conditional Certificates of Public Convenience and Necessity, issued December 15, 1975, in Docket Nos. CP78-123, *et al.*

[21] Section 9 of the ANGTA provides that when any agency action is "necessary or related to the construction and initial operation of the approved transportation system," and that action "requires a certificate, right-of-way, permit, lease, or other authorization," the Commission must act at the earliest practicable date. The availability of an adequately processed gas supply for transportation through the system is obviously directly necessary and related to the construction and initial operation of the ANGTS. The processing facilities of Prudhoe Bay will not be part of the transportation system itself, but the building and operation of these facilities, and indeed the executing of related gas sales contracts, require the Commission to take the action proposed herein. *See Decision* at 44.

[22] Section 601(c) of the NGPA, in its treatment of the limitations placed upon the NGA certification authority of this Commisson is not germane. That section speaks only to the denial of a certificate based on the maximum lawful price paid for the gas, inclusive of that permitted under section 110. It does not address the issue posed here: the assumption by a pipeline of processing costs attendant to a purchase and sale of natural gas of less than pipeline quality.

to participate. The initial comments shall be filed with the Office of the Secretary as stated above. In addition, each party shall serve their initial comments by March 5, 1979 to those of the service list. Reply comments are to be filed with the Office of the Secretary in accordance with the above procedures by March 19, 1979, and shall be served upon parties listed on the service list by the same date.

In providing proper service of the initial comments and any reply comments, attention is directed to the regulations of the Commission found at 18 CFR 1.17(b) [1977] which permits service by mail. In addition, those who provide comments are directed to the subscription and verification provisions found at 18 CFR 1.16 [1977].

In order that all interested parties may be apprised of this matter, the Commission orders that the Secretary, in addition to publishing this notice in the FEDERAL REGISTER, shall serve copies of the same to all parties of record in Docket Nos. CP78-123, CP78-124, CP78-125, and RM78-12, said service to be accomplished pursuant to 18 CFR 1.17 [1977].

(Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.;* Natural Gas Policy Act of 1978, Pub. L. No. 95-621, 92 Stat. 3350 (1978); Department of Energy Organization Act, Pub. L. No. 95-91; Executive Order No. 12009, 42 FR 46267; DOE Delegation Order No. 0204-8, 42 FR 61491; Alaska Natural Gas Transportation Act of 1976, 15 U.S.C. 719, *et seq.;* President's *Decision and Report to Congress on the Alaska Natural Gas Transportation System,* approved by joint resolution, Pub. L. No. 95-158, 91 Stat. 1268 (1977); Administrative Procedure Act, 5 U.S.C. 553.)

In consideration of the foregoing, the Commission proposes to amend Part 2, Subchapter A and Subpart K, Part 271, Subchapter H of Chapter I, Code of Federal Regulations as set forth below.

By the Commission. Commissioner Sheldon voted present.

KENNETH F. PLUMB,
Secretary.

(1) Part 2, Subchapter A of Chapter I, Title 18 Code of Federal Regulations is amended by adding new § 2.101 to read as follows:

§ 2.101 Policy respecting consideration of certain certificates applied for pursuant to the Natural Gas Act and involving gas to be transported through the Alaska Natural Gas Transportation System.

In any proceeding involving the approval of applications for certificates of public convenience and necessity, whether for the construction of the Alaska Natural Gas Transportation System or for the purchase or transport of gas through that system, it will be the general policy of the Commission, absent a showing that the public convenience and necessity would otherwise be served, that the purchase of natural gas from Prudhoe Bay, Alaska for transportation through the Alaska Natural Gas Transportation System should be of processed gas which is capable of immediate entry into the transportation system; and therefore, the Commission will approve only those applications for certificates of public convenience and necessity which do not require the assumption by the applicant or subsequent purchaser of processing or other related costs save to the extent such costs are allowed pursuant to Commission action taken under § 271.1106 of its regulations.

(2) Section 271.1100 of Subpart K, Part 271 of Subchapter H of Chapter I, Title 18 Code of Federal Regulations is amended in paragraph (b) to read as follows:

§ 271.1100 Applicability.

* * * * *

(b) *Exclusions.* Sections 271.1104 and 271.1105 shall not apply to any natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

(3) Section 271.1106 of Subpart K, Part 271 of Subchapter H of Chapter I, Title 18 Code of Federal Regulations is amended to read as follows:

§ 271.1106 Adjustments.

Pursuant to section 502(c) of the NGPA, any person may apply to the commission for an adjustment on the grounds that the operation of §§ 271.1100)b) or 271.1105 results in special hardship, inequity, or an unfair distribution of burdens to such person.

[FR Doc. 79-4463 Filed 2-7-79; 8:45 am]

[6450-01-M]

[18 CFR Part 284]

[Docket No. RM79-20]

CERTAIN SALES OF NATURAL GAS BY INTRASTATE PIPELINES

Further Notice of Proposed Rulemaking and Public Hearing

Issued February 5, 1979.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Further notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is seeking further written comments on its revised proposed regulations implementing section 311(b) of the Natural Gas Policy Act of 1978. Section 311(b) provides that the Commission may, by rule or order, authorize sales of natural gas by intrastate pipelines to interstate pipelines or local distribution companies served by interstate pipelines.

DATES: Written comments to be filed by February 21, 1979; public hearing to be held February 20, 1979.

ADDRESSES: Comments and requests to participate in the public hearing should be addressed to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Romulo L. Diaz, Jr., Deputy Assistant General Counsel, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 275-1790, or Howard Kilchrist, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 275-4539.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

Section 311(b) of the Natural Gas Policy Act of 1978 (NGPA), Pub. L. 95-621, November 9, 1978, provides that the Federal Energy Regulatory Commission (Commission) may, by rule or order, authorize any intrastate pipeline to sell natural gas to any interstate pipeline and any local distribution company served by an interstate pipeline. Section 311(b) also sets forth certain requirements relating to rates and charges, duration and other matters in connection with the sales, and states that sales authorized under section 311(b) are subject to terms and conditions prescribed by the Commission.

On November 13, 1978, the Commission adopted a notice of proposed rulemaking (43 FR 53270, November 15, 1978) in Docket No. RM79-3, proposing interim regulations to implement the NGPA. In that document, the Commission requested comments on proposed regulations implementing section 311(b). Although most of the regulations in that proposal were to become effective on December 1, 1978, the Commission proposed not to make the new Subpart C of Part 284, implementing section 311(b), effective until after the current winter heating season. The purpose of delaying the effectiveness of the section 311(b) rule was to permit a smooth transition between the Commission's emergency exemption program under section 7(c) of the Natural Gas Act, and the implementation of the NGPA provisions

permitting sales by intrastate pipelines to interstate pipelines and local distribution companies.

In this notice of proposed rulemaking, the Commission requests further data, views and comments with respect to the implementation of section 311(b) and also invites participation in a public hearing on the proposal. Comment procedures and information concerning the hearing are set forth below.

II. Summary of the Proposed Regulation

As proposed, Subpart C of Part 284 would generally permit intrastate pipelines to sell natural gas to interstate pipelines and to local distribution companies served by interstate pipelines, in accordance with the provisions of the subpart. These sales would take place without prior Commission approval, but as required by section 311(b)(4) of the NGPA and § 284.145(b) of the proposed regulations, would be subject to interruption to the extent that natural gas subject to the sale is required by selling pipeline to provide adequate service to the pipeline's customers at the time of the sale.

Sales would be limited to two years' duration under proposed § 284.145(a) and could be extended for periods of up to two years each if not disapproved by the Commission after opportunity for oral and written comments. The Commission could also modify the terms of a proposed extension and impose upon sales or extensions terms and conditions it deemed appropriate and in the public interest. Upon complaint or its own motion, the Commission could also terminate a sale after making certain findings enumerated in section 311(b)(6) of the NGPA.

Section 284.145(c) of the reguations states that no sales under Subpart C may involve natural gas acquired by the intrastate pipeline solely or primrily for the purpose of resale under section 311(b).

Section 311(b)(2) sets forth the statutory requirements relating to rates and charges by intrastate pipelines for sales to which these rules apply. Rates and charges must be "fair and equitable" and may not exceed the sum of (1) the pipeline's weighted average acquisition cost of natural gas; (2) an amount determined by Commission rule to be necessary to provide reasonable compensation for services and a reasonable opportunity for profit; and (3) an adjustment for current costs incurred under certain circumstances due to the sale. The Statement of Managers accompanying the Conference Report states that the conferees did not intend that the selling pipeline make a profit on the purchase and sale aspects of the transaction (H.R. Rep. No. 95-1752, p. 108).

In the November 13 proposal, the Commission proposed a definition of "weighted average acquisition cost of natural gas" which would have used volumes of gas acquired during a 12-month period (ending no more than 90 days prior to commencement of deliveries pursuant to the sale) and the prices paid for those volumes on the last day of the 12-month period. Under that formula, the weighted average acquisition cost of natural gas would have been fixed for the duration of a Subpart C sale as of a time up to 90 days prior to the commencement of deliveries.

The Commission received a number of comments which argued that the regulations should provide a formula that would permit a pipeline to charge a price determined on the basis of a constantly updated acquisition cost. In addition, the conferees stated that the determination of the weighted average acquisition cost was meant to be a contemporaneous determination involving the cost of gas at the time it is acquired and resold and that the customers of the selling pipeline shall be in no worse position as to price or supply. (H.R. Rep. No. 95-1752, p. 108). In view of these comments and the statements of the conferees, the Commission has revised its proposal. The new proposed § 284.143 would provide for a monthly determination of the weighted average acquisition cost of natural gas. For any calendar month in which deliveries pursuant to Subpart C occurred, the weighted average cost would be computed by (1) determining the quantities (in MMbtu's) of gas acquired from each source of supply during a 12-month period ending no more than 90 days before the beginning of the month; (2) multiplying the MMbtu's attributable to each source of supply by the most recent price actually paid with respect to each source; and (3) dividing the sum of the products computed in (2) by the sum of the MMbtu's determined in (1). Thus, the calculation of the weighted average cost would be revised monthly on the basis of the most recent prices paid. This moving average approach would enable the intrastate pipeline to reflect the latest prices paid while at the same time avoiding the substantial fluctuations that would occur under monthly computations.

The intrastate pipeline's weighted average acquisition cost of natural gas is one of the three components of the permissible rates and charges for a sale under Subpart C. The pipeline may add to that cost, as provided in § 284.144(a)(2), an amount to recover the costs of gathering, treating, processing, transporting and delivering the gas as provided in § 284.123 of Subpart B of Part 284 (Interim Regulations, 43 FR 56628-56629, December 1, 1978). Under § 284.123(b), an intrastate pipeline may base its rates upon the methodology and cost used (1) in designing its rates to recover the cost of gathering, treatment, processing, transportation, delivery or similar service (including storage) included in its firm sales rate schedules for city-gate service on file with a state regulatory agency; or (2) in determining the allowance permitted by an appropriate state regulatory agency for city-gate service by the intrastate pipeline. The pipeline may elect to use the rates contained in a transportation rate schedule for intrastate service on file with the state regulatory agency which the pipeline determines covers service comparable to service under Subpart B. Instead of any of these methods, an intrastate pipeline may file proposed rates with the Commission, with information showing the rates to be fair and equitable, and may commence service using those rates, subject to refund. The Commission received comments stating that if intrastate pipelines were not permitted to make a profit on sales under section 311(b), they would have no incentive to enter into these transactions. As noted above, however, the conferees stated that they did not intend that the purchase and sale aspects of the transaction produce a profit for the selling pipeline. By incorporating the Subpart B computation of charges for services in connection with a Subpart C sale, however, the Commission intends to afford intrastate pipelines the same compensation and opportunity for reasonable profit as would be afforded in a wholly intrastate transportation transaction and to satisfy the requirements of section 311(b)(2)(B) of the NGPA.

The third component of the rates and charges permissible in Subpart C sales is the adjustment described in section 311(b)(2)(C) of the NGPA and § 284.144(b) of the proposed regulations. The adjustment is intended to offset any contemporaneous increase in the weighted average acquisition cost of gas that a pipeline would incur to acquire gas under existing contracts as a result of entering into sales under Subpart C. The adjustment may be included in the sales price with respect to gas which (1) is acquired under an existing contract; (2) is in excess of quantities the pipeline would otherwise have acquired; and (3) the price of which exceeds the pipeline's weighted average acquisition cost of gas. If natural gas meeting these criteria is sold pursuant to Subpart C, the pipeline may add to the basic rate an amount sufficient to offset the increase in its weighted average acquisition cost.

The reporting requirements proposed in § 284.148 include an initial report, to be filed within 60 days after commencing deliveries under a Subpart C sale and "subsequent reports" whenever a significant change occurs in the information submitted with the initial report. If an extension of the sale is sought, an extension report must be filed not less than 90 days prior to the expiration of the sale. The extension report would consist of a current statement of the information required in the initial report and the terms of the proposed extension. Finally, within 60 days after termination of any sale or extension, a final report would be required of the purchases stating quantities purchased, amount paid and delivery points. All reports would be required to be under oath, signed by a senior official of the company.

As announced in the November 13 proposal, the Commission proposes to make rules implementing section 311(b) effective on March 1, 1979. For this reason, the period for the filing of comments on these proposed rules will end on February 21. In addition, a public hearing will be held. The Commission intends to take final action on the proposed regulations prior to March 1.

III. WRITTEN COMMENT PROCEDURES

Interested persons are invited to submit written comments, data, views or arguments with respect to this proposal. An original and 14 copies should be filed with the Secretary of the Commission. All comments received prior to 4:30 p.m., E.S.T., February 21, 1979, will be considered by the Commission prior to promulgation of final regulations. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, 825 North Capitol Street, NE., Washington, D.C., during regular business hours. Comments should by submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should reference Docket No. RM79-*20*.

IV. PUBLIC HEARING PROCEDURES

A public hearing concerning this proposal will be held in Washington, D.C. on February 20, 1979, beginning at 9:30 a.m. and will continue if necessary on the following day. Any person interested in this proceeding or representing a group or class of persons interested in this proceeding may make a presentation at the hearing provided a written request to participate is received by the Secretary of the Commission prior to 4:30 p.m., on February 15, 1979.

Request to participate in the hearing should include a reference to Docket No. RM79-*20*, as well as a concise summary of the proposed oral presentation and a number where the person making the request may be reached by telephone. Prior to the hearing, each person filing a request to participate will be contacted by the presiding officer or his designee for scheduling purposes. At least five copies of the statement shall be submitted to the Secretary of the Commission prior to 4:00 p.m. on February 16, 1979. The presiding officer is authorized to limit oral presentation at the public hearing both as to length and as to substance. Persons participating in the public hearing should, if possible, bring 100 copies of their testimony to the hearing.

The hearing will not be a judicial or evidentiary-type hearing. There will be no cross-examination of persons presenting statements. However, the panel may question such persons and any interested person may submit questions to the presiding officer to be asked of persons making statements. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented. If time permits, at the conclusion of the initial oral statements, persons who have made oral statements will be given the opportunity to make a rebuttal statement. Any further procedural rules will be announced by the presiding officer at the hearing. A transcript of the hearing will be made available at the Commission's Office of Public Information.

(Natural Gas Policy Act of 1978, Pub. L. 95-621)

In consideration of the foregoing, the Commission proposes to amend Subchapter I, Part 284, Chapter I of Title 18, Code of Federal Regulations, as set forth below.

By the direction of the Commission.

KENNETH F. PLUMB,
Secretary.

1. Part 284 is amended in the table of sections by adding a new Subpart C in the appropriate numerical order new sections and titles to read as follows:

Subpart C—Certain Sales by Intrastate Pipelines

Sec.
284.141 Applicability.
284.142 Sales by intrastate pipelines.
284.143 Definition.
284.144 Rates and charge.
284.145 Terms and conditions.
284.146 Extensions.
284.147 Terminations.
284.148 Reporting requirements.

AUTHORITY: Natural Gas Policy Act of 1978, Pub. L. 95-621.

2. Part 284 is amended by adding a new Subpart C to read as follows:

Subpart C—Certain Sales by Intrastate Pipelines

§284.141 Applicability.

This subpart implements section 311(b) of the NGPA and applies to certain sales of natural gas by intrastate pipelines to:

(a) Interstate pipelines; and

(b) Local distribution companies served by interstate pipelines.

§284.142 Sales by intrastate pipelines.

Any intrastate pipeline may, without prior Commission approval, sell natural gas to any interstate pipeline or any local distribution company served by an interstate piepine, in accordance with the provisions of this subpart.

§ 284.143 Definition.

"Weighted average acquisition cost of natural gas" means the cost of natural gas to an intrastate pipeline for any calendar month in which deliveries pursuant to this subpart occur, computed by:

(a) Determining the actual quantities of natural gas (expressed in terms of MMbtu's) purchased by the intrastate pipeline from each source of supply, excluding any quantities for which the instrastate pipeline makes an adjustment under § 284.144(b), during a 12-month period ending no more than 90 days prior to the first day of any calendar month in which deliveries pursuant to the sale occur;

(b) Multiplying the MMbtu's attributable to each source of supply by the most recent price per MMbtu actually paid with respect to each source of supply; and

(c) Dividing the sum of the products computed under paragraph (b) of this section by the sum of the MMbtu's determined under paragraph (a) of this section.

§ 284.144 Rates and charges.

(a) *Basic rate.* The rates and charges by an intrastate pipeline pursuant to this subpart may not exceed:

(1) Its weighted average acquisition cost of natural gas; plus

(2) An amount to recover the costs of gathering, treating, processing, transporting, and delivering the natural gas as determined in accordance with § 284.123; plus

(3) An adjustment as determined under paragraph (b) of this section.

(b) *Adjustment.* With respect to natural gas sold pursuant to this subpart which:

(1) Is acquired under an existing contract;

(2) Is in excess of quantities which the intrastate pipeline would otherwise have acquired; and

(3) The price of which exceeds the intrastate pipeline's weighted average acquisition cost of natural gas, the intrastate pipeline may add to the basic rate under paragraph (a) of this section an amount sufficient to offset the increase in its weighted average acquisition cost of natural gas.

§ 284.145 Terms and conditions.

(a) No sale pursuant to this subpart or extension thereof may be for a period exceeding two years.

(b) Any sale pursuant to this subpart shall be subject to interruption to the extent that natural gas subject to the sale is required by the intrastate pipeline to provide adequate service to the pipeline's customers at the time of the sale.

(c) No sale pursuant to this subpart may involve natural gas acquired by the intrastate pipeline solely or primarily for the purpose of resale pursuant to this subpart.

(d) The Commission may by rule or order impose other terms and conditions as it deems appropriate and in the public interest.

(e) The Commission presumes that the cost of gathering, treating, processing, transporting, and delivery recovered under § 284.144 will be considered by the state regulatory authority in arriving at sales and transportation rates to enable the intrastate pipeline company to recover such costs and earn its allowed rate of return.

§ 284.146 Extensions.

(a) An intrastate pipeline seeking to extend a sale pursuant to this subpart shall file an extension report as provided by § 284.148(c).

(b) If an extension report as required in § 284.148(c) is duly filed, the proposed extension may take effect unless the Commission, prior to the beginning of the proposed extension, after opportunity for the oral presentation of data, views and arguments and for written comments, determines by order that the proposed extension is not approved. If the Commission determines, by order, that the proposed extension shall be modified, the extension may take effect only as modified.

§ 284.147 Terminations.

(a) Upon complaint of any interested person or upon the Commission's own motion, the Commission may by order terminate a sale pursuant to this subpart.

(b) Prior to issuing an order under paragraph (a) of this section, the Commission shall afford an opportunity for the oral presentation of data, views and arguments, and for written comments.

(c) A sale under this subpart may be terminated if the Commission determines that:

(1) The termination is required to enable the intrastate pipeline to provide adequate service to its customers at the time of the sale;

(2) The sale involves natural gas acquired by the intrastate pipeline solely or primarily for the purpose of resale pursuant to this subpart;

(3) The sale violates any provision of this subpart or any term or condition established by rule or order of the Commission applicable to the sale; or

(4) The sale circumvents or violates any provision of the NGPA.

(d) Upon complaint of any interested person or upon its own motion, the Commission may, prior to a hearing as provided in paragraph (b) of this section, suspend a sale pursuant to this subpart pending the hearing if it determines that any of the findings under paragraph (c) of this section is likely to be made following the hearing.

§ 284.148 Reporting requirements.

(a) *Initial report.* Within 60 days after commencing deliveries under a sale pursuant to this subpart, an intrastate pipeline shall file with the appropriate state regulatory agency and with the Commission an initial report, under oath, signed by a senior official of the company, containing the following information:

(1) The exact legal name of the intrastate pipeline and the name, title and mailing address of the person or persons to whom communications regarding the sale pursuant to this subpart should be addressed;

(2) A description of the sale, including:

(i) The identity of the parties;

(ii) The dates of commencement and anticipated termination of the sale;

(iii) The estimated total and daily quantities (in MMbtu's) of natural gas; and

(iv) The rate to be charged;

(3) A computation showing the methodology for determining the weighted average acquisition cost of natural gas under this subpart;

(4) A computation showing the methodology to be employed for arriving at the rate charged to recover the cost of gathering, treating, processing, transporting and delivering the natural gas associated with the sale;

(5) Computation of an adjustment, if any, under § 284.165(b), including:

(i) The basis for attributing certain additional acquisitions of natural gas to a sale pursuant to this subpart;

(ii) The identity of the existing contract under which the additional acquisitions are made and the price (per MMbtu) of natural gas purchased under the contract; and

(iii) Each point of delivery of additional acquisitions of natural gas to the intrastate pipeline; and

(6) An affidavit that service pursuant to the sale is subject to interruption to the extent that natural gas subject to the sale under this subpart is required to enable the intrastate pipeline involved to provide adequate service to its customers at the time of the sale.

(b) *Subsequent report.* If any significant change occurs with respect to the information filed under paragraph (a) of this section, the intrastate pipeline shall file with the Commission and the appropriate state regulatory agency, under oath, appropriate amendments to its initial report, signed by a senior official of the company.

(c) *Extension report.* Not less than 90 days prior to the expiration of a contract for the sale of natural gas pursuant to this subpart, an intrastate pipeline seeking to extend the sale beyond the initial two-year period or any period of extension shall file with the Commission and the appropriate state regulatory agency an extension report signed by a senior official of the company, under oath, stating:

(1) Current information with respect to any matters required to be reported under paragraph (a) of this section; and

(2) The proposed terms of the extension.

(d) *Final report.* Within 60 days after the termination of any sale or extension under this subpart, the interstate pipeline or local distribution company served by an interstate pipeline which purchased natural gas pursuant to this subpart shall file with the Commission and the appropriate state regulatory agency, under oath, a final report signed by a senior official of the company, stating:

(1) The actual quantities of natural gas purchased, on a monthly and total basis;

(2) The actual rate paid (per MMbtu for each month and the total amount paid; and

(13) The points of delivery.

[FR Doc. 79-4464 Filed 2-7-79; 8:45 am]

[4910-22-M]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[23 CFR Parts 652 and 663]

[FHWA Docket No. 79-3]

DESIGN AND CONSTRUCTION STANDARDS FOR BIKEWAY CONSTRUCTION PROJECTS

Advance Notice of Proposed Rulemaking

AGENCY: Federal Highway Administration, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this advance notice to request comments on the development of design and construction standards for bikeway construction projects. This action is taken under section 141(b) of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599, 92 Stat. 2689).

DATES: Comments must be received on or before April 9, 1979.

ADDRESS: Comments should be sent (preferably in triplicate) to FHWA Docket No. 79-3, Federal Highway Administration, HCC-10, Room 4205, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Thomas Jennings, Highway Design Division, Office of Engineering (202-426-0314) or Reid Alsop, Office of the Chief Counsel (202-426-0800); Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Pursuant to Section 141(b) of the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689, the Federal Highway Administration (FHWA) is updating its existing standards for the design and construction of bikeway projects. The object of this revision is to develop standards that will provide guidance and requirements for State and local governments wishing to design and construct bikeways with Federal funding.

Accordingly, FHWA requests comments that could be of assistance in developing these standards. FWHA is particularly interested in comments relating to the criteria that should be included in bikeway design and construction standards; and in comments relating to FHWA's existing standards that reference the American Association of State Highway and Transportation Official's (AASHTO) "Guide for Bicyle Routes." A limited number of AASHTO's "Guide for Bicycle Routes" are available from FHWA by contacting either individual identified above.

NOTE: The Federal Highway Administration has determined that this document does not contain a significant regulation according to the criteria established by the Department of Transportation pursuant to E.O. 12044.

Issued on: January 31, 1979.

JOHN S. HASSELL, Jr.,
Deputy Administrator.

[FR Doc. 79-4403 Filed 2-7-79; 8:45 am]

[4310-31-M]

DEPARTMENT OF THE INTERIOR

Geological Survey

[30 CFR Ch. II]

OIL AND GAS OPERATIONS ON THE OUTER CONTINENTAL SHELF

Invitation for Public Comments

AGENCY: U.S. Geological Survey, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Geological Survey (USGS) proposes to develop regulations pertaining to oil and gas operations on the Outer Continental Shelf (OCS) in response to enactment of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372). Public comments are being sought concerning the content of regulations to be promulgated to implement Section 21, paragraph (b), of the Outer Continental Shelf Lands Act, as amended.

DATES: Written comments must be received on or before April 9, 1979.

ADDRESSES: Written comments should be addressed to Chief, Conservation Division, U.S. Geological Survey, Mail Stop 600, National Center, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard B. Krahl, U.S. Geological Survey, Telephone: (703) 860-7531.

AUTHORS: Thomas G. McCloskey, Special Assistant of Assistant Secretary for Energy and Minerals (202-343-4457), and Gerald Rhodes, U.S. Geological Survey (703-860-7531.).

SUPPLEMENTARY INFORMATION: The Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372), enacted on September 18, 1978, added to the Outer Continental Shelf Lands Act Section 21(b), which provides:

> In exercising their respective responsibilities for the artificial islands, installations, and other devices referred to in section 4(a)(1) of this Act, the Secretary, and the Secretary of the Department in which the Coast Guard is operating, shall require, on all new drilling and production operations and, wherever practicable, on existing operations, the use of the best available and safest technologies which the Secretary determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Secretary determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.

Based upon this language, there are four standards created which must be dealt with in a regulatory program. They are:

1. "The Best Available and Safest Technology (BAST)" standard;
2. The "economically feasible" standard;
3. The "significant effect" standard; and
4. The "incremental benefits" versus "incremental cost" standard.

The House Conference Report, No. 95-1474, that accompanied the bill which subsequently became Pub. L. 95-372, provides insight into the congressional intent of Section 21(b). The major points made in the Conference Report are that:

1. More than one technology may be applicable as the best way to achieve a particular objective or do a particular job;
2. It is the responsibility of an operator on an existing operation to demonstrate why application of a new, better technology would not be "practicable";
3. A determination as to what are the best available and safest technologies economically feasible is to be made by the regulating Agency on an industrywide basis or with respect to classes or categories of operations rather than on an installation-by-installation, company-by-company, or lessee-by-lessee basis; and
4. Considerations of costs and benefits should also be done on an industrywide basis or with respect to classes or categories of operations (House Conference Report, No. 95-1474, p. 109).

Furthermore, it is the intent of the Act that the Secretary's regulations and their implementation have a technology-forcing effect. That is, when new and improved devices are developed, there must exist a system for evaluating them and for requiring their use when and where appropriate.

The USGS' present policies, programs, and procedures are designed to insure that oil and gas operations on the OCS are conducted in a manner which takes into consideration safety, health, and environmental concerns. The USGS' OCS Operating Orders, which are designed to implement the regulations contained in 30 CFR Parts 250 and 251, establish minimum requirements in the form of performance standards for technology, equipment, and procedures used or applied to operations on the OCS. In addition, the USGS is initiating a Platform Verification Program and a Failure Inventory and Reporting System. The Platform Verification Program will allow the Survey to insure that the BAST

requirement is applied in the design, construction, and installation of platforms of unique design, in deepwater and in frontier areas. The Failure Inventory and Reporting System will provide the USGS with information on equipment failures. Analysis of this information will be used to identify those instances where current technology needs improvement.

In fulfilling its obligations under Section 21(b) of the Act, the USGS intends to maintain existing programs and follow existing procedures and to consider them as the foundation upon which the BAST program will be developed. The USGS recognizes that changes may be needed. It intends to fully evaluate existing programs and procedures to insure their adequacy in meeting the requirements of Section 21 (b) of the Act. In this regard, the USGS will use the information provided under the Failure Inventory and Reporting System and the information it gains from the study into the adequacy of existing safety and health regulations and of the technology, equipment, and techniques available for the exploration, development, and production of the minerals of the OCS called for in Section 21(a) of the Act. This study is a joint effort by the USGS and the U.S. Coast Guard.

An important first step in implementing the BAST standard is defining it. The House Conference Report makes it clear that "more than one technology may be applicable as the best way to achieve a particular objective or do a particular job." The USGS intends to establish performance requirements based upon a determination that the technology, equipment, and procedures covered by the requirements provide the level of protection required to assure safe operations on the OCS. By definition, any technology, equipment, or procedure which results in a level of performance which meets or exceeds the requirements shall qualifiy as a "best available and safest technology" (BAST).

The USGS considers the BAST requirement to be evolutionary in nature. That is, when inadequacies or new developments in any technology, equipment, or procedure that would have a significant effect on safety, health, or the environment demonstrate a need, existing performance requirements will be modified or new requirements will be established. In such instances, the new performance requirements may force the development of new technology, equipment, or procedures.

To assist in the development of its BAST program, the USGS requests comments and recommendations on the nature, scope, and content of the program and implementing regulations. Particular attention should be paid to the following questions:

1. Should the USGS use performance requirements as a method of identifying the "best available and safest technologies"? Are there other approaches to defining BAST which should be considered?

2. Are the USGS' existing policies, programs, and procedures an adequate foundation upon which to build a BAST program? If not, are they wholly or partially inadequate? If the conclusion is that they are inadequate, the reasons for that conclusion should be set forth.

3. In establishing performance requirements, should specific items of equipment be identified and standards established? If so, please identify items of equipment for which standards should be established.

4. What criteria should be used by the USGS in determining the economic feasibility of BAST?

5. What factors should the USGS consider in determining "significant effect"?

6. What procedure should be used by the USGS to assess incremental costs and benefits when more stringent performance requirements are established or alternative, technologies, equipment, or procedures are required? How should benefits such as reduced number of accidents or reduced health risks be measured against dollar costs?

Dated: February 2, 1979.

JOAN M. DAVENPORT,
Assistant Secretary, Energy and Minerals.

[FR Doc. 79-4255 Filed 2-7-79; 8:45 am]

[4910-14-M]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 117]

[CGD 78-172]

DRAWBRIDGE OPERATION REGULATIONS

Halifax River, Florida

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Public Affairs Council of the Daytona Beach Area Chamber of Commerce, the Coast Guard is considering revising the regulations for the Seabreeze and Memorial bridges across the Halifax River (AIWW), miles 829.1 and 830.6 respectively, to allow periods during peak vehicular traffic when the draws need not open. The draws of both bridges presently open on signal. This action should relieve vehicular traffic during the morning and evening rush hours while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before March 12, 1979.

ADDRESS: Comments should be submitted to and are available for examination at the office of the Commander (oan), Seventh Coast Guard District, 51 S.W. First Anvenue Miami, Florida 33130.

FOR FURTHER INFORMATION CONTACT:

Frank L. Teuton, Jr. Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-0942).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Seventh Coast Guard District, will forward any comments received with his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, D.C., who will evaluate all communications received and recommend a course of final action to the Commandant on this proposal. The proposed regulations may be changed in the light of comments received.

DRAFTING INFORMATION

The principal persons involved in drafting this proposal are: Frank L. Teuton, Jr., Project Manager, Office of Marine Environment and Systems, and Mary Ann McCabe, Project Attorney, Office of the Chief Counsel.

DISCUSSION OF THE PROPOSED REGULATIONS

These additional restrictions are being considered in an effort to relieve increased vehicular traffic during the morning and evening peak periods on the Seabreeze and Memorial bridges. The Coast Guard, therefore, is presenting this proposal for comment from affected and interested parties.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by revising § 117.433 to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.433 Halifax River, AIWW, Volusia County, Fl.

(a) *Ormond Beach bridge*, Halifax River, AIWW, mile 824.9, Granada

Avenue, Ormond Beach, FL. From 7:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 5:30 p.m., Monday through Saturday, the draw may remain closed to the passage of vessels. However, the draw shall open at 8 a.m. and 5 p.m. to pass any accumulated vessels. The draw shall open on signal on Federal and Florida State holidays.

(b) *Seabreeze bridge,* Halifax River, AIWW, mile 829.1, Seabreeze Boulevard, Daytona Beach, FL. From 7:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 5:30 p.m., Monday through Saturday, the draw may remain closed to the passage of vessels. However, the draw shall open at 8 a.m. and 5 p.m. to pass any accumulated vessels. The draw shall open on signal on Federal and Florida State holidays.

(c) *Memorial Bridge,* Halifax River, AIWW, mile 830.6, Orange Avenue to Silver Beach Street, Daytona Beach, FL. From 7:45 a.m. to 8:45 a.m. and from 4:45 p.m. to 5:45 p.m., Monday through Saturday, the draw may remain closed to the passage of vessels. However, the draw shall open at 8:15 a.m. and 5:15 p.m. to pass any accumulated vessels. The draw shall open on signal on Federal and Florida State holidays.

(d) *Port Orange bridge,* Halifax River, AIWW, mile 835.5, State Road A-I-A (Dunlawton Avenue), Port Orange, FL. From 7:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 5:30 p.m., Monday through Saturday, the draw may remain closed to the passage of vessels. The draw shall open at 8 a.m. and 5 p.m. to allow any accumulated vessels to pass. The draw shall open on signal on Federal and Florida State holidays.

(e) Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time. The opening signal from these vessels is four blasts of a whistle, horn, or other sound-producing device, or shouting.

(f) During periods when storm signals are displayed in the Daytona Beach area, the draws shall open on signal. Storm signals are displayed when the National Weather Service predicts winds of 33 knots or more or sea conditions considered dangerous to small craft or both. The opening signal is three blasts of a whistle, horn, or other sound-producing device or by shouting.

(g) The owners of or agencies controlling these bridges shall post notices containing the substance of these regulations on both the upstream and downstream sides of the bridges or adjacent to the bridges, in such manner that they can be easily read at any time from an approaching vessel.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; (33 U.S.C. 499, 49 U.S.C. 1655(g)(2)); 49 CFR 1.46(c)(5).)

Dated: January 31, 1979.

R. H. SCARBOROUGH,
Vice Admiral, U.S. Coast Guard
Acting Commandant.

[FR Doc. 79-4396 Filed 2-7-79; 8:45 am]

[4910-14-M]

[33 CFR Parts 127 and 165]

[CGD 17-78-1R2]

PORT VALDEZ, VALDEZ, ALASKA

Proposed Establishment of a Safety Zone; Correction

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule appearing in the December 28, 1978 issue of the FEDERAL REGISTER by changing the reference to a citation in the Discussion of the Proposed Regulation Change and by adding a clause to the rule which was accidentally omitted from the proposed rule. It also extends the comment period to March 1, 1979.

DATE: Comments must be received on or before March 1, 1979.

ADDRESS: Comments should be submitted to, and are available for examination at, the office of the Commander (m), Seventeenth Coast Guard District, P.O.B. 3-5000, Federal Building, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT:

LT David G. Dickman, Office of Marine Environment and Systems, Port Safety and Law Enforcement Division (G-WLE), U.S. Coast Guard, Room 7319, Department of Transportation, Nassif Building, 400 7th Street SW., Washington, D.C. 20590, 202-426-1927.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-36136 appearing at page 60614 in the FEDERAL REGISTER of December 28, 1978, the proposed rule is amended to read as follows:

1. DATE: Comments must be received on or before March 1, 1979.

2. The last sentence in the paragraph under the Discussion of the Proposed Regulation Change is corrected to read: As provided in the General Safety Zone Regulations (33 CFR 165.20) no person or vessel may enter a safety zone unless authorized by the Captain of the Port or the District Commander.

3. 33 CFR 165.1701 is corrected to read as follows:

§ 165.1701 Port Valdez, Valdez, Alaska.

The waters within the following boundaries are a safety zone: The area within 200 yards of any waterfront facility at the Alyeska Marine Terminal complex or vessels moored or anchored at the Alyeska Marine Terminal complex and the area within 200 yards of any tank vessel maneuvering to approach, moor, unmoor or depart the Alyeska Marine Terminal complex.

Dated: January 29, 1979.

F. P. SCHUBERT,
Captain, U.S. Coast Guard,
Acting Chief, Office of Marine Environment and Systems.

[FR Doc. 79-4264 Filed 2-7-79; 8:45 am]

[7710-12-M]

POSTAL SERVICE

[39 CFR Parts 310 and 320]

RESTRICTIONS ON PRIVATE CARRIAGE OF LETTERS

Proposed Revisions in Comprehensive Standards for Permissible Private Carriage of Letters; Extension of Comment Period

AGENCY: U.S. Postal Service.

ACTION: Extension of time for comments.

SUMMARY: This notice extends the time for filing comments on proposed revised regulations relating to the restrictions on the private carriage of letters.

DATE: Comments must be received on or before March 12, 1979.

ADDRESS: Written comments should be addressed to: Jerry Belenker, Law Department, U.S. Postal Service, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260. Copies of all written comments received will be available for public inspection and photocoping between 9 a.m. and 4 p.m., outside room 9120, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260.

FOR FURTHER INFORMATION CONTACT:

Jerry Belenker, Law Department, U.S. Postal Service, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260; (202) 245-4616.

SUPPLEMENTARY INFORMATION: On December 28, 1978, a document was published in the FEDERAL REGISTER (43 FR 60615) proposing revisions of Postal Service regulations pertaining to the Private Express Statutes. The date for the submission of comments, February 12, 1979, was inadvertently omitted, but was published in the issue of January 3, 1979 (44 FR 915).

In response to a number of requests for an extension of time within which to submit comments, and in order to facilitate maximum public participation in the rulemaking process, the Postal Service will accept written com-

ments which are received on or before March 12, 1979.

W. ALLEN SANDERS,
Acting Deputy General Counsel.

[FR Doc. 79-4364 Filed 2-7-79; 8:45 am]

[4310-10-M]

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

[43 CFR Part 4]

ALASKA NATIVE CLAIMS APPEAL BOARD

Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking amends existing regulations. The purpose of the amendments is to clarify procedures and simplify language in the existing regulations, and to carry out Secretarial policy decisions on: (1) Alaska Native Claims Appeal Board jurisdiction over appeals by persons claiming rights under section 14(c) of the Alaska Native Claims Settlement Act; (2) requirements for standing to appeal; (3) standard of review and burden of proof; and (4) procedure for hearings on questions of fact.

COMMENT DATE: Written comments must be received on or before 30 days from date of publication.

ADDRESS: Send comments to: Director, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203. Comments are available for public review in Room 1111 of the above address on weekdays from 8:30 to 9:00.

FOR FURTHER INFORMATION CONTACT:

David Graham, Director, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, Telephone: (703) 557-1500.

Beaumont McClure, Alaska Native Claims Coordinator, Division of Lands & Realty, (320 Bureau of Land Management), United States Department of the Interior, 18th & C Streets NW., Washington, DC 20240, Telephone: (202) 343-3066.

Judith M. Brady, Chairperson, Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, Telephone: (907) 265-5356.

SUPPLEMENTARY INFORMATION: ANCSA POLICY REVIEW. In order to improve the Department's administration of the Settlement Act and achieve the goal of prompt land conveyance, the Department in August 1977 began a comprehensive review of ANCSA implementation and policies. The review was organized to cover twenty-four issues, each requiring a decision on Departmental policy. Extensive discussions were held on these issues with representatives of Departmental agencies, the State of Alaska, Native Corporations, and the Joint State-Federal Land Use Planning Commission. The Secretary by memorandum of March 3, 1978, announced the policy decisions on each issue reached through this process.

ANCSA Issue 16 addressed the following questions:

A. Should the review process for all ANSCA related actions be standardized?

B. If yes, what should that review process be?

C. If not, what review process should be developed for discretionary actions, e.g., easement reservations, section 14(h) withdrawals and conveyances, etc.?

The Secretary decided that:

(1) The review process should be standardized and that the Alaska Native Claims Appeal Board was the appropriate board to hear ANCSA-related actions, including easement appeals. (Exceptions to this policy decision, however, are those cases in which alternative appeal procedures are provided by easement agreements between the Department and Native corporations. Such agreements continue to govern appeals in easement disputes, but are binding only on the parties to the agreements.)

(2) Procedures should be clarified between ANCSA and the Interior Board of Land Appeals for cases involving both ANCSA and other public land issues.

(3) Hearings before ANCAB which involve (a) issues of fact or mixed questions of fact and law, or (b) issues subject to the Administrative Procedure Act, will be conducted by Administrative Law Judges.

(4) In order to have standing to appeal, a person must claim a property interest in lands affected by the decision being appealed.

(5) While land areas affected by an appeal usually cannot be conveyed before decision of the appeal, methods must be provided to allow prompt conveyance of areas in land selections which are unaffected by the appeal, so that conveyance of unaffected land areas is not delayed during the appeal.

(6) Factual determinations in a decision shall not be reversed unless an appellant proves by a preponderance of the evidence that the determination was incorrect; and discretionary actions shall not be reversed unless arbitrary and capricious.

(7) Regulations should be published as necessary to carry out these policy decisions.

ANCSA Issue 21 addressed the question of what role the Department should take in reconveyances under section 14(c). The Secretary decided that the Department should continue a policy of nonintervention.

These regulations are published for comment in response to the above decisions. Other changes are to clarify and simplify language of present regulations.

DISCUSSION OF CHANGES

43 CFR 4.1(b) is amended by the addition of a provision that the Board shall not consider appeals on rights granted and protected by section 14(c) of ANCSA.

43 CFR 4.901(a) is also amended to clarify the Board's lack of jurisdiction over appeals on section 14(c) claims.

43 CFR 4.901(c) is redesignated (d) and a new subsection (c) is added to clarify the jurisdiction of the Alaska Native Claims Appeal Board (ANCAB) and the Interior Board of Land Appeals (IBLA). The Interior Board of Land Appeals has jurisdiction over appeals from decisions involving the validity of an interest or pending interest applied for under the public land laws. The Alaska Native Claims Appeal Board has jurisdiction over appeals from decisions in matters relating to land selection under the Alaska Native Claims Settlement Act, as amended, and appeals arising under other statutes dealing with Alaska Native claims, except for the Alaska Native Allotment Act. Confusion occurred when the issue on appeal involved the effect of the Settlement Act on an interest or pending interest applied for under the public land laws. The proposed regulation establishes that jurisdiction over an appeal involving the effect of the Settlement Act, as amended, or other statute concerned with Alaska Native claims on an interest or pending application under public land laws shall be with the Alaska Native Claims Appeal Board. Jurisdiction over questions as to whether or not such interests or pending interests are valid under the public land laws shall be with the Interior Board of Land Appeals.

43 CFR 4.901(c) is redesignated (d) and amended to shorten and simplify language in present regulations on certification of an appeal from ANCAB to IBLA or vice versa.

43 CFR 4.903 is revised to define requirements for appellant's statement of reasons and standing in greater detail than the present regulations. The appellant is requested to provide a legal description of the land in which he claims a property interest so the Board may segregate this land from land unaffected by the appeal, in order that the unaffected land can be conveyed.

43 CFR 4.904 is amended by adding a new subsection (c) to [the existing

§ 4.904 Answers] to define requirements for contents of answer in more detail.

43 CFR 4.904 is revised to limit pleadings to the appellant's statement of reasons and standing and the appellee's answer, with further briefs at the discretion of the Board. A procedure is provided for motions.

43 CFR 4.905 is renumbered § 4.908 and a new section 4.905 is added which defines burden of proof and standard of review.

43 CFR 4.906 is renumbered § 4.909 and a new section 4.906 is added to clarify the date pleadings will be considered to have been filed and the filing deadlines for certain pleadings.

43 CFR 4.907 [Pleadings] is deleted and existing section 4.908 is renumbered § 4.907.

43 CFR 4.906 is renumbered § 4.909.

43 CFR 4.909 is renumbered § 4.910.

43 CFR 4.910 is renumbered § 4.911.

43 CFR 4.911 is renumbered § 4.912 and changed to simplify language authorizing the Board to hold conferences.

43 CFR 4.912(c) [existing § 4.911(c)], is amended to require all hearings on issues of fact, or mixed issues of fact and law, and hearings required by the APA, to be conducted by an Administrative Law Judge appointed under 5 U.S.C. 3105. The amendment provides that the Administrative Law Judge will render a recommended decision to the Board with service on all parties and the Board. Parties shall have 30 days in which to file exceptions and briefs from the recommended decision, at which time the Board shall render a final decision. Argument on issues of law shall be heard by the Board.

43 CFR 4.912 (existing § 4.911) is amended by redesignating subsections (d) and (e), subsections (f) and (g) respectively, and adding new subsections (d) and (e). Section 4.912(d) provides for oral argument and § 4.912(e) authorizes the Board to segregate lands unaffected by the appeal or take other action or allow conveyance or further processing of lands unaffected by the appeal.

43 CFR 4.912 is renumbered § 4.913.

43 CFR 4.913 is renumbered § 4.914 and amended to clarify the Board's role in settlement approval. The amended regulation requires approval by the Board or the Secretary of any settlement agreement which resolves matters on appeal and requires future action on forbearance by the Department. The existing regulation appears to esatblish alternative requirement for settlement and has caused confusion.

43 CFR 4.915, a new section, is added to establish procedure for reconsideration of a decision by the Board, including a time limit within which any request for reconsideration must be filed.

It is hereby determined that publication of this proposed rulemaking does not require a detailed statement pursuant ot section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), and that this document does not contain a significant regulatory proposal requiring preparation of a regulatory analysis under Executive Order 12044.

The principal author of this proposed rulemaking is Judith M. Brady, Chairperson, Alaska Native Claims Appeal Board, assisted by other members and staff counsel of the Board and by personnel from the Office of Hearings and Appeals.

Under the authority of the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*) it is proposed to amend Subparts A and J, Part 4, Subtitle A, Title 43 of the Code of Federal Regulations as explained above and set forth below.

Subpart A—General; Office of Hearings and Appeals

§ 4.1 Scope of authority; applicable regulations.

* * * * *

(5) *Alaska Native Claims Appeal Board.* The Board considers and decides finally for the Department appeals to the head of the Department from findings of fact or decisions rendered by Departmental officials in matters relating to land selection arising under the Alaska native Claims Settlement Act (85 Stat. 688), as amended, and any other statute dealing with Alaska Native claims except the Alask Native Allotment Act, Act of May 17, 1906, 34 Stat. 197, as amended. The Board orders hearings as necessary, *except:* The Board shall not consider appeals relating to enrollment of Alaska Natives; the Board shall not consider appeals on rights granted and protected by section 14(c) of the Act; the Board shall not consider appeals on easements brought by parties to agreements with the Department which set forth alternative procedures for easement appeals; and with respct to appeals from Departmental decisions on village eligibility under section 11(b) of the Act, decisions of the Board shall be submitted to the Secretary for his personal approval before becoming final. Special regulations applicable to proceedings before the Board are contained in Subpart J of this part.

* * * * *

Subpart J—Special Rules Applicable to the Alaska Native Claims Settlement Act Hearings and Appeals

Sec.
4.900 References.
4.901 Appeals; general.
4.902 Who may appeal.
4.903 Appeals; how taken.
4.904 Pleadings, additional briefs, and motions.
4.905 Standard of review and burden of proof.
4.906 Filing and extensions.
4.907 Service.
4.908 Summary dismissal.
4.909 Transmittal of administrative record.
4.910 Amicus curiae; intervenors; joinder.
4.911 Appearances; practice.
4.912 Proceedings.
4.913 Witnesses.
4.914 Settlement approval.
4.915 Reconsideration.

AUTHORITY. Alaska Native Claims Settlement Act (43 U.S.C. 1601, et. seq.)

Subpart J—Special Rules Applicable to the Alaska Native Claims Settlement Act Hearings and Appeals

§ 4.900 References.

General appeals procedures are contained in Subparts A and B of this part.

§ 4.901 Appeals; general.

(a) Unless otherwise provided, appeals to the Secretary under ANCSA and related statutes referenced in § 4.1(5) relating to land selection shall be to the Alaska Native Claims Appeal Board. The Alaska Native Claims Appeal Board members shall be personally appointed by the Secretary. At least one member of the Board shall be familiar with the Native village life. Among those otherwise qualified to serve on the Board, perference will be given to those familiar with Native village life. The Board is authorized to decide finally for the Secretary appeals under ANCSA, as amended, and any other statute dealing with Alaska Native Claims, except;

(1) The Board shall not consider appeals relating to enrollment of Alaska Natives;

(2) The Board shall not consider appeals arising under the Alaska Native Allotment Act; Act of May 17, 1906, 34 Stat. 197, as amended;

(3) Appeals from decisions on village eligibility shall be personally approved by the Secretary;

(4) The Board shall not consider appeals on rights granted and protected by section 14(c) of the Act. The fact that the Board lacks jurisdiction over such appeals shall not prejudice such rights; and

(5) The Board shall not consider appeals on easements brought by parties to agreements with the Department which set forth alternative procedures for easement appeals.

(b) All hearings held in connection with appeals to the Alaska Native Claims Appeal Board shall be conducted within the State of Alaska. The Alaska Native Claims Appeal Board has its headquarters within the State of Alaska. The mailing address of the Board is: U.S. Department of the Interior, Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510.

(c) An appeal from a decision by the Bureau of Land Management which involves the effect of the Alaska Native Claims Settlement Act, and related statutes as referenced in § 4.1(5), upon an interest, or pending application for an interest, derived under the public land laws, shall be to the Alaska Native Claims Appeal Board (ANCAB). An appeal from a decision by the Bureau of Land Management which involves the effect of the public land laws upon the validity of an interest, or pending application for an interest, shall be to the Interior Board of Land Appeals (IBLA).

(d) When there is a determination that a single appeal raises issues within the jurisdiction of both ANCAB and another Appeals Board of the Department, one Board may refer the appeal to another. The record shall be certified to the appropriate Board, and an appeal timely filed with any Appeals Board of the Department shall be considered timely filed with the Board determined to have jurisdiction. Where issues on appeal have been severed and referred to a second Board of the Department, each Board may proceed with its appeal and issue separate decision, or upon completion of the questions referred from the Board in which the appeal was first filed, the record and determination of such other Board may be certified to the Board in which the appeal was first filed.

§ 4.902 Who may appeal.

Any party may appeal who claims a property interest in land affected by a determination which is appealable to the Alaska Native Claims Appeal Board. An agency of the Federal Government or a regional corporation shall have the right of appeal in any case involving land selections.

§ 4.903 Appeals; how taken.

(a) *Filing of notice of appeal.* Appellant shall file a notice of appeal, signed by the appellant or the appellant's representative, with the Board within the following time limits:

(1) A party receiving actual notice of the decision shall have 30 days from the receipt of actual notice 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 a receipt for actual notice, shall have 30 days from the date of publication of the decision in the FEDERAL REGISTER in which to file an appeal.

(b) *Contents of notice of appeal.* The notice of appeal shall:

(1) Indicate an appeal is intended.

(2) Identify the decision being appealed. Identification should include the serial number or date of the decision.

(The notice of appeal shall be served on all parties, see §4.907 of this title.)

(c) *Statement of reasons and standing.* If not filed with the notice of appeal, the appellant's statement of reasons and standing must be filed by the appellant within 30 days after filing of the notice of appeal and should include the following:

(1) A statment of facts and law upon which the appellant relies in claiming a property interest for standing under § 4.902 of this title, including a specific reference to federal or state law, if any, under which appellant claims a property interest.

(2) A clear statement of all issues being reaised by appellant on appeal supported by facts and law.

(3) A legal description of the land in which the appellant claims a property interest.

(The statement of reasons and standing shall be served on all parties; see § 4.907 of this title.)

(d) *Answers.* Any party served with a copy of appellant's statement of reasons and standing who desires to participate in the proceedings on appeal must file an answer within 30 days of service of the appellant's statement of reasons and standing. The answer must include the following:

(1) Opposition, if any, to appellant's allegations of standing under § 4.902 of this title supported by facts and law.

(2) A reply to all issues raised by the appellant supported by facts and law.

(3) Objection, if any, to the legal description furnished by the appellant of the lands in which the appellant claims a property interest.

(The answer shall be served on all parties; see § 4.907 of this title.)

§ 4.904 Pleadings, additional briefs and motions.

(a) *Pleadings.* There shall be an appellant's statement of reasons and standing, an answer as described in § 4.903 and only such other pleadings as the Board may order.

(b) *Additional briefs.* The Board may allow the submission of additional briefs on its own motion or if requested by the parties. A party shall make such a request by motion filed with the Board within 15 days of service of the pleadings or brief for which the response is sought.

(c) *Motions.* An application to the Board for an order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds for the motion, and shall set forth the relief or order sought. Opposition to motion must be filed with the Board within 10 days after service of the motion unless otherwise ordered by the Board or unless stipulated to by the parties with Board approval.

§ 4.905 Standard of review and burden of proof.

(a) When decisions regarding factual determinations are on appeal before the Board, the appellant has the burden of proof by a preponderance of the evidence.

(b) When decisions regarding discretionary actions are on appeal before the Board, the decision appealed from shall be affirmed unless it is proved to have been arbitrary, capricious, or contrary to law or policy.

§ 4.906 Filing and extensions.

(a) The filing of all pleadings shall be considered to have been made on the date of postmark. In the event there is no postmark or the postmark is illegible it shall be the date of receipt by the Board.

(b) The Board may, upon request and for good cause shown, grant extensions of time for filing all pleadings and responses except the notice of appeal.

§ 4.907 Service.

(a) Copies of all briefs, statements of reason for appeal and interest affected, and other documents filed with the Board shall be served upon all parties to the proceeding, and such other persons as the Board may order.

(b) The notice of appeal, all pleadings, briefs and other documents filed with the Board shall contain a certificate stating the names and addresses of all persons served with copies.

(c) Whenever the regulations in this subpart require that a document be served upon a person, service may be made by personal delivery or by mailing the document first-class or by registered or certified mail, return receipt requested, to the person's address of record.

(d) Service may be proved by an acknowledgment of the person served, or by a certificate of service, stating the time and manner of service, signed by the person making service. No default will be entered without proof of actual service, or satisfactory proof of inability to serve.

(e) When an attorney has entered an appearance for a party in a case involving an appeal before the Board,

such attorney will be recognized as responsible for the case on behalf of his client and service of all briefs and other documents filed with the Board shall be made upon the attorney. The requirement of service of any document relating to the proceeding on such party may be fully satisfied by making service upon such attorney, unless otherwise specifically required by law, rule, order, or regulation of the Board. When more than one attorney has entered an appearance for a party, service upon one of the attorneys shall be sufficient.

(f) Whenever a time period commences after service is made, for purposes of computing the time period, service shall be deemed to have been made on the date personal service was made, or, if service was made by mail, on the date of posting.

§ 4.908 Summary dismissal.

An appeal may, in the discretion of the Board, be dismissed for failure to file or serve, upon all persons required to be served, a notice of appeal, statement of reasons or of standing as required by § 4.903.

§ 4.909 Transmittal of administrative record.

Within 10 days after service of a copy of the notice of appeal, the officer whose decision is appealed shall transmit a certified copy of the administrative record to the Board. Such record will be available for inspection and copying in the Board's office.

§ 4.910 Amicus curiae; intervenors; joinder.

(a) A brief of an amicus curiae may be filed with the Board. Copies of amicus curiae briefs shall be served upon all parties to the proceeding and a certificate of service must be filed in accordance with § 4.907. Any person filing an amicus brief shall not be considered a party to the proceeding for purposes of this subpart.

(b) Any person may petition the Board to intervene in an appeal. Upon a proper showing of interest under § 4.902, such person may be recognized as an intervenor in the appeal.

(c) The Board may require the joinder of any person whose participation is deemed essential to the final determination of an appeal.

(d) Any motion seeking intervention or joinder shall be served on all parties to the proceeding, and a certification of service must be filed in accordance with § 4.907.

§ 4.911 Appearances; practice.

(a) *Representation; generally.* Appearance and representation before the Board shall be governed generally by the applicable provisions in Part 1 of Subtitle A of this title, which regulates practice before the Department of the Interior.

(b) *Practice and procedure.* When not in conflict with this subpart, the provisions in Subparts A and B of this part shall be applicable.

§ 4.912 Proceedings.

(a) *Consolidation and separation.* Under appropriate circumstances, the Board may consolidate several appeals, or separate a single appeal into component parts, each of which may be processed as a separate appeal.

(b) *Conferences.* The Board may hold conferences with the parties when appropriate.

(c) *Hearings.* A party may request a hearing to present evidence on an issue of fact. Such request shall be made in writing, shall be filed with the Board, and shall be served in accordance with § 4.907. The allowance of a hearing is within the discretion of the Board. The Board may, on its own motion, order a hearing on one or more issues. All hearings required under the Administrative Procedure Act and all hearings involving issues of fact or mixed issues of fact and law shall be conducted by an Administrative Law Judge appointed under 5 U.S.C. 3105, in accordance with §§ 4.430-4.439. Argument on issues of law shall be heard by the Board. In the event of a hearing conducted by an Administrative Law Judge, the Administrative Law Judge will make a recommended decision to the Board. Such decision shall be served on all parties who shall have 30 days from date of receipt to file exceptions and briefs with the Board. At the end of the briefing period the Board shall render a final decision.

(d) *Oral argument.* The Board may grant an opportunity for oral argument.

(e) *Segregation.* The Board may segregate those lands unaffected by the appeal or take such other action necessary to permit the conveyance or further processing of those lands unaffected by the appeal.

(f) *Copy requirements.* Unless otherwise provided in this subpart or by order of the Board, an original and one copy of all documents should be filed with the Board. All documents must be legible.

(g) *Official file.* The Board shall maintain one official file constituting the entire record of each appeal before the Board. No document shall be removed from the official file. The official file shall be available in the Board's office for inspection and copying.

§ 4.913 Witnesses.

(a) It is the responsibility of the parties to produce those persons whose testimony will support their respective positions at the times and places established for evidentiary hearings, and to keep such witnesses available so long as may be necessary for the reception of their testimony. All employees of the Department of the Interior requested by the Board or any Administrative Law Judge to testify before or furnish relevant information to the Board or the Administrative Law Judge shall comply with such requests.

(b) If a witness fails to appear in spite of every reasonable effort to assure his appearance, the Board may allow secondary evidence to be submitted in lieu of the testimony of such witness; the weight to be attributed to such secondary evidence shall be within the discretion of the Board.

§ 4.914 Settlement approval.

No settlement agreement between the parties which resolves matters in issue on appeal before the Board and requires future action or forbearance from action by the Department of the Interior shall bind the Department unless such agreement is approved by the Board, or the Secretary.

§ 4.915 Reconsideration.

Reconsideration of a decision may be granted, in the discretion of the Board, only in extraordinary circumstances. Request for reconsideration must be filed within 60 days of issuance of a decision and must state with particularity the error or errors claimed. Except in the case of newly discovered evidence, matters not in the record may not be raised for the first time in connection with a request for reconsideration. The filing and pendency of a request for reconsideration shall not operate to stay the effectiveness of the decision involved unless so ordered by the Board. A request for reconsideration need not be filed to exhaust administrative remedies.

Dated: January 30, 1979.

DAVID B. GRAHAM,
Director,
Office of Hearings and Appeals.

[FR Doc. 79-4295 Filed 2-7-79; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 89, 91 and 93]

[Docket No. 20846; FCC 79-18]

INTERCONNECTION OF PRIVATE LAND MOBILE RADIO SYSTEMS WITH THE PUBLIC, SWITCHED, TELEPHONE NETWORK IN THE BANDS 806-821 MHz and 851-866 MHz

Prescribing Policies and Regulations

AGENCY: Federal Communications Commission.

ACTION: Rule proposals.

SUMMARY: Proposal looking toward adopting rules to govern the interconnection of private land mobile radio systems licensed in the 806-821 MHz and 851-866 MHz bands with the facilities of wire line telephone companies. The regulations would extend to radio systems operated in the Part 90 Public Safety, Industrial, and Land Transportation Radio Services.

DATES: Comments are to be filed by March 12, 1979, and reply comments by March 27, 1979.

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

FOR FURTHER INFORMATION CONTACT:

John B. Letterman, Industrial and Public Safety Rules Division, Safety and Special Radio Services Bureau, (202-632-6497).

In the matter of amendment of parts 89, 91, and 93 of the Commission's rules to prescribe policies and regulations to govern interconnection of private land mobile radio systems with the public, switched, telephone network in the bands 806-821 MHz and 851-866 MHz. Docket No. 20846. Further notice of proposed rulemaking (44 FR 4492).

Adopted: January 17, 1979.

Released: January 31, 1979.

By the Commission: Commissioner Washburn issuing a Separate Statement.

1. We initiated this proceeding through our *Notice of Inquiry and Notice of Proposed Rule Making*, released in July 1976, (41 F.R. 28540 (July 12, 1976)). On August 17, 1978, we adopted our *First Report and Order* (FCC 78-622), 43 F.R. 38396 (August 28, 1978). In that decision, we reached conclusions to permit the interconnection of private land mobile radio systems in the bands below 512 MHz in accordance with new rules and regulations developed for that purpose; but we postponed decision on interconnection of radio systems licensed in the 806-821 MHz and 851-866 MHz bands, those allocated in the proceeding in Docket No. 18262 for use in the Part 89, Public Safety, Part 91, Industrial, and Part 93, Land Transportation Radio Services.

2. In this connection, we want to emphasize that our decision in Docket No. 18262 did not deprive licensees in the private services of their right to interconnect their facilities. Specific provision for interconnected services was made at Section 89.653 of the Rules.[1] But the new interconnection rules adopted in this proceeding for the bands below 512 MHz are significantly different from those adopted for 800-MHz systems in Docket No. 18262. To illustrate, at 800 MHz, interconnection must be accomplished at a control point or a control station. This is not necessarily the case below 512 MHz. There, interconnection may be accomplished manually at a control point or control station, but it may also be accomplished automatically at other points in the licensee's system of communication, provided this is done under the "supervision of the licensee's control operator." Sections 89.954 (b) and (c).[2] Further, at 800 MHz, system control from mobile units by mobile operators of the licensee is not permitted (Section 89.653), but under certain conditions this is allowed in interconnected systems licensed below 512 MHz. Section 89.954(c).[3] Additionally, "interconnection at a common location," such as a "telephone answering service," is barred at 800 MHz. This is not necessarily so below 512 MHz (See Section 89.902(b)); [4] however, in these lower bands we have prohibited interconnected usage in certain major urban areas in the Automobile Emergency, Business, Special Emergency, Special Industrial, and Taxicab Radio Services. Section 89.951(c).[5] As these differences indicate, the arrangements that may be made for interconnected service at 800 MHz are, in many respects, more restricted than those permitted under our new rules in the bands below 512 MHz.

3. Further, our allocation and assignment plan for 800-MHz facilities differs from that followed in the bands below 512 MHz. At 800 MHz, much emphasis was placed on a "systems" approach through which we sought to attain maximum efficiency in the use of the spectrum allocated to the land mobile services. In the private services, stress was put on operations of a "dispatch" nature (See Section 89.655(a)(4)); [6] and while interconnection of private systems with the facilities of telephone companies was allowed, as we have mentioned, the rule structure was designed to assure that interconnection would be an ancillary function, incidental to a licensee's primary use of authorized 800-MHz channels in "dispatch" mode. Further, to meet the requirements of the public for interconnection and limited "dispatch" service, 40 MHz of spectrum was allocated for the development and implementation of "cellular" systems, through which common carriers could offer mobile radiotelephone capabilities to the public on a compatible, nationwide basis. Again, stress was put on the design characteristics of "cellular" systems which were thought best to accomplish the overall goal of spectrum efficiency in providing these types of communication capabilities.

4. In the above circumstances, then, we want to consider further whether the interconnection provisions adopted for 800-MHz operations should be modified to allign them more closely with those applying to the lower bands, particularly in the light of the overall regulatory goals we sought to attain at 800 MHz. Therefore, we ask for comments on the following issues:

(a) The needs and requirements of eligibles and licensees in the Public Safety, Industrial, and Land Transportation Radio Services for interconnected systems licensed in the 806-821 MHz and 851-866 MHz bands, including conventional and trunked systems.[7]

(b) The impact, if any, of this proposal on the Commission's overall regulatory program for the 806-947 MHz band. We are particluarly interested in comments on the potential impact of interconnection as now allowed in the bands below 800-MHz on the Commission's spectrum efficiency and service objectives which formed the bases for our decision in Docket No. 18262.

(c) Whether the geographic limitations on interconnection we have adopted for the Automobile Emergency, Business Special Emergency, Special Industrial, and Taxicab Radio Services for the lower bands should also be made to apply at 800-MHz, since the frequency shortage constraints above 800-MHz are not as severe as in the bands below 800-MHz.

As we announced in our *First Report and Order*, we will decide separately

[1] Section 89.653 governs interconnection of all 800-MHz systems. This rule provision becomes Section 90.389 in new Part 90, adopted November 14, 1978, effective January 2, 1979, *Report and Order*, Docket No. 21348, 43 F.R. 54788 (November 22, 1978).

[2] Sections 89.954 (b) and (c) become Sections 90.483 (b) and (c) in Part 90.

[3] Section 89.954(c) becomes Section 90.483(c) in new Part 90.

[4] Section 89.902(b) becomes Section 90.463(a) in new Part 90.

[5] Section 89.951(c) becomes Section 90.477(c) in new Part 90.

[6] Section 89.655(a)(4) becomes Section 90.385(a)(4) in new Part 90.

[7] We do not include within this issue matters pertaining to interconnection of shared or community repeater systems interconnected at a common point. As pointed out in the text below, we will decide those matters separately as indicated at paragraph 47 of the *First Report and Order* in this Docket. See *fn.* 8, below.

the matter concerning interconnection at a common location of certain types of "shared" and "community repeater" systems. See *First Report and Order,* Docket No. 20846, *supra,* at para. 47.[8] However, we want to be clear that we are looking towards settling these matters with respect to other systems in this phase of the proceeding; and that one alternative would be to adopt rules to permit interconnection under one or several of the options set forth in Subpart T of Part 89, subject, of course, to the limitations on interconnection at common locations mentioned above.[9]

5. Authority for the proposed amendments is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested parties may file comments on or before March 12, 1979, and reply comments on or before March 27, 1979, Relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

6. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and five copies of all statements, briefs, or comments filed shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C. 20554.

7. For further information concerning this rule making, contact John B. Letterman, Industrial and Public Safety Rules Division, Safety and Special Radio Services Bureau, Federal Communications Commission, Washington, D.C. 20554 (202) 632-6497.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

JANUARY 17, 1979.

[8] In paragraph 47 of the *First Report and Order,* we stated that "* * * we will defer adoption of new rules directed to interconnection which is accomplished at the location of the shared radio equipment pending resolution of the proper regulatory status of a number of * * * third party arrangements." This limitation would apply to any rules adopted to govern interconnection arrangements for private radio systems operating in the 800-MHz bands.

[9] See Sections 90.477 through 90.484 in new Part 90.

SEPARATE STATEMENT OF COMMISSIONER ABBOTT WASHBURN—RE: DOCKET 20846

The decision in Docket 18262 was the product of a variety of interactive compromises. It represents a delicate balancing of opposing views and interests. A significant change in one of the elements of that decision, therefore, e.g. the proposed change of limitations on "interconnection," could affect the viability of the entire decision. Rather than singling out this element for separate treatment, such a change might better be addressed in a comperhensive proceeding dealing with a range of issues surrounding the allocation of frequencies above 800 MHz.

[FR Doc. 79-4265 Filed 2-7-79; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 661]

COMMERCIAL AND RECREATIONAL SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON AND CALIFORNIA

Draft Supplemental Environmental Impact Statement/Fishery Management Plan: Hearings

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: The Pacific Fishery Management Council will conduct additional hearings on proposed amendments for 1979 to the Fishery Management Plan for the Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California Commencing in 1978.

SUMMARY: Data recently received by the Pacific Fishery Management Council concerning anticipated low runs of chinook and coho salmon in 1979 suggest that additional restrictions on the sport and commerical harvest of salmon may be required. These data and proposed management options will be presented to the Council at its February 7-9 meeting by the Salmon Plan Development Team. Because the public did not have an opportunity to comment on this new information during the regularly scheduled comment period and public hearings in early January, the Council has extended the comment period from January 22 to February 28, 1979, and scheduled additional hearings on this subject. The final decision on recommendations for amendments to the salmon FMP for 1979 will be made by the Council at its March 8-9 meeting in Eureka, California.

DATES: Public hearings will be held on February 27 and 28. Submit written comments to either of the contact persons listed below by February 28, 1979, to receive full consideration in the implementation process.

ADDRESSES:

February 27, Chinook Room, Thunderbird Motor Inn, 400 Industry, Astoria, OR 97103, 7:00 p.m. Hearing Officer: John A. Martinis.

February 28, Redwood Ballroom, Red Lion Motor Inn, 1929 4th Street, Eureka, CA 95501, 7:00 p.m. Hearing Officer: Vernon J. Smith.

February 28, Olympic Bowl, Olympic Hotel, 416 Seneca, Seattle, WA 98101, 7:00 p.m. Hearing Officer: Charles F. Mechals.

FOR FURTHER INFORMATION CONTACT:

Mr. Lorry Nakatsu, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201, 503-221-6352.

Mr. Donald R. Johnson, Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, WA 98109, 206-442-7575.

Copies of the supplemental environmental impact statement and fishery management plan are available from the addresses shown above.

Dated: February 5, 1979.

WINFRED H. MEIBOHM,
Acting Executive Director, National Marine Fisheries Service.

[FR Doc. 79-4361 Filed 2-7-79; 8:45 am]

[4910-60-M]

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

[49 CFR Parts 171, 172, 173, 174, 175, 176 and 177]

[Docket No. HM-145A; Notice No. 78-6]

TRANSPORTATION OF HAZARDOUS WASTE MATERIALS

Notice of Public Hearings and Closing Date for Comment

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

ACTION: Public Hearings; Closing Date for Comments on Notice of Proposed Rulemaking.

SUMMARY: On May 25, 1978, the Materials Transportation Bureau (MTB) published a Notice of Proposed Rulemaking under Docket HM-145A (43 FR 22626) pertaining to the transportation of hazardous waste materials. It was stated in the Notice that the closing date for comments would be announced at a later time. On December 18, 1978, the Environmental Protec-

tion Agency (EPA) published a Notice of Proposed Rulemaking (43 FR 58946) Pertaining to hazardous wastes guidelines and regulations. The EPA also announced that public hearings would be held jointly with the Department of Transportation.

DATES: Public hearings pertaining to the transportation of hazardous wastes will be held on Febrary 15 and 21, and March 8 and 13, 1979. See SUPPLEMENTARY INFORMATION for further details. Unfortunately, this publication is too late to announce the joint hearing in New York City on February 8, as was announced in the EPA publication. The closing date for public comment on Docket HM-145A; Notice No. 78-6, is June 1, 1979.

ADDRESSES: Submit 5 copies of comments on Docket HM-145A; Notice No. 78-6 to Dockets Branch, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590 through June 1, 1979. For public hearings being held by EPA see SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT:

Alan I. Roberts, Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau, 2100 Second Street, SW., Washington, D.C. 20590, (202) 426-0656.

SUPPLEMENTARY INFORMATION: The EPA is holding public hearings on proposed regulations to be issued under Sections 3001-3004 of the Resource Conservation and Recovery Act of 1976. Section 3003 pertains to transportation. The hearings pertaining to proposed transportation regulations will be held jointly by the EPA and MTB. The schedule and location for each hearing is as follows:

February 15, 1979; 2:00 to 5:00 p.m.—Breckenridge Pavillion Hotel, One Broadway, St. Louis, Missouri 63102 (314) 421-1776.

February 21, 1979; 2:00 to 5:00 p.m.—Department of Commerce, Main Auditorium, 14th Street entrance, Washington, D.C.

March 8, 1979; 2.00 to 5:00 p.m.—Holiday Inn-Airport, P.O. Box 38218, 4040 Quebec Street, Denver, Colorado 80216 (303) 321-6666.

March 13, 1979; 2:00 to 5:00 p.m.—EPA Regional Office, Sixth Floor Conference Room, 215 Fremont Street, San Francisco, California. Anyone wishing to make an oral statement at one of the scheduled hearings should notify in writing: Mrs. Geraldine Wyer, Public Participation Office, Office of Solid Waste (WH-562), U.S. E.P.A., 401 M Street, SW., Washington, D.C. 20460.

Oral or written comments may be submitted at the public hearings. Persons who wish to make oral presentations must restrict their presentations to ten minutes, and are encouraged to have written copies of their complete comments for inclusion in the official record.

It was stated in MTB's Notice No. 78-6 that the closing date for comment on the Notice of Proposed Rulemaking would be at least 60 days after the last notice of proposed rulemaking published by EPA pertaining to regulations that will be issued under Subtitle C of the Resource Conservation and Recovery Act. Since all of the EPA Subtitle C proposals that affect transportation have been published as of December 18, 1978, the closing date for comments on Notice No. 78-6 under docket HM-145A is June 1, 1979.

Authority: 49 U.S.C. 1803, 1804, 1808, 49 CFR 1.53 and paragraph (a)(4) of Appendix A to Part 106.

Issued in Washington, D.C. on January 31, 1979.

ALAN I. ROBERTS,
Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 79-4578 Filed 2-7-79; 11:32 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.

[3410-11-M]

DEPARTMENT OF AGRICULTURE

Forest Service

SHEYENNE NATIONAL GRASSLAND LAND MANAGEMENT PLAN; CUSTER NATIONAL FOREST, RANSOM AND RICHLAND COUNTIES, N. DAK.

Intent To Prepare an Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture will prepare an Environmental Statement in conjunction with the Sheyenne National Grassland Land Management Plan.

The Sheyenne Planning Unit includes 70,340 acres under federal ownership in Ransom and Richland Counties of southeastern North Dakota. These are public lands that were purchased in the 1930's under the Bankhead-Jones Farm Tenant Act.

Major land use practices have historically centered around agriculture and for the past 40 years, grassland management and livestock use have dominated the activity.

This planning effort is an updating and revision of previous land management plans. It will provide the land manager with long-range guidance for the Sheyenne National Grasslands by correlating capabilities and limitations of the land and will reflect the expressed concerns of the public.

Robert H. Torheim, Regional Forester, is the responsible official. The Custer National Forest will develop the plan.

It is anticipated the environmental assessment will require about 1 year to complete. The Draft Environmental Statement is scheduled for completion by August 1979, with a 3-month review period. The Final Environmental Statement is scheduled for filing in February 1980.

Comments on the Notice of Intent or management of the Sheyenne National Grassland should be sent to Daniel C. MacIntyre, Forest Supervisor, 2602 First Avenue North, Billings, MT 59103.

Dated: February 2, 1979.

JAMES E. REID,
Director, Planning, Programming, and Budgeting.

[FR Doc. 79-4302 Filed 2-7-79; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Docket No. 32660; Agreement C.A.B. 27767 R-1 through R-23; Order 79-1-183]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding North Atlantic-Africa Passenger Fares

Issued under delegated authority January 31, 1979.

An agreement has been filed with the Board pursuant to section 412(a) of Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic regulations between various U.S. and foreign member air carriers of the International Air Transport Association (IATA). The agreement was adopted at a meeting of the Composite Passenger Traffic Conference held in Miami in October, 1978, and was filed with the Board on January 8, 1979.

The agreement, which involves fares between the United States and Africa, establishes a new North Atlantic-Africa fare structure effective April 1, 1979 through March 31, 1980. Specifically, for transportation to and from West Africa, normal economy and excursion fares are increased by three percent, winter group inclusive-tour (GIT) fares by five percent, and New York-Abidjan/Accra APEX fares by 1.4 to 5.5 percent. All other U.S.-West Africa fares remain at existing levels as do most fares for the remainder of Africa, except for excursion fares which also take a 3 percent increase. Finally, additional APEX or GIT fares are specified at several more points in West and East Africa, and a new 5/14 day incentive fare for groups of at least 10 persons is proposed for U.S.-Johannesburg travel.[1]

The purpose of this order is to establish procedural dates for the submission of carrier justification in support of the agreement and comments from interested persons. The carrier's justification for the agreement should assign costs attributable to scheduled combination passenger service, treating cargo both on the "space method", utilizing the load factor adjustment and density and priority weightings as adopted by the Board in the *Transatlantic, Transpacific, and Latin American Service Mail Rates Investigation*, Docket 26487 (Order 78-12-159, December 21, 1978), and the "revenue-offset method" adopted April 2, 1971, in Phase 7 of the *Domestic Passenger Fare Investigation*, Docket 21866-7 (Orders 71-4-59 and 71-4-60).[2] The data should be set out in the tabular format suggested in Order 75-7-88, July 17, 1975, starting with historical data as reported to the Board in Form 41 Reports by functional account for total transatlantic services for the year ended December 1978. These data should be adjusted to exclude those market areas not covered by the agreement,[3] as well as any scheduled all-cargo and charter services in the U.S.-Africa market. The remainder, pertaining to U.S.-Africa scheduled combination services, should show the present economic status of scheduled passenger services in the market area covered by the agreement. Similarly, using the above two methods for the treatment of cargo, the carrier is expected to submit forecast results for the year ending March 1980, both including and excluding implementation of the agreement.

In addition, the carrier will be expected to submit detailed traffic data showing revenue passenger-miles and revenue by specific fare category, as well as capacity and load-factor information, for the historical period and for the forecast period, including and excluding implementation of the agreement.

Accordingly,

1. Pan American World Airways, Inc., the only United States air carrier member of the International Air Transport Association providing service within the area covered by the agreement, shall file within 20 calendar days after the date of service of this order full documentation and economic justification for the fares and related conditions embodied in the subject agreements;

2. Interested persons and parties shall submit their comments and objections within 20 calendar days after the date of service of this order;

[1] A comparison of present and proposed fares in selected U.S.-Africa markets is shown in the Appendix.

[2] In furnishing the data requested, the carrier should attach complete explanatory data describing the methods used in allocating the various cost items and entity investments.

[3] United States-Europe and United States-Middle East. These two areas are defined in IATA Resolutions 012 and 012b. Africa is defined in IATA Resolution 012e.

3. All interested persons and parties shall submit any replies to submissions received in response to ordering paragraph 1 above and replies to comments received pursuant to ordering paragraph 2 above within 30 calendar days after the date of service of this order; and

4. Insofar as air transportation as defined by the Act is concerned, no carrier shall file tariffs implementing the subject agreement in advance of Board approval of the agreement.

We shall publish this order in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

NORTH ATLANTIC-AFRICA
PRESENT AND PROPOSED FARES IN SELECTED MARKETS

		New York-Abidjan			New York-Dakar			New York-Johannesburg			New York-Lagos			New York-Nairobi		
		Present	Proposed	% Change	Present	Proposed	% Change	Present	Proposed	% Change	Present	Proposed	% Change	Present	Proposed	% Change
First Class		$ 2,008	$ 2,008	0	$ 1,730	$ 1,730	0	$ 2,522	$ 2,522	0	$ 2,030	$ 2,030	0	$ 2,522	$ 2,522	0
Economy	Basic	1,192	1,228	3 0%	1,022	1,052	2 9%	1,626	1,626	0	1,208	1,244	3 0%	1,626	1,626	0
	Peak	1,316	1,356	3 0	1,144	1,178	3 0	1,626	1,626	0	1,328	1,368	3 0	1,626	1,626	0
Excursion	Basic	849	875	3 1	720	741	2 9	1,202	1,238	3 0%	858	883	2 9	1,202	1,238	3 0%
	Peak	978	1,008	3 1	848	873	3 0	1,202	1,238	3 0	986	1,015	2 9	1,202	1,238	3 0
14/45 Day APEX		-	-	-	-	-	-	875	875	0	-	-	-	-	-	-
13/45 Day APEX	Basic	678 1/	716 1/	5 5	583	583	0	-	-	-	726	726	0	-	-	-
	Peak	742 1/	779 1/	5 0	647	647	0	-	-	-	790	790	0	-	-	-
5/14 Day Incentive Group (New)		-	-	-	-	-	-	-	700	-	-	-	-	-	-	-
13/30 Day GIT (4 persons)	Basic	638	638	0	534	534	0	1,021	1,021	0	644	644	0	948	948	0
	Peak	708	708	0	607	607	0	1,021	1,021	0	717	717	0	948	948	0
14/30 Day GIT (15 persons)		-	-	-	-	-	-	-	-	-	-	-	-	795	795	0
6/16 Day Winter GIT		596	625	4 9	511	536	5 0	-	-	-	-	-	-	-	-	-

1/ Available only for Eastbound originations

[FR Doc 79-4191 Filed 2-7-79; 8:45 am]

[6335-01-M]

CIVIL RIGHTS COMMISSION

LOUISIANA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Louisiana Advisory Committee (SAC) of the Commission will convene at 9:00 a.m. and will end at 1:00 p.m. on March 3, 1979 in the Capitol House (Room 921) 201 Lafayette Street Baton Rouge, Louisiana 70801.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwestern Regional Office of the Commission, Heritage Plaza, 418 South Main, 1st Floor, San Antonio, Texas 78204.

The purpose of this meeting is to select a subcommittee for the upcoming Community Development Block Grant Funds hearing and to plan what needs to be done to prepare for it.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washintington, D.C., February 5, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-4387 Filed 2-7-79; 8:45 am]

[6335-01-M]

MISSOURI ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a Planning meeting of the Missouri Advisory Committee (SAC) of the Commission will convene at 10:00 a.m. and will end at 3:00 p.m. on March 1, 1979, the Federal Building, 601 12th Street, Room 114, Kansas City, Missouri, 64106.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Central States Regional Office of the Commission, 911 Walnut Street, Room 3103, Kansas City, Missouri 64106.

The purpose of this meeting is to review regional conference program planning recommendations for Fiscal Year 1979 and 1980.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 5, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-4388 Filed 2-7-79; 8:45 am]

[6335-01-M]

WASHINGTON ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Washington Advisory Committee (SAC) of the Commission will convene at 7:00 p.m. and will end at 10:00 p.m. on March 1, 1979, at 915 Second Avenue, Room 2854, Seattle, Washington 98174.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northwestern Regional Office of the Commission, 915 Second Avenue, Seattle, Washington 98174.

The purpose of this meeting is to plan for Washington Advisory Committee hearing on March 2 and 3, 1979.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 5, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-4385 Filed 2-7-79; 8:45 am]

[6335-01-M]

WASHINGTON ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a Factfinding meeting of the Washington Advisory Committee (SAC) of the Commission will convene at 9:00 a.m. and will end at 5:00 p.m. on March 2 and 3, 1979, at 915 Second Avenue, New Federal Building, South Auditorium (4th Floor), Seattle, Washington 98174.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northwestern Regional Office of the Commission, 915 Second Avenue, Seattle, Washington 98174.

The purpose of this meeting is to discuss Equitable Administration of Justice for Minorities and Women in Seattle, Washington.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 5, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-4386 Filed 2-7-79; 8:45 am]

[3510-07-M]

DEPARTMENT OF COMMERCE

Bureau of the Census

CENSUS ADVISORY COMMITTEE OF THE AMERICAN STATISTICAL ASSOCIATION

Public Meeting

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. APP. (1976), notice is hereby given that the Census Advisory Committee of the American Statistical Association will convene on March 1 and 2, 1979, at 9:00 a.m. The Committee will meet in Room 2424, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee of the American Statistical Association was established in 1919. It advises the Director, Bureau of the Census, on the Bureau's programs as a whole and on their various parts, considers priority issues in the planning of censuses and surveys, examines guiding principles, advises on questions of policy and procedures, and responds to Bureau requests for opinions concerning its operations.

The Committee is composed of 15 members appointed by the President of the American Statistical Association.

The agenda for the March 1 meeting, which will adjourn at 5:30 p.m., is: (1) Topics of current interest at the Bureau of the Census, including staff changes and Bureau organization, and major budget and program developments; (2) interviewer recruitment and training; (3) measurement of Hispanic undercount; (4) weekly retail sales series; (5) benchmarking techniques; and (6) development of Committee recommendations.

The agenda for the March 2 meeting, which will adjourn at 12:30 p.m. is: (1) Update on the Bureau Electronic Data Processing Requirements Study; (2) Committee discussion or recommendations; (3) report of the National Commission on Employment and Unemployment Statistics; (4) Census Conference on Undercount—methodology and adjustment; (5) discussion on (a) Bureau responses to prior Committee recommendations, (b) status of specific Bureau activities, and (c) Bureau activities described at earlier Committee meetings; and (6) recom-

mendations, plans, and agenda items for the next meeting.

The meeting will be open to the public, and a brief period will be set aside on March 2 for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Mr. James, L. O'Brien, Acting Chief, Statistical Research Division, Bureau of the Census, Room 3573, Federal Building 3, Suitland, Maryland. (Mail address: Washington, D.C. 20233). Telephone (301) 763-5350.

Dated: February 5, 1979.

MANUEL D. PLOTKIN,
Director, Bureau of the Census.

[FR Doc. 79-4286 Filed 2-7-79; 8:45 am]

[3510-04-M]

National Technical Information Service

TECHNICAL INFORMATION PRODUCTS AND SERVICES IN FEDERAL REPUBLIC OF GERMANY

The National Technical Information Service of the U.S. Department of Commerce requests that parties interested in managing the sales of its technical information products and services in the Federal Republic of Germany make their interest known to the NTIS Assistant Director, Office of Marketing, NTIS, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated: January 26, 1979.

DEAN SMITH,
Assistant Director, National Technical Information Service, Department of Commerce.

[FR Doc. 79-4303 Filed 2-7-79; 8:45 am]

[3510-22-M]

National Oceanic and Atmospheric Administration

FOREIGN FISHING "JOINT VENTURE" PERMIT APPLICATIONS

AGENCY: National Oceanic and Atmospheric Administration/National Marine Fisheries Service.

ACTION: Notice of determinations of consistency of 1978 foreign fishing vessel permits for "joint ventures" with the Fishery Conservation and Management Act of 1976, as amended by Public Law 95-354.

FOR FURTHER INFORMATION CONTACT:

Mr. Alfred J. Bilik, Permits and Regulations Division, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, 202-634-7265.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 9 and August 16, 1978, the National Marine Fisheries Service (NMFS) issued fishing permits which authorized foreign vessels to receive, from vessels of the United States in the fishery conservation zone, fish harvested by vessels of the United States ("joint ventures"). The permits complied with the then-existing requirements of the Fishery Conservation and Management Act of 1976, as amended (16 U.S.C. 1801, *et seq.*) ("the Act").

On August 28, 1978, Pub. L. 95-354 further amended the Act to provide a preference for U.S. fish processors to process U.S. harvested fish. Specifically, Pub. L. 95-354 provides that an application for a foreign vessel to receive at sea U.S. harvested fish from vessels of the U.S. may be approved unless it is determined that U.S. fish processors have adequate capacity, and will utilize such capacity, to process all U.S. harvested fish from the fishery. Pub. L. 95-354 further provides that the amount of U.S. harvested fish which may be received at sea during any year by foreign vessels may not exceed that portion of the optimum yield which will not be utilized by U.S. fish processors.

On October 20, 1978, NMFS published preliminary determinations of the consistency of the 1978 "joint venture" permits with the provisions of Pub. L. 95-354 and sought public comments (43 FR 49032). To make these determinations, NMFS assessed: (1) The anticipated U.S. harvest in 1978 of Pacific hake off Washington, Oregon and California and of Alaska pollock in the Gulf of Alaska, and (2) the capacity, and utilization of such capacity, of U.S. fish processors to process in 1978 Pacific hake and Alaska pollock. NMFS found that U.S. fish processors would not process all U.S. harvested fish from these fisheries. NMFS then computed the maximum amounts of U.S. harvested Pacific hake and Alaska pollock which could be received at sea during 1978 by foreign vessels as follows:

	Pacific hake (m.t.)	Alaska pollock (m.t.)
Optimum yield	130,000	168,800
To be utilized by U.S. fish processors	−4,000	−500
Total receiveable by foreign vessels	126,000	168,300

The amounts of U.S. harvested hake and pollock which could be received at sea by foreign vessels were limited by permit restrictions to 10,000 m.t. and 51,460 m.t., respectively. Thus, the NMFS preliminary determinations were that the 1978 "joint venture" permits were consistent with the Act as amended by Pub. L. 95-354.

COMMENTS AND RESPONSE: No comments received addressed the NMFS assessments of anticipated U.S. harvest or anticipated U.S. processing in the fisheries concerned, and no objections were made to the preliminary determination that approval of the "joint venture" permit applications was consistent with the Act as amended by Pub. L. 95-354. Objections were expressed, however, to the method used by NMFS in computing the maximum amounts of fish which could be received at sea by foreign vessels. Reviewers pointed out that the intent of Pub. L. 95-354 in this regard was to allow foreign receipts of U.S. harvested fish only to the extent that U.S processors are not expected to process that U.S. harvested fish. Specifically, commenters urged that the language "may not exceed that portion of the optimum yield of the fishery concerned" in section 204(b)(6)(B)(ii) of the Act (as amended by Pub. L. 95-354) refers to the portion of the optimum yield caught by U.S. vessels. After re-examining the legislative history of Pub. L. 95-354, NMFS agrees with that interpretation.

DETERMINATIONS OF CONSISTENCY: NMFS finds that the approvals of the "joint venture" applications were consistent with the Act, as amended by Pub. L. 95-354. However, the permit limitations on the amount of fish which could be received at sea in 1978 were not consistent with Pub. L. 95-354. The limitations should have been computed as follows:

	Pacific hake (m.t.)	Alaska pollock (m.t.)
U.S. harvested portion of optimum yield	10,000	32,700
To be utilized by U.S. fish processors	−4,000	−500
Total receiveable by foreign vessels	6,000	32,200

The 10,000 m.t. limitation on Pacific hake and the 51,460 m.t. limitation of Alaska pollock exceeded the revised computations. Because the actual receipts by foreign vessels of U.S. harvested Pacific hake and Alaska pollock during 1978 did not exceed 1,000 m.t. of either species, the inconsistency had no adverse effect on the conservation of the fish stocks.

Signed at Washington, D.C., this the 2nd day of February, 1979.

WINFRED H. MEIBOHM,
Acting Executive Director, National Marine Fisheries Service.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

[FR Doc. 79-4247 Filed 2-7-79; 8:45 am]

[3810-70-M]

DEPARTMENT OF DEFENSE

Office of the Secretary

DEFENSE SCIENCE BOARD TASK FORCE ON HIGH ENERGY LASERS

Advisory Committee Meeting

The Defense Science Board Task Force on High Energy Lasers will meet in closed session on 2-3 March 1979 in Albuquerque, New Mexico.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs to the Department of Defense.

A meeting of the Task Force on High Energy Lasers has been scheduled for 2-3 March 1979 to review specific aspects of laser devices, pointing and tracking, and optics technology. The Task Force will focus on major technical issues that may limit the performance characteristics and potential utility of high energy lasers to missions of interest to the Department of Defense.

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.

FEBRUARY 2, 1979.

[FR Doc. 79-4367 Filed 2-7-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

ECONOMIC REGULATORY ADMINISTRATION

[ERA DOCKET NO. 78-015-NG; FERC DOCKET NO. G-104]

EL PASO NATURAL GAS CO.

Petition To Amend Order Authorizing the Continued Exportation of Gas to the Republic of Mexico

AGENCY: department of Energy, Economic Regulatory Administration.

ACTION: Notice of Receipt of petition and application for a temporary certificate and invitation to submit petitions to intervene in the proceeding.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of the Petition of El Paso Natural Gas Company (El Paso) to Amend Order and Application for a Temporary Certificate in ERA Docket No. 78-015-NG, requesting amendment to the order issued by the Federal Power Commission (FPC), as further amended, more fully described hereinafter, pursuant to Section 3 of the Natural Gas Act. The requested amendment would permit the continued exportation of natural gas from the United States of America to the Republic of Mexico. Petitions to intervene are invited.

DATES: Petition to intervene: To be filed on or before the 15th day after the date of publication of this notice in the FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT:

Finn K. Neilsen Director, Import/Export Division, Economic Regulatory Administration, 2000 M Street, N.W., Room 6318, Washington, D.C. 20461, telephone: 202-254-9730.

Martin S. Kaufman, Office of General Counsel, U.S. Department of Energy, Room 5115, 12th & Pa. Avenue, N.W., Washington, D.C. 20461, telephone: 202-633-9380.

SUPPLEMENTARY INFORMATION:

BACKGROUND

By a presidential permit issued September 5, 1940, El Paso was authorized to operate and maintain an 8⅝" O.D. natural gas pipeline, with appurtenances, at the International Border near Naco, Arizona, and to make a physical connection between such facilities and the facilities of Compania Occidental de Gas, S.A. de C.V. (Occidental) for the exportation of natural gas to Cananea Consolidated Copper Company, S.A. predecessor in interest of Compania Minera de Cananea, S.A. de C.V. (Compania Minera).

By FPC orders issued September 10, 1940, November 12, 1947, June 7, 1962, and July 21, 1967, in Docket No. G-104, El Paso was authorized to export natural gas from the United States of America to the Republic of Mexico for a period extending through December 31, 1978. The order issued July 21, 1967, authorized El Paso to increase the quantities of natural gas exports from 10,000 Mcf/d to 14,300 Mcf/d as well as to export such additional quantities in excess of 14,300 Mcf/d on a best efforts basis through December 31, 1978, as may be requested by Compania Minera.

Natural gas exported pursuant to the foregoing authorizations is sold by El Paso to Compania Minera and delivered by El Paso to Occidental, a wholly-owned subsidiary of El Paso, for the account of Compania Minera at a point near Monument 90 of the International Border located near Naco, Arizona, for transportation and delivery to Compania Minera at a point near Sonara, Mexico. Natural gas delivered to Compania Minera is used by it as fuel in its mining and smelting activities conducted near Cananea, Sonora, Mexico, and a portion of such natural gas is resold for distribution in the community of Cananea.

El Paso's Petition

El Paso has been requested by Compania Minera to continue sales of natural gas in further satisfaction of Compania Minera's requirements for a primary term extending through and including December 31, 1979, and thereafter from month to month. Accordingly, El Paso and Compania Minera have agreed to extend the term of the existing contract at the presently authorized quantities of 14,300 Mcf per day on a firm basis, and on a best efforts basis, to export for sale such additional quantities of gas in excess of 14,300 Mcf/d as Compania Minera shall request. El Paso and Compania Minera have executed an Amendment of Gas Sales contract dated as of December 14, 1978 (Sales Contract), which Sales Contract further amends the Gas Sales Contract between the parties dated as of June 9, 1962. Compania Minera will continue to receive natural gas at the present delivery point.

El Paso seeks an amended authorization, pursuant to Section 3 of the Natural Gas Act, to continue the exportation of natural gas from the United States of America to the Republic of Mexico for an extended primary term through and including December 31, 1979, and month to month thereafter, all in accordance with the Gas Sales Contract dated as of June 9, 1962, as amended, between El Paso and Compania Minera.

The rate to be charged Compania Minera for each Mcf of gas purchased from El Paso is the rate specified to be charged for natural gas delivered under El Paso's Rate Schedule B-1 or superseding rate schedule of El Paso's FERC Gas Tariff, Original Volume No. 1, or superseding tariff. The currently effective rate under Rate Schedule B-1 is 148.30 cents per Mcf.

The facilities which are being utilized for the exportation of natural gas and which will continue to be utilized upon issuance of the requested authorization consist of a portion of El Paso's interstate transmission system located in the State of Arizona, extending to the delivery point near

Monument 90 on the International Border.

El Paso has delivered natural gas since June 8, 1931, continuously to Compania Minera. For the twelve (12) month period ending October 31, 1978, the peak day delivery to Compania Minera was 3,838 Mcf and total volumes of natural gas delivered aggregated 653,363 Mcf.

OTHER INFORMATION

The ERA invites petitions for intervention in the proceeding. Such petitions are to be filed with the Economic Regulatory Administration, Room 6318, 2000 M Street, N.W., Washington, D.C., 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 157.10). Such petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m. on February 23, 1979.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing which may be convened herein must file a petition to intervene. Any person desiring to make any protest with reference to the petition and application for temporary certificate should file a protest with the ERA in the same manner as indicated above for petitions to intervene. All protests filed with ERA will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

A formal hearing will not be held unless a motion for such hearing is made by any party or intervener and is granted by ERA, or if the ERA on its own motion believes that such a hearing is required. If such hearing is required, due notice will be given.

A copy of El Paso's petition is available for public inspection and copying in Room B-120, 2000 M Street, N.W., Washington, D.C. 20461 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., January 31, 1979.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-4261 Filed 2-7-79; 8:45 am]

[6450-01-M]

GEOTHERMAL DEMONSTRATION PROGRAM, BACA RANCH, SANDOVAL AND RIO ARRIBA COUNTIES, N. MEX.

Intent To Prepare Environmental Impact Statement

Notice is hereby given that, in accordance with the National Environmental Policy Act of 1969, the U.S. Department of Energy (DOE) has commenced preparation of an environmental impact statement (EIS) to assess the environmental implications of a proposed DOE action to cost-share the construction and operation of a 50 megawatt (MWe) geothermal powerplant with Union Oil Company and Public Service of New Mexico (PNM) within the Valles Caldera, on the Baca Ranch, in Sandoval and Rio Arriba Counties, New Mexico.

The applicants, Union Oil and Public Service of New Mexico, jointly responding to a DOE Request for Proposal, propose to construct and operate a 50 MWe single flash geothermal powerplant. DOE support, through sharing of capital costs, is sought to complete well-field development and construct a 50 MWe powerplant and necessary transmission lines. The proposed project would be located within the Valles Caldera, on the Baca Ranch (private land) in Sandoval and Rio Arriba Counties, New Mexico. The project site is approximately 30 kilometers (km) west of Los Alamos and 96 km north of Albuquerque. The proposed well-field and plant site are located within Redondo Creek Canyon in an area of approximately 775 hectates (ha). The proposed project would require construction of at least 30 km of 115 kilovolt (kv) transmission lines crossing lands of the Santa Fe National Forest, the Bandelier National Monument, and the Los Alamos Scientific Laboratory Site.

To date, Union Oil has drilled eighteen wells at the site. Thirteen to sixteen additional wells will have to be drilled and flow-tested to complete field development for the resource required for the proposed 50 MWe capacity plant.

A number of environmental and local issues have been identified. These issues include a potential for contamination of surface and groundwater, possible non-compliance with the state ambient air quality standard for hydrogen sulfide, the presence onsite of a state endangered species, potential impacts on a federally endangered species, proximity of Native American lands and sacred sites, a potential for drawdown of surface springs, potential impact on water rights, possible induced seismicity as a result of injection under pressure, presence of sites of archeological significance, the potential impacts of transmission corridors and towers through the Santa Fe National Forest, the Bandelier National Monument, and private recreation lands.

This EIS will address the potential impact of the DOE cost-shared funding of the construction and operation of a 50 MWe plant and its associated well-field and transmission lines. In addition, the potential long-range and cumulative impacts of possible future expansion of the resource to support a 400 MWe complex (based on current estimates of the capabilities of the leasehold) will be discussed.

Alternatives currently planned to be assessed in the EIS include the no action alternative, funding a plant at other geothermal leaseholds, and alternative funding options. Also, alternative plant and cooling systems, design transmission corridors, tower designs and nonelectric utilization of the resource options will be assessed.

All interested agencies, organizations, or persons are invited to submit comments or suggestions for consideration in the preparation of the draft EIS. Upon completion of the draft EIS, its availability will be announced in the FEDERAL REGISTER at which time public comments will again be solicited. Those desiring to submit comments or suggestions should submit them to Mr. F. A. Leone, Division of NEPA Affairs, Mail Station E-201, GTN, U.S. Department of Energy, Washington, D.C. 20545, (telephone 301-353-4241) on or before March 9, 1979.

Those desiring not to submit comments or suggestions now but would like to receive a copy of the draft EIS for review and comment when it is issued should also notify Mr. Leone.

Copies of the documents currently planned to be used in the preparation of the draft EIS are available for public inspection at:

Santa Fe National Forest Office, Federal Post Office Building, Paseo De Peralta, Santa Fe, New Mexico.

In addition, a copy of the bibliography of these documents are available for inspection at the following DOE locations:

Public Reading Room, FOI, Room GA-152, 1000 Independence Ave., SW., Washington, D.C.

Albuquerque Operations Office, National Atomic Museum, Kirtland Air Force Base East, Albuquerque, New Mexico.

Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois.

Chicago Operations Office, 175 West Jackson Boulevard, Chicago, Illinois.

Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho.

Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada.

Oak Ridge Operations Office, Federal Building, Oak Ridge, Tennessee.

Richland Operations Office, Federal Building, Richland, Washington.

Energy Information Center, 215 Fremont Street, San Francisco, California.

Savanna River Operations Office, Savannah River Plant, Aiken, South Carolina.

And also at the:

Regional Energy/Environment Information Center, Denver Public Library, 1357 Broadway, Denver, Colorado.

Dated at Washington, D.C. this 2nd day of February.

For the United States Department of Energy.

JAMES L. LIVERMAN,
Deputy Assistant Secretary for Environment.

[FR Doc. 79-4260 Filed 2-7-79; 8:45 am]

[6450-01-M]

Economic Regulatory Administration

[Release No. 8]

MANDATORY OIL INPORT PROGRAM

Oil Import Allocations and Licensing January 1-31, 1979

The fee-exempt allocations and licenses issued in accordance with Presidential Proclamation 3279, as amended, during the period January 1-31, 1979, are given in the following tables. The allocations are listed for the appropriate sections of 10 CFR Part 213 under which the allocations are made.

Also published is a tabulation of the fee-paid crude oil and product licenses and a listing of the sale and reassignment of fee-exempt crude oil licenses issued during the month of January 1979.

Previous releases covered the issuance of allocations and licenses for the period May 1, 1978, through December 31, 1978. The releases will continue to be issued on a monthly basis.

Dated: February 2, 1979.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

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Table and Title

1—Allocations of Residual Fuel Oil—District I—10 CFR 213.15
2—Fee-exempt allocation for imports of Canadian oil based upon exchange for domestic oil—10 CFR 213.28(b)
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4—Fee-paid licenses issued—10 CFR 213.35
5—Fee-exempt licenses issued as a result of decision and orders from the Office of Hearings and Appeals

U.S. DEPARTMENT OF ENERGY, OFFICE OF OIL IMPORTS

[Allocation January 1-31, 1979]

TABLE 1.—*Residual Fuel Oil Imports Sec. 213.15—District I*

Company	Address	Allocation Barrels
Apex Oil Company	St. Louis, MO	500,000
Northville Industries	Huntington, Sta., NY	147,632
Northeast Petroleum	Chelsea, Mass	500,000
New England Power Co	Westborough, Mass	500,000
Florida Power & Light	Miami, Fla	500,000
Petraco-Valley Oil & Refining Co	Houston, TX	500,000
Laura Lee International Corp	Drexel Hill, PA	500,000
Consolidated Edison Co. of NY	New York, NY	500,000
International Petroleum Refining	New York, NY	500,000
Tesoro Petroleum Corp	San Antonio, TX	500,000
Trammo Petroleum Corp	New York, NY	261,678

TABLE 2.—*Canadian Crude Oil—Exchange of Material Not Allocated Under Pt. 214, Sec. 213.28(b)*

Company	Address	Exchange volume licensed total barrels
Continental Oil Co	Houston, Texas	1,825,000
Exxon Corporation	Houston, Texas	2,920,000
Exxon Corporation	Houston, Texas	2,190,000

TABLE 3.—*Oil Import Licenses Sold Pursuant to Sec. 213.22(d)*

Seller	Buyer	Date	Commodity	Barrels sold
	DISTRICT I-IV			
El Paso/Dart Industries	Texaco Inc.	12/29/78	Crude	114,427
El Paso Products	Texaco Inc.	12/29/78	Crude	45,077
ARCO Chemical Co.	Borg-Warners	1/5/79	Crude	13,140
ARCO Chemical Co.	Celanese Corp.	1/5/79	Crude	85,084
ARCO Chemical Co.	Ethyl Corp.	1/5/79	Crude	104,030

TABLE 3.—*Oil Import Licenses Sold Pursuant to Sec. 213.22(d)*—Continued

Seller	Buyer	Date	Commodity	Barrels sold
	DISTRICT I-IV—Continued			
ARCO Chemical Co.	Monsanto Co.	1/5/79	Crude	31,951
ARCO Chemical Co.	Oxirane Chemical	1/5/79	Crude	116,664
Celanese Corp.	Amoco Oil Co.	1/4/79	Crude	148,920
Celanese Corp.	Amoco Oil Co.	1/4/79	Crude	1,055,575
E-Z Serve, Inc.	Union Oil CA	1/12/79	Crude	559,910
Cross Oil & Refining Co.	Amoco Oil Co.	1/12/79	Crude	220,000
Cross Oil & Refining Co.	Amoco Oil Co.	1/12/79	Crude	99,740
American Petrofina, Inc.	Ashland Oil	1/16/79	Crude	992,311
Southwestern Refining Co.	Texaco Inc.	1/16/79	Crude	1,928,130
Southwestern Refining Co.	Texaco Inc.	1/16/79	Crude	2,000,000
Southwestern Refining Co.	Texaco Inc.	1/16/79	Crude	814,455
Southwestern Refining Co.	Texaco Inc.	1/16/79	Crude	2,000,000
Marion Corporation	Exxon Corp.	1/16/79	Crude	258,325
Marion Corporation	Exxon Corp.	1/16/79	Crude	510,000
Marion Corporation	Exxon Corp.	1/16/79	Crude	1,364,005
Novamont Corporation	Ashland Oil	1/16/79	Crude	395,110
Novamont Corporation	Ashland Oil	1/16/79	Crude	9,672
Novamont Corporation	Ashland Oil	1/16/79	Crude	9,673
ATC Petroleum Inc.	Sun Oil of PA	1/19/79	Crude	96,360
ATC Petroleum Inc.	Sun Oil of PA	1/19/79	Crude	112,785
ATC Petroleum Inc.	Sun Oil of PA	1/19/79	Crude	243,820
Delta Refining Co.	Koch Industries	1/19/79	Crude	377,585
ARCO Chemical	E.I. du Pont	1/23/79	Unfinished	64,000
Tenneco Oil Co.	Amoco Oil Co.	1/24/79	Crude	2,000,000
Champlin Petroleum Co.	Amoco Oil Co.	1/29/79	Crude	5,000,000
Champlin Petroleum Co.	Amoco Oil Co.	1/29/79	Crude	5,000,000
Little America Refining	Texaco Inc.	1/30/79	Crude	1,984,340
Little America Refining	Texaco Inc.	1/30/79	Crude	1,190,000
Little America Refining	Texaco Inc.	1/30/79	Crude	568,205
Union Carbide Corp.	Amoco Oil Co.	1/30/79	Crude	640,575
Union Carbide Corp.	Amoco Oil Co.	1/30/79	Crude	288,193
Kentucky Oil & Refining	Ashland Oil	1/30/79	Crude	28,835
	DISTRICT V			
Tesoro Petroleum Corp.	Texaco Inc.	1/4/79	Crude	1,000,000
San Joaquin Refining	Mobil Oil	1/19/79	Crude	600,000
San Joaquin Refining	Mobil Oil	1/19/79	Crude	440,310
Exxon Corporation	Gulf Oil	1/24/79	Crude	926,955
Exxon Corporation	Texaco Inc	1/25/79	Crude	550,000
Exxon Corporation	Texaco Inc	1/25/79	Crude	1,650,000
Kalama Chemical	Golden Eagle	1/30/79	Crude	500,000

TABLE 4.—*Fee-Paid Licenses Issued Pursuant to Sec. 213.35*

CRUDE OIL—BOND POSTED

Company	Date	Quantity total barrels
Koch Industries	12/29/78	500,000
Shell Oil Company	12/29/78	5,000,000
Shell Oil Company	12/29/78	5,000,000
Sohio Natural Resources	12/29/78	10,000,000
National Coop. Refining	1/5/79	1,000,000
Marathon Oil Company	1/5/79	5,000,000
Coastal States Gas	1/8/79	5,000,000
Koch Industries, Inc.	1/8/79	750,000
Amoco Oil Company	1/8/79	5,000,000
Amoco Oil Company	1/8/79	5,000,000
Gulf Oil Company	1/8/79	10,000,000
Ashland Oil, Inc.	1/11/79	5,000,000
Southwestern Refining Co	1/12/79	2,000,000
Texaco Inc	1/16/79	7,000,000
Sun Oil Co. of PA	1/16/79	6,000,000
Good Hope Refineries	1/17/79	4,764,800
Chevron U.S.A. Inc	1/18/79	5,000,000
Mobil Oil Corporation	1/22/79	10,000,000
Shell Oil Company	1/23/79	5,000,000
Koch Industries Inc	1/23/79	7,500,000
Amoco Oil Company	1/23/79	10,000,000
Amoco Oil Company	1/23/79	5,000,000
Delta Refining Co	1/23/79	1,250,000
		License quantity total barrels
Southwestern Refining Co	1/25/79	2,000,000
Southwestern Refining Co	1/25/79	2,000,000
Mobile Bay Refining	1/25/79	160,000

TABLE 4.—*Fee-Paid Licenses Issued Pursuant to Sec. 213.35*

CRUDE OIL—BOND POSTED—Continued

Company	Date	Quantity total barrels
		License quantity total barrels
Metropolitan Petroleum Co.	1/25/79	1,780,952
Exxon Corporation	1/30/79	18,000,000
Murphy Oil Corporation	1/30/79	2,000,000
United Refining Co	1/30/79	570,057
Vickers Petroleum Corp	1/30/79	3,000,000
Ashland Oil, Inc	1/31/79	5,000,000
FINISHED PRODUCTS—PREPAID		
NFO Int'l Ltd	1/4/79	126
Laurence-David, Inc	1/4/79	165
Moore & Munger Inc	1/9/79	23,105
Dow Chemical Co	1/16/79	2,100
Dow Chemical Co	1/16/79	14,300
Enterprise Oil & Gas Co	1/16/79	2,064
Mattiace Petrochemical Co	1/16/79	10,000
Bucher Petrochemical Co	1/16/79	5,000
Keyser International Inc	1/22/79	1,100
Apco Industries Co. Ltd	1/23/79	3,000
Garlyn Shelton	1/23/79	6,500
Asiatic Petroleum Co	1/25/79	79
Finachem Canada Inc	1/29/79	40,000
Laurence-David, Inc	1/29/79	480
Pressol Mfg	1/30/79	38
Firestone Wire & Cable	1/30/79	262
Ashland Chemical Co	1/30/79	2,000
Asiatic Petroleum	1/29/79	40
FINISHED PRODUCTS—BOND POSTED		
		Quantity total barrels
Farstad Oil Inc	1/3/79	75,000
Texas-U.S. Chemical	1/3/79	100,000
Gulf Oil Corp	1/5/79	170,000
Apex Oil Company	1/15/79	1,000,000
Van Waters & Rogers	1/16/79	25,000
Esso Std. Oil Co. (P.R.)	1/16/79	400,000
Chevron U.S.A. Inc	1/16/79	1,500,000
Mobil Oil Corporation	1/22/79	500,000
Metropolitan Petroleum Co	1/25/79	200,000
Atlantic Richfield Co	1/25/79	52,500
Exxon Corporation	1/30/79	1,500,000

TABLE 5.—*Fee-Exempt Licenses Issued as a Result of Decisions and Order From the Office of Hearing and Appeals*

Company	Date	Commodity	Barrels
Phillips Puerto Rico Core	1/26/79	Unfinished	16,750,000

[FR Doc. 79-4319 Filed 2-7-79; 8:45 am]

[6450-01-M]

NORTHERN ILLINOIS GAS CO.

Proposed Allocation of Synthetic Natural Gas (SNG) Feedstocks

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Availability of Environmental Assessment and Negative Determination.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces the availability of its environmental assessment (EA) of a proposed assignment of supplier and a base period use of synthetic natural gas (SNG) feedstocks for the Northern Illinois Gas Company's (NI-Gas) Aux Sable, Illinois, SNG plant. DOE has determined, based on the EA, that an assignment approximating historical operating levels does not constitute 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 (NEPA). Comments regarding the EA and DOE's determination that an environmental impact statement is not required are invited. Additionally, interested parties are invited to comment on NI-Gas' petition for SNG feedstock.

DATE: Written comments to be submitted no later than 4:30 p.m., February 28, 1979.

ADDRESS: Comments should be submitted to Box WR, Economic Regulatory Administration, Office of Public Hearing Management, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Richard Johnson, Economic Regulatory Administration, Office of Fuel Supply and Allocation, Room 6318, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254-3330.

Carol Borgstrom, Office of Environment, Room 6229, 20 Massachusetts Ave., N.W., Washington, D.C. 20461, (202) 376-5999.

Janine Landow-Esser, Office of the General Counsel, Room 8217, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545, (202) 376-4266.

Verlette Gatlin, Department of Energy, Freedom of Information Reading Room, Forrestal Building, 1000 Independence Ave., S.W., Room GA-152, Washington, D.C. 20461, (202) 252-5969.

SUPPLEMENTAL INFORMATION

I. BACKGROUND

On February 5, 1976 the Federal Energy Administration (FEA), a predecessor of DOE, issued a Decision and Order (February 5 Order) to Northern Illinois Gas Company (NI-Gas) assigning NI-Gas a base period use of 4,064,875 barrels of propane, butane, natural gasoline, and naphtha for synthetic natural gas (SNG) plant feedstock use in each of the second, third, and fourth calendar quarters of 1976, and the first calendar quarter of 1977 for its Aux Sable, Illinois, SNG plant. Subsequent orders were issued to NI-Gas extending the period of allocation and assignment of SNG feedstock volumes.

The EA is based upon NI-Gas' August 5, 1977 petition which requested an increased allocation of approximately 19 %. However, on August 18, 1978, NI-Gas requested withdrawal of its August 5, 1977 petition thereby reverting to its August 1, 1976 petition. NI-Gas' current allocation is for 4,386,875 barrels per quarter of mixed feedstock and Btu enrichment material as set forth in the most recent Decision and Order issued September 30, 1978. the August 1, 1976 petition requests the continuation of this allocation level. The EA addresses the environmental consequences due to plant operation and fuel substitution in the service area at various feedstock allocation levels including the increased allocation originally requested, and a level which approximates the current allocation.

The analyses in the EA indicate that the allocation of SNG feedstock at a level approximating the requested amount (continuation of the status quo) would not be a "major Federal action significantly affecting the quality of the human environment," within the meaning of NEPA. This conclusion is warranted because approval of the requested allocation would not result in any significant fuel switching in the service area nor would it cause increases in the levels of SNG plant pollutant emissions. Therefore, a negative determination, pursuant to 10 CFR 208.4(c), is appropriate and no EIS is required.

ERA is continuing to evaluate NI-Gas' need for the SNG produced at its Aux Sable plant. If it is determined that an allocation less than 100 percent of currently assigned base period volumes is required, DOE will consider the need for further environmental review.

II. COMMENT PROCEDURE

Single copies of the NI-Gas EA may be obtained from the Fuel Supply and Allocation Office, Room 6318, 2000 M Street, NW., Washington, D.C. 20461, 254-3330. Copies of the EA are also available for public review in the DOE Freedom of Information Reading Room, Forrestal Building, 1000 Independence Ave., SW., Room GA-152, Washington, D.C. 20461, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. A file containing all pertinent information and data filed in conjunction with NI-Gas' petition, other than confidential information which ERA has determined to be exempt from the disclosure requirements of 5 U.S.C. 522, is also available for public inspection and copying at the DOE Freedom of Information Reading Room.

Interested parties may submit written comments with respect to the EA, negative determination and the petition to Box WR, Public Hearing Management, Department of Energy, Room 2313, 2000 M Street, NW., Washington, D.C. 20461. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "Northern Illinois Gas Company Feedstock Assignment". All comments should be received by DOE by 4:30 p.m. February 28, 1979, in order to insure consideration.

Any person submitting written comments should forward 15 copies to ERA and should comply with the requirements of the ERA procedural regulations set forth in 10 CFR 205.9 *et seq.*

Any information or data submitted in response to this notice considered by the person furnishing it to be confidential must be so identified and submitted in writing, in one copy only, in accordance with procedures set forth in 10 CFR 205.9(f). Any material not accompanied by a statement of confidentiality will be considered to be nonconfidential. The Economic Regulatory Administration reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

Issued in Washington, D.C., February 2, 1979.

DORIS J. DEWTON,
Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-4317 Filed 2-7-79; 8:45 am]

[6450-01-M]

Federal Energy Regulatory Commission

[Docket No. ER79-158]

ALABAMA POWER CO.

Filing of Rate Schedule

FEBRUARY 2, 1979.

Take notice that Alabama Power Company on January 23, 1979, tendered for filing an Agreement with Craig Field Airport and Industrial Authority, intended as an initial rate schedule. The filing is for the proposed Craig Field Substation delivery point of the Craig Field Airport and Industrial Authority. According to Alabama Power the delivery point will be served at the Company's applicable revision to Rate Schedule MUN-1 incorporated in FERC Electric Tariff, Original Volume No. 1 of Alabama Power Company as allowed to become effective, subject to refund, by Commission order in FERC Docket ER78-77.

Alabama Power Company has requested that the proposed rate schedule take effect as of January 2, 1979, as provided in the Agreement, and has requested a waiver of the sixty-day statutory notice requirement.

Copies of the filing were served upon the Craig Field Airport and Industrial Authority, according to Alabama Power.

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, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8; 1.10). All such petitions or protests should be filed on or before February 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4345 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-157]

BOSTON EDISON CO.

Tariff Filing

FEBRUARY 2, 1979.

Take notice that on January 19, 1979 Boston Edison Company (Edison) tendered for filing a tariff non-firm transmission service designated FERC Electric Tariff, Original Volume No. 1. Edison also tendered unexecuted service agreements with the two customers which have required such service, the Towns of Reading and Braintree, Massachusetts, together with supplements to those service agreements describing specific amounts and periods of purchase.

Edison requests that the tariff, the service agreements and supplements be made effective as of May 1, 1978. Edison requests waiver of the 60-day notice requirement for this purpose.

Edison states that it has served the filing on the affected customers and the Massachusetts Department of Public Utilities.

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 Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 13, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4346 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-90]

Central Kansas Power Co., Inc.

Order Accepting for Filing and Suspending Proposed Rate Increase, Providing for Hearing Instituting Section 206 Investigation, Denying Petition, To Reject Base Rate, Granting Summary Disposition, Rejecting Proposed Purchased Power Adjustment Clause, Establishing Procedures and Granting Intervention

JANUARY 31, 1979.

On December 1, 1978, Central Kansas Power Company (CKP) tendered from filing a proposed increase in its rates to Sunflower Electric Cooperative (Sunflower). Sunflower is a nonprofit rural electric association whose members are nonprofit rural electric cooperatives operating electric distribution systems. CKP's filing included two separate rate schedules for service to Sunflower—the SEC-1-Base rate for sales up to 22,000 kW and the SEC-1-Excess rate for sales in excess of 22,000 kW.[1] CKP states in its transmittal letter that the proposed revisions to its base and excess rates constitute a rate change under Section 205 of the Federal Power Act and requests that the increased rates be made effective as of February 1, 1979. Based on the twelve month test period ending December 31, 1979, the proposed rates would increase revenues by approximately $612,293.

Under the proposed rates, both the base and excess rate will have a one step demand and energy charge. The proposed rates also contain a 100 percent 12-month billing demand ratchet. The proposed excess rate includes a Purchased Demand Adjustment Clause whereby the billing demand charge would be increased or decreased for variations in CKP's weighted average purchased demand cost above or below $3.70/kW per month.

The proposed base rate is intended to increase the base rate submitted by CKP for filing in compliance with the Commission's Order Affirming Initial Decision issued June 30, 1978, in Docket No. E-8755, which became effective on September 16, 1978, pursuant to the Commission's letter of compliance dated November 13, 1978. The presently effective base rate had been the subject of an investigation under Section 206 of the Federal Power Act.[2] On December 28, 1978, in Docket No. ER76-588, the Commission issued an Order Affirming Initial Decision requiring that CKP file revised base rates with 60 days. The base rate to be submitted in compliance with that order will, when accepted, supersede the presently effective base rate. The base rate proposed by CKP in Docket No. ER76-588 was subject to investigation under Section 206. The excess rate proposed by CKP in the present docket is intended to supersede the currently effective excess rate that, after being suspended for three months, became effective August 1, 1976, subject to refund pursuant to the Commission's Order in Docket No. ER76-588, issued April 30, 1976.

Public notice of CKP's filing was issued on December 12, 1978, with responses due on or before December 29, 1978. On December 29, 1978, Sunflower filed a "Protest and Petition to Intervene and for Rejection of Certain Proposed Changes in Tariff Tendered for Filing." On January 22, 1978, CKP filed a Reply to Sunflower's Protest and Petition to Intervene.

Sunflower requests in its protest and petition that CKP's filing of an increased base rate be rejected on the grounds that the wholesale power contract between CKP and Sunflower relating to the sale of the first 22,000 kW is a fixed rate contract and cannot be modified unilaterally by CKP. Sunflower also asserts that the proposed increase in the base rate can only become effective prospectively following a final Commission determination that the proposed base rate satisfies the standards of the *Sierra* case.[3] With regard to the proposed increase in the excess rate, Sunflower requests that the rate be suspended for five months.

Sunflower protests the proposed rates as being excessive and also sets forth a number of specific objections to the methodologies followed by CKP in preparing its cost of service study. Sunflower points out that CKP has included certain accumulated deferred investment tax credits (ADITC) only in the common equity component of its capital structure even though the Commission has held several times that the return allowed on ADITC must be measured by the overall rate of return rather than just on the higher common equity return. Sunflower requests that the Commission grant summary disposition of this issue. Sunflower states that CKP's use of a 48 percent Federal income tax rate in computing its tax expense for Period II, calendar year 1979, is inappropriate because a 46 percent rate will be applicable for the entire period. Sunflower also states that CKP has allocated administrative and general expense (A&G) on the basis of operation and maintenance expense exclusive of A&G and exclusive of fuel, purchased power and rents. Sunflower maintains that A&G expense should be allowed on the basis of labor. Sunflower objects further to CKP's proposed 100 percent demand ratchet and to CKP's proposed allocation of fuel stocks on the basis of demand rather than energy.

Our review of CKP's filings in the present case indicates the proposed rates have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful. We have also reviewed the power contract between CKP and Sunflower and have concluded that it contemplates only prospective changes upon final regulatory action based on an investigation

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[1] See Attachment A for rate schedule designations.

[2] See Commission Orders in Docket No. E-8755 dated July 2, 1974; July 29, 1974; August 28, 1974; October 3, 1974; and October 16, 1974.

[3] *F.P.C. v. Sierra Pacific Power Company*, 350 U.S. 348 (1956).

under Section 206 of the Federal Power Act.[4] Therefore, we shall accept for filing CKP's proposed change in the base rate, but shall not permit the increased rate to become effective except upon final order of the Commission following investigation and hearing pursuant to Section 206 of the Federal Power Act. However, the test of the *Sierra* case shall not be applicable in the determination of the justness and reasonableness of the base rate proposed by CKP in the Section 206 investigation and hearing which we shall require in this case.[5] We shall, however, accept CKP's proposed excess rate for filing and suspend the proposed rate for five months to become effective July 1, 1979, subject to refund.[6]

With regard to the issue of ADITC, summary disposition is granted, as requested by Sunflower, so that the return allowed on ADITC shall be measured by the overall rate of return rather than the higher common equity return.[7] Similarly, we shall grant summary disposition with regard to Federal taxes and shall require that CKP compute its Period II tax expense on the basis of the 46 percent tax rate. We shall also grant summary disposition with regard to the proposed 100 percent demand ratchet. In our Order issued December 28, 1978, Affirming Initial Decision, in docket No. ER76-588, we approved an 80 percent demand ratchet. CKP has indicated in its Reply dated January 22, 1979, that it will use the 80 percent demand ratchet. Summary disposition is also granted with regard to the allocation of fuel stocks. CKP indicated in its Reply that it will allocate such costs on the basis of energy in the manner indicated by our December 28, 1978, order in Docket No. ER76-588. Furthermore, we shall order CKP to refile its capital structure and rates to reflect the summary disposition of these issues. CKP shall include all costs of refiling in its Account Number 426.5 (18 C.F.R. Part 101) so that the expense will not be borne by the ratepayers. The 46 percent tax rate should have been reflected in CKP's December 1, 1978, filing because CKP could have and should have known prior to that date that the tax rate had been previously reduced from 48 percent to become effective January 1, 1979 (prior to CKP's requested effective dates). Because the cost of reflecting our summary disposition of the ADITC, fuel stock and demand ratchet issues will add little, if any, to the cost of incorporating the proper Federal income tax rate in the refiling, the entire cost of refiling shall be included in CKP's Account No. 426.5.

With regard to the functionalization of General Plant, we shall require CKP to meet the burden of showing that use of labor ratios is unreasonable as applied to the company, not merely that its alternative method might be reasonable. This requirement is consistent with prior Commission action.[8] Sunflower had objected to CKP's method of allocating A&G expense but we are not granting summary disposition of this issue for we have not as yet reached any definite conclusion on the matter. We shall also reject CKP's proposed purchased power adjustment clause. Although the proposed clause permits upward and downward adjustments to this portion of CKP's rates, it would nevertheless be inequitable to permit CKP to automatically flow through to its wholesale customers increases for this one item while not automatically flowing through reductions due to other items that could be decreasing in cost. Automatic adjustments for the cost of fuel are allowed only as permitted by our Regulations. Similarly, automatic adjustments which reflect changes in all costs may also be allowed. *See,* Order Reversing Initial Decision, *Nantahala Power and Light Company,* Docket No. E-9181, issued February 7, 1977.

The Commission orders:

(A) The Revised Rate Schedule designated SEC-1-Excess filed by Central Kansas on December 1, 1978, is accepted for filing, suspended for a period of five months and permitted to become effective thereafter on July 1, 1979, subject to refund.

(B) The Revised Rate Schedule designated SEC-1-Base also filed by Central Kansas on December 1, 1978, is accepted for filing, but shall not become effective except upon final order of the Commission and only to the extent thereby authorized.

(C) Pursuant to the provisions of the Federal Power Act, particularly Sections 205, 206 and 308 thereof, and the Commission Rules and Regulations, a public hearing shall be held for the purpose of determining the justness and reasonableness of proposed revised Rate Schedule SEC-1-Excess.

(D) Pursuant to the provisions of the Federal Power Act, particularly Sections 206 and 308 thereof, and the Commission Rules and Regulations, an investigation and public hearing is hereby initiated to determine the justness and reasonableness of proposed revised Rate Schedule SEC-1-Base.

(E) The hearings provided for in paragraphs C and D above shall be consolidated for purposes of hearing and decision.

(F) On or before April 24, 1979, the Commission Staff shall prepare and serve top sheets summarizing the Staff investigations and recommendations.

(G) A presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose shall preside at a prehearing conference in this proceeding to be held within (10) days after the serving of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Said Judge is authorized to establish procedural dates and to rule upon all motions (except motions to consolidate and sever, and motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(H) For good cause shown, Sunflower Electric Cooperative (Sunflower) is hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission: *Provided, however,* that participation of such intervenor shall be limited to the matters affecting asserted rights and interests specifically set forth in the petition to intervene; and *Provided, further,* that the admission of such intervenor shall not be construed as recognition by the Commission that it might be aggrieved by any orders entered in this proceeding.

(I) Sunflower's petition to reject the proposed Rate Schedule SEC-1-Base is rejected.

(J) CKP's proposed purchased power adjustment clause is rejected.

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[4] See Order Amending Prior Order and Denying Rehearing, Docket No. E-8755, issued August 28, 1974; Order Denying Petition for Reconsideration, Docket No. E-8755, issued October 16, 1974; Order Affirming Initial Decision Docket No. E-8755, issued June 30, 1978; Order Accepting For Filing and Suspending Proposed Rate Increase, Providing for Hearing, Instituting Section 206 Investigation, etc., Docket No. ER76-588, issued April 30, 1976; Order Affirming Initial Decision, Docket No. ER76-588, issued December 28, 1978.

[5] See Order Amending Prior Order and Denying Rehearing, Docket No. E-8755, issued August 28, 1974; Order Denying Petition for Reconsideration, Docket No. E-8755, issued October 16, 1974; Initial Decision in Docket No. ER76-588, issued December 27, 1977; and Order Affirming Initial Decision in Docket No. ER76-588, issued December 28, 1978.

[6] We note that in its filing dated July 27, 1978, in compliance with the Order Affirming Initial Decision in Docket No. E-8755, issued June 30, 1978, CKP included unilateral rate change language with regard to its base rate. Such a unilateral change of its contract with Sunflower is not permitted by the contract. We shall therefore require CKP to remove this language from its presently effective and proposed base rate schedules.

[7] See, *Caroline Power & Light Company,* Opinion No. 19, issue August 2, 1979; *Virginia Electric & Power* company, Docket No. ER78-522, issue August 30, 1978 (suspending proposed rates).

[8] See Order dated August 25, 1978 in *Public Service Company of Indiana,* Docket No. ER78-513; Order of October 12, 1978, *Arkansas-Missouri Power Company,* Docket No. ER78-489; and Order issued October 12, 1978, in *Public Service Company of Oklahoma,* Docket No. ER78-511.

(K) Summary disposition of the ADITC, Federal income tax rate, fuel stock, and demand ratchet issues is granted. CKP is ordered to refile its capital structure and rates to reflect the summary disposition of these issues.

(L) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

ATTACHMENT A

CENTRAL KANSAS POWER COMPANY

Dated: (1) & (2) December 1, 1978.
Filed: (1) & (2) December 1, 1978.
Effective: (1) Upon final Commission order in Section 206 proceeding; (2) July 1, 1979, subject to refund.

Designations	Description	Supersedes
(1) Supp. No. 7 to Rate Schedule FERC No. 1.	SEC-1-Base	—
(2) Supp. No. 8 to Rate Schedule FERC No. 1.	SEC-1-Excess	Supp. No. 4 to Rate Schedule FERC No. 1.

[FR Doc. 79-4347 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-174]

CONSUMERS POWER CO.

Proposed Tariff Change

FEBRUARY 2, 1979.

Take notice that Consumers Power Company (Consumers Power) on January 24, 1979 tendered for filing a Letter Agreement dated December 8, 1978 between Consumers Power and Commonwealth Edison Company (Commonwealth) which constitutes a redetermination of the fixed charge factor applicable to transactions under the "Agreement for Sale of Portion of Generating Capability of Ludington Pumped Storage Plant by Consumers Power Company to Commonwealth Edison Company," dated June 1, 1971, as amended by an agreement dated August 15, 1971 (hereinafter termed "Agreement as amended"). The Agreement as amended has been denoted Consumers Power Company Rate Schedule FPC (now FERC) No. 28. Consumers Power states that the redetermination of the fixed charge factor was made pursuant to the of the Agreement as amended and does not constitute an amendment to the agreement.

Consumers Power states that the Letter Agreement reduces the fixed charge factor from 14.86 percent to 14.582 percent on and after January 1, 1979. Consumers Power states that the Revenue Act of 1979, effective January 1, 1979 reduces the effective corporate income tax rate from 48 percent to 46 percent the effect of this was a reduction of .285 percent in the fixed rate factor.

Consumers Power states the fixed charge factor is subject to further revisions during the term of the Agreement as amended in accordance with Section 4.2 thereof.

Consumers Power states that copies of the filing were served on Commonwealth, the Detroit Edison Company and on the Michigan Public Service Commission.

Consumers Power requests waiver of the notice requirements to permit an effective date of January 1, 1979 for the 14.582 percent fixed charge rate.

Any person desiring to be heard or to protest said letter agreement should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before February 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4348 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-172]

FLORIDA POWER & LIGHT CO.

Proposed Amendment to Agreement To Provide Specified Transmission Service

FEBRUARY 2, 1979.

Take notice that Florida Power & Light Company (FPL), on January 23, 1979, tendered for filing an amendment, executed by both parties, to an agreement entitled "Amendment Number Two To Agreement To Provide Specified Transmission Service Between Florida Power & Light Company and Fort Pierce Utilities Authority." Under the Amendment, FPL will transmit power and energy for Fort Pierce Utilities Authority (Ft. Pierce) as is required by Ft. Pierce in the implementation of Schedule A of its interchange agreement with the City of Homestead, according to FPL.

FPL requests an effective date for the Agreement of no later than 60 days after the date of filing. FPL states that a copy of the filing was served on the Director of Utilities of Ft. Pierce.

Any person desiring to be heard or to protest said filing should file a petition to intervene, or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protest should be filed on or before February 16, 1979. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4349 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-161]

GULF STATES UTILITIES CO.

Filing of Agreement

FEBRUARY 2, 1979.

Take notice that on January 22, 1979, Gulf States Utilities Company (Gulf States) tendered for filing an agreement for wholesale service between it and Brazos Electric Power Cooperative, Inc. Gulf States indicates that the agreement provides for Gulf States to furnish firm power service to Brazos Electric at Gulf States' standard rates for such service.

Gulf States requests an effective date of December 1, 1978.

According to Gulf States, a copy of the filing was served upon the Public Utility Commission of Texas and the Louisiana Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with

the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4350 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-165]

INDIANA & MICHIGAN ELECTRIC CO.

Proposed Changes in Rates and Charges

FEBRUARY 2, 1979.

Take notice that American Electric Power Service Corporation (AEP) on January 22, 1979, tendered for filing on behalf of its affiliate Indiana & Michigan Electric Company (Indiana Company), Modification No. 13 dated December 1, 1978 to the Interconnection Agreement dated November 1, 1961 between Northern Indiana Public Service Company and Indiana & Michigan Electric Company, I&M's Rate Schedule FPC No. 22.

According to AEP, Section 1 of Modification No. 13 provides for an increase in the demand charge for Short Term Power from $0.60 to $0.70 per kilowatt per week and Section 2 provides for an increase in the Short Term Power transmission charge from $0.15 to $0.175 per kilowatt per week. This schedule is proposed to become effective December 11, 1978.

Applicant states that since the use of Short Term Power cannot be accurately estimated, for the twelve months period succeeding the date of filing, it is impossible to estimate the increase in revenues resulting from this modification for such period. Applicant Exhibit I which was included with the filing of this Modification, demonstrates that the increase in revenues which would have resulted had the modification been in effect during the twelve-month period ending December 1978, would have been $180,505.97 (i.e., from $6,521,636.56 to $6,702,142.53), according to AEP.

Copies of the filing were served upon Northern Indiana Public Service Company, the Public Service Commission of Indiana and the Michigan Public Service Commission.

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, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4351 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. ER76-5]

INDIANA & MICHIGAN POWER CO.

Compliance Filing

FEBRUARY 1, 1979.

Take notice that Indiana & Michigan Power Company (I&M Power) on November 29, 1978, tendered for filing in compliance with Opinion No. 27, issued September 15, 1978, and the Order Denying Rehearing, issued November 13, 1978, the following:

1. Supplement No. 1 to FERC Rate Schedule No. 1 of I&M Power; and

2. Statement, dated November 28, 1978, rendered by I&M Power to Indiana & Michigan Electric Company for electric services rendered by the former to the latter during the month of October, 1978, together with a schedule and supporting data indicating as an example, the types of change which I&M Power contemplates would be made in statements which are rendered after Supplement No. 1 is made effective for electric service rendered after such effective date.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 9, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4352 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. ES79-24]

IOWA PUBLIC SERVICE CO.

Application

FEBRUARY 2, 1979.

Take notice that on January 22, 1979, Iowa Public Service Company (Applicant) a corporation organized under the laws of the State of Iowa and qualified to transact business in the States of Iowa and South Dakota, wth its principal business office in Sioux City, Iowa, filed an application pursuant to Section 204 of the Federal Power act seeking authority to issue $50 million of short-term unsecured promissory notes to commercial banks and commercial paper dealers. All proposed notes are to be issued on or before March 31, 1980, and will bear final maturity dates not later than March 31, 1981.

Applicant proposes to use the funds for construction or acquisition of permanent improvements, extensions and additions to Applicant's property and/or to pay off maturing short-term loans. Its estimated construction expenditures for the year 1979 are $85,878,000.

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, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4353 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. RA79-11]

JACK HALBERT

Filing of Petition for Review Under 42 U.S.C. 7194

FEBRUARY 2, 1979.

Take notice that Jack Halbert (Halbert) on January 26, 1979, filed a Petition for Review under 42 U.S.C. section 719(b) (1977 Supp.) from an order of the Secretary of Energy, issued on December 4, 1978, denying Halbert's application for exception on relief.

Copies of the petition for review have been served on the Secretary, Department of Energy, and all participants in prior proceedings before the Secretary.

Any person desiring to be heard with reference to such filing should on or

before February 21, 1979 file a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8). Any person wishing to become a party or to participate as a party must file a petition to intervene. Such petition must also be served on the parties of record in this proceeding and the Secretary of Energy through Gaynell C. Methvin, Deputy General Counsel for Enforcement, Department of Energy, 12th and Pennsylvania Ave., NW., Washington, D.C. 20461. Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4354 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-153]

KANSAS GAS AND ELECTRIC CO.

Proposed Tariff Change

FEBRUARY 2, 1979.

Take notice that Kansas Gas and Electric Company on January 18, 1979, tendered for filing proposed changes in its FPC Electric Service Tariff No. 127. The proposed Amendment establishes a new delivery point for the Coffey County Rural Electric Cooperative Association, Inc.

The Amendment is necessary because the Cooperative has requested an additional delivery point, according to Kansas Gas and Electric Company.

Copies of this filing were served upon the Coffey County Rural Electric Cooperative Association, Inc.

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, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 13, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4355 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-89]

MISSOURI PUBLIC SERVICE CO.

Order Accepting In Part and Rejecting In Part Proposed Rate Changes

JANUARY 31, 1979.

On December 1, 1978, Missouri Public Service Company (MPS or Company) tendered for filing revised schedules for Rates and Charges for Wholesale Firm Power Service to supersede and replace the rate schedules presently in effect for its eight municipal customers.[1] MPS' case-in-chief is based on a test period consisting of the 12 months ending August 31, 1978. The proposed rates would increase revenue for this period by approximately $754,332 (38.2 percent). MPS requests an effective date of February 1, 1979.

MPS relies on a Commission order[2] issued September 30, 1976, in Docket No. ER76-585, MPS' prior rate application, in support for its claim that the present rate schedules applicable to the Cities of Liberal, El Dorado Springs, Pleasant Hill, and Rich Hill contain language permitting MPS to unilaterally file for changes in rates and service under 205 of the Federal Power Act (The Act). In addition, MPS has tendered for filing superseding contracts with the City of Harrisonville, executed on October 5, 1977 and the City of Galt, executed on August 22, 1978, incorporating rates currently in effect for the Cities of Liberal, El Dorado Springs, Pleasant Hill, and Rich Hill. MPS claims that the new contracts with the Cities of Harrisonville and Galt provide for unilateral change in rates and service under Section 205 of the Act. Based on its interpretation of the newly filed contracts, MPS has simultaneously tendered superseding rate schedules for service to the Cities of Harrisonville and Galt. The superseding rate schedules contain the same rates as the superseding schedules for the remaining municipal customers of MPS in the instant application.

Contrary to the Commission's finding in Docket No. ER76-585 that MPS' contracts with the Cities of Odessa and Gilman City are fixed rate over fixed term, MPS seeks to increase the rates for service to these Cities. MPS requests waiver of § 35.3(a) of the Commission Regulation with respect to the City of Odessa requesting an effective date of April 1, 1979, to coincide with Article II of the Odessa contract. Article II provides for a review of rates every five years on the anniversary date of the contract. The five year anniversary date will be April 1, 1979. MPS states that it is presently negotiating for a new contract with the City of Gilman which will provide for a unilateral change in rates and service. MPS "assumes" a new contract will be filed as a late filing for the City of Gilman. MPS' present and proposed rates contain a Tax and License Rider which adjusts the customers' bills for gross receipts, franchise, occupational, and license taxes. However, MPS states that there are no such taxes or fees currently in effect.

Notice of this filing was issued on December 7, 1978, with protests or petitions to intervene due on or before December 29, 1978. On December 14, 1978, the City of Galt, filed a protest and attached documents objecting to the superseding rate schedule simultaneously filed with the August 22, 1978 contract Also, City of Galt claims that it is experiencing difficulty coordinating additional load requirements with MPS under the new contract. On December 27, 1978, the Board of Alderman and the Mayor of Galt, Missouri, filed and "informal protest" to the instant application. On December 29, 1978, the Citizens of Liberal and the Mayor of the City of Liberal, Missouri filed a protest stating that its senior citizens will be unable to pay the proposed rates.

Our review indicates that the existing contract for the Cities of Odessa and Gilman provide for fixed rates over fixed terms with no reservation of power to unilaterally change the existing rates. Our review of the City of Odessa and Gilman City contract is consistent with the Federal Power Commission's (FPC) interpretation as set forth by the Commission's order of September 30, 1976, in Docket No. ER76-585. Accordingly, pursuant to the *Sierra-Mobile* doctrine[3] we must reject MPS' filing as it applies to the City of Odessa and Gilman City. Since MPS' filing as to the City of Odessa is rejected, MPS' request for waiver of § 35.3(a) of the Commission's Regulations seeking an effective date of April 1, 1979 is moot.

As to the newly filed contract with the City of Galt, executed on August 22, 1978, MPS claims that the Billing and Rate provision contained in Article II of the contract reserves the power to make unilateral changes. We agree. Although the Billing and Rate

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[1] Cities of Liberal, Odessa, Pleasant Hill, Rich Hill, Gilman City, El Dorado Springs, Cities of Galt and Harrisonville. See also, Attachment A for designations.

[2] Proceedings in Docket No. ER76-585 were commenced before the FPC. By the joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the FERC. The term "Commission," when used in the context of action taken prior to October 1, 1977, refers to the FPC; when otherwise, the reference is to the FERC.

[3] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *F.P.C.* v. *Sierra Pacific Power Co.*, 350 U.S. 248 (1956).

provision states that the customer shall pay the contract rates or any superseding rate schedules approved by the Commission, the provision goes on to state in unequivocal terms that "Nothing contained herein shall be construed as affecting in any way the right of the Company to unilaterally make application to the Federal Energy regulatory Commission for a change in rates, changes, 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 promulgated thereunder." Therefore, pursuant to § 35.1(d)(2) of the Commission's Rules and Regulations we find that the City of Galt contract maintains the right of the Company to unilaterally apply for change in rates pursuant to Section 205 of the Act.[4] As to the newly filed contract with the City of Harrisonville, executed on October 5, 1977, we find that the contract provides in unambiguous terms, for unilateral changes in rates pursuant to Section 205 of the Act. Accordingly, as hereinafter ordered, we shall accept for filing, MPS' revised rate schedule for the City of Harrisonville.

While we question certain costing methodologies employed by MPS, our review of the application as a whole indicates the rates to be just and reasonable. Therefore, we find that good cause exists to accept for filing the proposed rates for the Cities except Odessa and Gilman City.

The Commission orders:

(A) With respect to the City of Odessa and Gilman City, MPS' filing is hereby rejected.

(B) With respect to the Cities of Liberal, Rich Hill, El Dorado Springs, Pleasant Hill, Galt, and Harrisonville, the proposed rate schedules are hereby accepted for filing and shall become effective February 1, 1979. This acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

(C) Invocation of the tax and License Rider constitutes a change in the rate and MPS is hereby ordered to file a timely application together with underlying computations in the event of such change.

(D) Missouri Public Service Company and City of Galt are hereby ordered to file, whithin 30 days documents necessary to clarify the discrepancy in the contracts as filed by Missouri Public Service Company on December 1, 1978 and by the City of Galt on December 14, 1978.

(E) The Secretary shall cause the prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[4] We note that attached to the City of Galt's protest, filed on December 14, 1978, is what appears to be a copy of the August 22, 1978 contract with MPS. However, the terms of Article II of the contract are different than the terms contained in Article II of the contract filed by MPS in the instant application. Although the different contract language has no effect on our action today, we shall allow the parties 30 days to clarify this discrepancy. Also, in the interim the Commission will entertain supplementary pleadings from MPS and the City of Galt clarifying the question of MPS' alleged obligation to upgrade certain transmission facilities.

ATTACHMENT A.—*Missouri Public Service Company*

[Docket No. ER79-89]

Instrument: November 28, 1978.
Effective: As noted.
Filed: December 1, 1978.

Designation	Description	Effective Date
CITY OF EL DORADO SPRINGS		
Supplement No. 3 to Rate Schedule FPC No. 35 (Supersedes Supplement No. 1 to Rate Schedule FPC No. 35).	(Rates)	February 1, 1979.
Supplement No. 4 to Rate Schedule FPC No. 35 (Redesignation of fuel adjustment rider in Supplement No. 1).	(Fuel adjustment clause)	October 1, 1976.
Supplement No. 5 to Rate Schedule FPC No. 35 (Redesignation of tax & license rider in Supplement No. 1).	(Tax and license rider)	October 1, 1976.
CITY OF GALT		
Rate Schedule FERC No. 38 (Supersedes Rate Schedule FPC No. 28, as amended).	(Executed contract, dated August 22, 1978.	February 1, 1979.
Supplement No. 1 to Rate Schedule FERC No. 38	(Rates)	February 1, 1979.
Supplement No. 2 to Rate Schedule FERC No. 38	(Fuel adjustment clause)	February 1, 1979.
Supplement No. 3 to Rate Schedule FERC No. 38	(Tax and License rider)	February 1, 1979.
Supplement No. 4 to Rate Schedule FERC No. 38 (Supersedes Supplement No. 1 to Rate Schedule FERC No. 38).	(Rates)	February 1, 1979.
Supplement No. 5 to Rate Schedule FERC No. 38 (Supersedes Supplement No. 2 to Rate Schedule FERC No. 38).	(Fuel adjustment clause)	February 1, 1979.
CITY OF HARRISONVILLE		
Rate Schedule FERC No. 39 (Supersedes FPC No. 25, as amended).	(Executed contract, dated October 5, 1977.	February 1, 1979.
Supplement No. 1 to Rate Schedule FERC No. 39	(Rates)	February 1, 1979.
Supplement No. 2 to Rate Schedule FERC No. 39	(Fuel adjustment clause)	February 1, 1979.
Supplement No. 3 to Rate Schedule FERC No. 39	(Tax and license rider)	February 1, 1979.
Supplement No. 4 to Rate Schedule FERC No. 39 (Supersedes Supplement No. 1 to Rate Schedule FERC No. 39).	(Rates)	February 1, 1979.
Supplement No. 5 to Rate Schedule FERC No. 39 (Supersedes Supplement No. 2 to Rate Schedule FERC No. 39).	(Fuel adjustment clause)	February 1, 1979.
CITY OF LIBERAL		
Supplement No. 3 to Rate Schedule FPC No. 36 (Supersedes Supplement No. 1 to Rate Schedule FPC No. 36).	(Rates)	February 1, 1979.
Supplement No. 4 to Rate Schedule FPC No. 36 (Redesignation of fuel adjustment rider in Supplement No. 1).	(Fuel adjustment clause)	October 1, 1976.
Supplement No. 5 to Rate Schedule FPC No. 36 (Redesignation of tax and license rider in Supplement No. 1).	(Tax and license rider)	October 1, 1976.
CITY OF PLEASANT HILL		
Supplement No. 3 to Rate Schedule FPC No. 34 (Supersedes Supplement No. 1 to Rate Schedule FPC No. 34).	(Rates)	February 1, 1979.
Supplement No. 4 to Rate Schedule FPC No. 34 (Redesignation of fuel adjustment rider in Supplement No. 1).	(Fuel adjustment clause)	October 1, 1976.
Supplement No. 5 to Rate Schedule FPC No. 34 (Redesignation of tax and license rider in Supplement No. 1).	(Tax and license rider)	October 1, 1976.
CITY OF RICH HILL		
Supplement No. 3 to Rate Schedule FPC No. 37 (Supersedes Supplement No. 1 to Rate Schedule FPC No. 37).	(Rates)	February 1, 1979.
Supplement No. 4 to Rates Schedule FPC No. 37 (Redesignation of fuel adjustment rider in Supplement No. 1).	(Fuel adjustment clause)	October 1, 1976.
Supplement No. 5 to Rate Schedule FPC No. 37 (Redesignation of tax and license rider in Supplement No. 1).	(Tax and license rider)	October 1, 1976.

[FR Doc. 79-4356 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. RP74-100, (PGA79-3)]

NATIONAL FUEL GAS SUPPLY CORP.

Order Accepting for Filing and Suspending Proposed PGA Rate Increase, Granting Waiver of Notice Requirements, and Making This Proceeding Subject to the Outcome of Other Proceeding; Pipeline Rates: PGA Suspension Nonjurisdictional Purchases

JANUARY 31, 1979.

On December 29, 1978, National Fuel Gas Supply Corporation (National Fuel) filed revised tariff sheets [1] to become effective February 1, 1979 reflecting (1) a 5.03 cent per Mcf increase in current purchased gas costs of $9,988,010 annually from pipeline and producer suppliers and (2) a 1.65 cents decrease in the surcharge adjustments [2] to recover deferred purchase gas costs of $1,073,365.

National Fuel's proposed PGA rates include the costs of local purchases from small producers within New York. Based on a review of this filing as well as other data in our files concerning the physical location and operation of this pipeline system, the Commission has concluded that these volumes purchased locally cannot flow across the New York border and into Pennsylvania, the other state served by National Fuel. Because this gas is produced, transported and consumed totally within the State of New York, these sales and the prices paid to the producers are not subject to the Commission's jurisdiction under Section 1(b) of the Natural Gas Act.[3] Nonetheless, the Commission has full jurisdiction over National Fuel's collection of these purchased gas costs from its jurisdictional customers. *See, Colorado Interstate Gas Company,* Docket No. RP72-122 (PGA78-3) and RP78-51, order issued September 25, 1978.

The subject filing includes costs National Fuel incurred under a contract with Amarex, Inc., a New York producer, for sale of natural gas in intrastate commerce. The contract contains a favored nations clause which allows the gas sale price to increase each January 1 by the same amount as the average annual increase in cost per Mcf which National pays to three of its other suppliers. Costs incurred under this contract reflect sales made both before and after the effective date of the NGPA.[4] National Fuel's gas purchase contracts with other intrastate producers may also contain similar escalator clauses.

In a policy statement of January 24, 1979, we discussed the effect of the NGPA upon escalator or favored nation clauses in intrastate contracts for sale of natural gas. There, we stated that escalator clauses in intrastate contracts may increase the contract price, in accordance with contract terms, but not to a level in excess of the new natural gas price under Section 102 of the Act. Therefore, National may reflect costs of intrastate purchases incurred after the effective date of the NGPA, provided that operation of the escalator clauses do not increase the contract prices above the maximum lawful price under the NGPA.

But costs incurred prior to the effective date of the NGPA must be scrutinized under the prudent pipeline standard.

This PGA filing includes purchases prior to December 1, 1978, at rates in excess of the nationwide rates.[5] These excess rates apparently result in part from automatic price escalation clauses in the New York producer contracts. National Fuel has not presented sufficient evidence for the Commission to find that the prices paid for these purchases were at rates a prudent pipeline would have paid under similar circumstances. Accordingly, the Commission shall suspend National Fuel's PGA filing grant waiver of the notice requirements such that it shall become effective February 1, 1979, subject to refund.

We note that the issues raised in this docket are similar to those raised in Docket No. RP74-100 (PGA78-8). Accordingly, we shall make the outcome of this proceeding subject to the outcome of the proceedings in Docket No. RP74-100 (PGA78-8).

Public notice of National Fuel's filing was issued January 8, 1979, with protests and petitions to intervene due on or before January 17, 1979.

The Commission orders:

(A) National Fuel's proposed tariff sheets referenced herein are hereby accepted for filing, suspended, and waiver of the notice requirements is granted such that these sheets may become effective February 1, 1979, subject to refund.

(B) The outcome of this proceeding is hereby made subject to the outcome of the proceedings in Docket No. RP74-100 (PGA78-8).

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4357 Filed 2-7-79; 8:45 am]

[1] Twenty-fifth Revised Sheet No. 4 to FERC Gas Tariff, Original Volume No. 1.

[2] This would decrease the surcharge adjustment from 2.96 cents to 1.31 cents.

[3] Opinion No. 777, issued September 30, 1976, *Colorado Interstate Gas Company,* Docket Nos. CP75-323 and CP75-300.

[4] The Natural Gas Policy Act of 1978 controls on and after December 1, 1978.

[5] Determined pursuant to Commission Opinion No. 770-A, issued November 5, 1976, in Docket No. RM75-14.

[6450-01-M]

[Docket No. RM79-3]

NATURAL GAS POLICY ACT OF 1978

Receipt of Report of Determination Process

FEBRUARY 5, 1979.

Pursuant to section 18 CFR 274.105 of the Federal Energy Regulatory Commission's Regulations, a jurisdictional agency may file a report with the Commission describing the method by which such agency will make certain determinations in accordance with sections 102, 103, 107, and 108 of the Natural Gas Policy Act of 1978.

Reports in conformance with 18 CFR 274.105 have been received by the Commission from the following jurisdictional agencies:

Agency	Date
State of New Mexico Energy and Minerals Department, Oil Conservation Division.	Nov. 29, 1978.
State of Louisiana Department of Conservation.	Nov. 29, 1978.
Railroad Commission of Texas	Nov. 30, 1978.
West Virginia Department of Mines, Oil and Gas Division.	Nov. 30, 1978.
Alabama State Oil and Gas Board	Nov. 30, 1978.
State Oil and Gas Board of Mississippi.	Nov. 30, 1978.
Kansas State Corporation Commission Conservation Division.	Nov. 30, 1978.
State of Michigan, Department of Natural Resources, Geological Survey Division.	Dec. 1, 1978.
State of California Department of Conservation Division of Oil and Gas.	Dec. 4, 1978.
Commonwealth of Virginia Department of Labor and Industry, Division of Mines and Quarries.	Dec. 4, 1978.
State of Wyoming Office of oil and Gas Conservation Commission.	Dec. 4, 1978.
State of Colorado Department of Natural Resources.	Dec. 5, 1978.
State of Ohio Department of Natural Resources, Division of Oil and Gas.	Dec. 6, 1978.
State of Alaska Oil and Gas Conservation Commission.	Dec. 11, 1978.
State of Arizona Oil and Gas Conservation Commission.	Dec. 14, 1978.
State of Nebraska Oil and Gas Conservation Commission.	Dec. 15, 1978.
State of Tennessee Oil and Gas Board.	Dec. 19, 1978.
State of Indiana Department of Natural Resources.	Dec. 26, 1978.
State of Pennsylvania Department of Environmental Resources, Division of Oil and Gas.	Dec. 26, 1978.
State of Florida Department of Natural Resources.	Jan. 3, 1979.
State of North Dakota Geological Survey.	Jan. 4, 1979.
State of Illinois, Department of Mines & Minerals, Oil and Gas Division.	Jan. 5, 1979.
United States Department of Interior, Geological Survey.	Jan. 19, 1979.
State of Montana Department of Natural Resources and Conservation.	Jan. 29, 1979.

Copies of these reports are available for public inspection in the Commission's Office of Public Information,

Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4363 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-57]

NEW ENGLAND POWER CO.

Order Rejecting Filing

JANUARY 31, 1979.

On November 13, 1978, New England Power Company (NEP) submitted for filing a proposed increase in the demand charge component for the sale of System Power-Unreserved to its tariff customers and to three customers served under separate Power Contracts. The proposed demand charge would be increased from the present rate of $3.917/kW/month to $4.512/kW/month, resulting in increased revenue of $550,000 (15.2 percent for the twelve month test period ending December 31, 1977.[1]

NEP requests waiver of the filing requirements under § 35.13 of the Commission's Rules and Regulations, which requires the last day of Period I data to be no more than seven months before the tender of the filing. Here, NEP's filing was received on November 13, 1978, or three and one-half months after July 31, 1978, the latest date a filing can be received based on a calendar year of 1977. NEP claims the "seven-month rule" should be applied only in filings where Period II data is required since the rule was intended to permit a comparison of the most recently available Period I data with Period II data. NEP asserts that the waiver should be granted here because 1) Period II data was not filed [2]; 2) calendar year data is more readily available.

On December 18, 1978, Fitchburg Gas & Electric Light Company (Fitchburg) petitioned to intervene, alleging that it will not be adequately represented by any other parties to the proceeding. No specific objection or issues were raised.

The NEP Customer Rate Committee and NEP's Municipal System Unreserved Customers [3] petitioned to intervene on December 18, 1978. These petitioners protest NEP's requested increase and request the Commission to temporarily defer a decision on suspension of the proposed increase pending the anticipated completion of a settlement agreement between NEP and petitioners.

On December 17, 1978, NEP requested by letter, that the effective date of the proposed rate be extended from January 12, 1979 to February 1, 1979. NEP indicated that informal settlement discussions had taken place between the Company and representatives of "most" of the affected customers and that a settlement agreement would be subsequently filed.

SETTLEMENT AGREEMENT

On January 5, 1979, NEP filed a proposed settlement agreement which reduces the proposed demand charge from $4.512/kW/month to $4.192/kW/month resulting in a revenue increase of $253,000 (7.0 percent increase in demand charges) for the test period.[4]

This Settlement Agreement is expressly conditioned upon the Commission's acceptance of all provisions thereof, without change or condition, and upon the following further Commission actions:

(a) Waiver of the requirements of § 35.3 with respect to the filings provided for in Article I of the Settlement Agreement, to the extent necessary to effectuate all of the provisions, and

(b) Waiver by the Commission of the requirements of § 35.13 of its regulations under the Federal Power Act with respect to said filings; and

(c) Acceptance of said filings without suspension under § 205 of the dates requested in said filings.

The Settlement Agreement was executed by NEP, the NEP Customer Rate Committee, and the municipal customers under the Tariff. The settlement has not been executed by Fitchburg or the Village of Lyndonville, Vermont.

On January 24, 1979, Fitchburg filed a protest against the proposed settlement. Fitchburg states that it has not completed its review of the rate and terms of the settlement and has requested additional information from NEP on three issues: depreciation expense, administrative and general expense, and purchase power demand costs. Fitchburg claims that the additional information is needed to justify a 19.9 percent annual rate of increase of NEP's depreciation expense since 1974 and a 34.3 percent annual rate of increase in administrative and general expense during the 1974-1977 period. In addition, Fitchburg requests that NEP justify its increased purchase power demand costs in light of additions to its generating capacity. Finally, Fitchburg believes that it may abe appropriate for NEP to apply a credit for other wholesale capacity sales, and that step-up transformer costs should be reflected in a transmission rate rather than in its demand rate.

Fitchburg requests that the Commission reject NEPCO's proposed effective date of February 1, 1979, for the rates set forth in the proposed settlement and that an evidentiary hearing be held on the originally tendered rate request filed in this docket on November 13, 1978.

We find that good cause has not been shown to justify waiver of § 35.13(b)(4)(iii). NEPS's stale cost support would not provide a meaningful basis for litigation. Accordingly, we will deny NEP's request for waiver of § 35.13(b)(4)(iii) and reject the filing without prejudice to refile with appropriate cost data.

The question of Commission's treatment of the proposed settlement agreement has become moot given the rejection of the underlying filing.

The Commission orders:

(A) NEP's request for waiver of § 35.13(b)(4)(iii) is hereby denied.

(B) NEP's November 13, 1978, filing is rejected without prejudice to refile.

(C) 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. 79-4358, Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-163]

NEW ENGLAND POWER POOL

Filing

FEBRUARY 2, 1979.

Take notice that Secretary of the Management Committee of the New England Power Pool (NEPOOL) on January 22, 1979 tendered for filing a NEPOOL Power Pool Agreement dated September 1, 1971, as amended, signed by David I. Sweetland, General Manager, Pascoag Fire District of Burrillville, Rhode Island. NEPOOL indicates that this Agreement has previously been filed with the Commission as a rate schedule (designated NEPOOL FPC No. 1).

It is proposed that the tendered Agreement as related to the Pascoag Fire District electric system, commence on December 1, 1978.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the

[1] Notice of the filing was issued on November 24, 1978, with comments, protests or interventions due on or before December 18, 1978.

[2] Since the proposed increase is less than $1 million, NEP was not required to file Period II data under § 35.13.

[3] The Towns of Ashburnham, Danvers, Georgetown, Groton, Hinghan, Holden, Hull, Ipswich, Littleton, Mansfield, Marblehead, Middleton, North Attleboro, Paxton, Peabody, Princeton, Shrewsbury, Sterling, Templeton, Wakefield, West Boylston, and Hudson, Massachusetts.

[4] Notice of the settlement agreement was issued on January 16, 1979, with responses due on or before January 24, 1979.

Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protest should be filed on or before February 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4359 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-154]

NORTHERN STATES POWER CO.

Letter Agreement

FEBRUARY 2, 1979.

Take notice that Northern States Power Company, on January 18, 1979, tendered for filing a Letter Agreement, dated December 5, 1978, with the Department of Energy, United States of America.

The filed Letter Agreement extends certain provisions of Contracts No. 14-06-600-1556 and No. 14-06-600-1940 through July 31, 1979, or until a new interconnection contract is executed, whichever is earlier, according to Northern States.

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, N.E., Washington, D.C., 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions and protests should be filed on or before February 13, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4339 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-156]

OKLAHOMA GAS AND ELECTRIC CO.

Notice of Proposed Superseding Contract

FEBRUARY 2, 1979.

Take notice that on January 19, 1979, Oklahoma Gas and Electric Company (OG&E) tendered for filing a new Agreement intended to supersede OG&E's Rate Schedule FERC No. 12. This Agreement is the contract between OG&E and the Southwestern Power Administration (SWPA). According to OG&E the new Agreement is identical to the old Agreement, and provides for the sale of Replacement Energy and Emergency Service by OG&E to SWPA.

OG&E requests waiver of the Commission's notice requirements to allow for an effective date of January 1, 1979.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 13, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4340 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-28]

PUBLIC SERVICE COMMISSION OF NEW YORK

Petition for Investigation and for Appropriate Action on Rate Proceedings

FEBRUARY 2, 1979.

Take notice that the Public Service Commission of the State of New York (New York), on January 5, 1979, filed a petition urging initiation of investigatory proceedings pursuant to Sections 4, 5, 14 and 16 of the Natural Gas Act, and the institution of appropriate action in rate proceedings.

The petition urges the Commission to institute a general investigation into possible overcharges to interstate pipelines for marine construction and contracting services in the Gulf of Mexico, and to put all pipelines on notice of the risk in being required to make appropriate restitution to their customers for loss resulting from the pipelines' failure to institute appropriate damage actions prior to tolling of the statute of limitations. Additionally, New York's proposal urges the Commission (1) to make a determination as to whether excessive payments have been made by either the customers of pipeline companies with facilities in the Gulf of Mexico, or customers of the companies purchasing gas from those pipelines, resulting from overcharges for offshore marine construction or contracting services; and (2) to issue a notice requiring future orders in all rate proceedings pertaining to the aforementioned class of companies, to contain language reflecting its position to be that action in those rate proceedings will not preclude the Commission from ordering restitution to that group of customers affected by excessive overcharges, if that determination is ultimately made in a hearing on the matter.

New York states that it has served copies of this petition upon the pipelines referred to on pages 2 and 3 of the Petition, which include: (1) the Stingray Pipeline Company; (2) Sea Robin Pipeline Company; (3) Texas Eastern Transmission Corporation; (4) Columbia Gulf Transmission Company; and (5) Tennessee Gas Pipeline, in accordance with § 1.17 of the Commission's Rules of Practice and Procedure.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc 79-4341 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. EL79-7]

SIERRA PACIFIC POWER CO.

Filing

FEBRUARY 2, 1979.

Take notice that on January 8, 1979, Sierra Pacific Power Company (Sierra) tendered for filing a petition for a decision by the Federal Energy Regula-

tory Commission (Commission) on the proper accounting for sales of surplus, interruptible economy energy by Sierra Pacific to Pacific Gas & Electric Company (PG&E) and Utah Power & Light Company (UP&L) under the Commission's Uniform System of Accounts for Public Utilities and Licensees.

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, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 20, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4342 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-84]

SOUTHERN CO. SERVICES, INC.

Order Accepting and Suspending Rate Schedule, Granting Interventions, Granting Waivers, and Establishing Hearing Procedures

JANUARY 26, 1979.

On November 29, 1978, Southern Company Services, Inc. (Southern Co.), on behalf of Alabama Power Company, Georgia Power Company, Mississippi Power Company, and Gulf Power Company, submitted for filing an Amendment No. 2 to "The Southern Company System Procedures Under Intercompany Interchange Contract".[1] Southern Co. also filed new computational schedules showing the basis for inter-company capacity and energy transactions for 1979. A waiver of the sixty (60) day notice requirement was requested by Southern Co. in order for the amendment to be made effective as of January 1, 1979.

Notice of the submittal was issued on December 12, 1978, with comments, protests or petitions to intervene due on or before December 29, 1978. On December 22, 1978, Oglethorpe Power Corporation (Oglethorpe), representing 39 electric membership corporations, filed a petition to intervene and requested the Commission to suspend the rates for one day and set the matter for hearing. On December 29, 1978, the Municipal Electric Authority of Georgia (MEAG), comprising 46 Georgia cities, petitioned to intervene in this proceeding. Both Oglethorpe and MEAG are wholesale customers of Georgia Power Company. Good cause has been shown to grant intervenor status to these customers.

Southern Co. requests a waiver of the sixty day notice requirement on grounds that the existing computational schedules are inappropriate for calendar year 1979 "due to changes in costs, install generating capacity and other changes affecting system operations." Southern Co. also notes that a waiver was granted in Docket No. ER77-86 for the year 1977 and in Docket No. ER78-76 for the year 1978. Good cause has been demonstrated to grant the waiver of the notice requirement.

In addition, Southern Co. requests a waiver of the provisions of § 35.13(b)(4)(iii) of the Commission's Regulations requiring the filing of Statements A through P since that requirement "has limited application to the interchange transactions and pricing mechanisms contemplated by the subject filing." We believe that good cause has been shown to waive the filing requirement.

Our review indicates that the rates filed by Southern Co. have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. Therefore, the Commission will accept Southern Co.'s submittal for filing and suspend the proposed rates and services for one day after which they shall go into effect as of January 2, 1979, subject to refund. A subsequent hearing shall be held to consider the justness and reasonableness of the proposed rates and services.

We shall also order a prehearing conference in order to establish the date for submittal of Southern Co.'s case-in-chief as well as additional dates as may be necessary.

The Commission orders: (a) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Act and by the Federal Power Act, particularly Sections 205, 206, 301, 308 and 309 thereof, and pursuant to the Commission's Rules of Practice and Procedure and to the Regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rates proposed by Southern Co.

(B) The request by Southern Co. for waiver of the sixty day notice requirement pursuant to § 35.3 of the Commission's Regulations, as amended by Change in Notice Requirements, issued January 2, 1979, in Docket No. RM79-11, is hereby granted.

(C) The proposed rates are hereby accepted for filing and suspended for one day, until January 2, 1979, after which they are made effective, subject to refund.

(D) The request by Southern Co. for waiver of the filing requirements under § 35.13(b)(4)(iii) of the Commission's Regulations is hereby granted.

(E) The Staff shall serve top sheets in this proceeding on or before April 17, 1979.

(F) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose shall convene a prehearing conference in this proceeding to be held within thirty (30) days of the issuance of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 for the purpose of establishing the date for Southern Co.'s submittal of its case-in-chief. The Presiding Judge is authorized to establish procedures or to rule upon all motions (except motions to consolidate and sever and motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The Presiding Judge shall also convene a prehearing conference within ten (10) days of the serving of top sheets in a hearing room of the Federal Energy Regulatory Commission.

(H) Petitioners Oglethorpe and MEAG are hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission; *Provided, however,* that participation by such intervenors shall be limited to matters set forth in their petition to intervene; and, *Provided further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this matter.

(I) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

ATTACHMENT

SOUTHERN COMPANY SERVICES, INC., RATE SCHEDULE DESIGNATIONS (DOCKET NO. ER79-84)

(1) Southern Company Services Supplement No. 5 to Rate Schedule FPC No. 46 (Supersedes Supplement No. 3), Amendment No. 2 to Procedures.

(2) Supplement No. 6 to Rate Schedule FPC No. 46 (Supersedes Supplement No. 4), Schedules and Support Schedules.

Concurrences in (1) and (2) above.

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[1] See Attachment for Rate Schedule Designations.

Alabama Power Supplement No. 2 to Rate Schedule FPC No. 140 (Supersedes Supplement No. 1).

Gulf Power Company Supplement No. 2 to Rate Schedule FPC No. 62 (Supersedes Supplement No. 1).

Georgia Power Company Supplement No. 2 to Rate Schedule FPC No. 796 (Supersedes Supplement No. 1).

Mississippi Power Company Supplement No. 2 to Rate Schedule FPC No. 120 (Supersedes Supplement No. 1).

[FR Doc. 79-4343 Filed 2-7-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-155]

VIRGINIA ELECTRIC & POWER CO.

Tendered Revised Contract Supplement

FEBRUARY 2, 1979.

Take notice that on January 19, 1979, Virginia Electric and Power Company (VEPCO) tendered for filing a revised supplement to the contract between VEPCO and Northern Piedmont Electric Cooperative. VEPCO states that the revised contract supplement reflects changes due to a change in transformer capacity at Gold Mine Delivery Point as set forth below:

Present FERC No.: 81-11.
Proposed FERC No.: 81-35.
Item Corrected: 3, 5(1), 5(3), 8, 10, 11.

VEPCO further states that the revised contract supplement is intended to supersede the listed FERC Rate Schedule and requests that the revised supplement be allowed to become effective on December 11, 1978, the date the change in transformer facilities was completed.

Any person desiring to be heard or to protest with reference to said application should on or before February 13, 1979, file with the Federal Energy Regulatory Commission, 825 North Captiol Street, N.E., Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 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 protestants parties to the proceeding. Persons wishing to become parties to the proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. This application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-4344 Filed 2-7-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

PESTICIDE PROGRAMS

[PP 6G1838/T178; FRL 1057-2]

Butachlor; Reextension of Temporary Tolerances

On January 18, 1978, the Environmental Protection Agency (EPA) announced (43 FR 2664) an extension of temporary tolerances for residues of the herbicide butachlor (*N*-(butoxymethyl)-2-chloro-2',6'-diethylacetanilide) in or on the raw agricultural commodities rice at 0.5 part per million (ppm) and rice straw at 3 ppm. These tolerances were established (42 FR 18424) in response to a pesticide petition (PP 6G1838) submitted by Monsanto Agricultural Products Co., 800 N. Lindbergh Blvd., St. Louis, MO 63116. This extension expires April 1, 1979. (A related document reextending a feed additive regulation for residues of butachlor in rice bran and rice hulls appears elsewhere in today's FEDERAL REGISTER).

Monsanto Agricultural Products Co. has requested a one-year reextension of these temporary tolerances both to permit continued testing to obtain additional data and to permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit (524-EUP-30) that is being reextended concurrently 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 have been evaluated, and it has been determined that a reextension of the temporary tolerances will protect the public health. Therefore, the temporary tolerances are being reextended on condition that the pesticide be 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. Monsanto Agricultural Products 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.

These temporary tolerances expire April 1, 1980. Residues not in excess of 0.5 ppm remaining in or on rice and 3 ppm remaining in or on rice straw 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 tolerances. These temporary tolerances 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 (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, 401 M St., SW, Washington DC 20460 (202/755-0713).

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

Dated: February 2, 1979.

[FR Doc. 79-4390 Filed 2-7-79; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 79-6; FCC 79-43]

PROPOSED OFFERING OF ELECTRONIC COMPUTER ORIGINATED MAIL (ECOM)

Institution of Inquiry

AGENCY: Federal Communieations Commission.

ACTION: Institution of Inquiry.

SUMMARY: In response to a proposed offering of electronic mail by the United States Postal Service, Graphnet Systems Inc. (a specialized common carrier providing facsimile message transmission and delivery services to the public under FCC tariffs) filed a petition seeking an FCC determination on the scope of its jurisdiction over electronic mail, the possible effect of the Communications Act's requirements on the Postal Service's role in this field, and development of FCC regulatory policies on emerging communications/mail offerings. In response, the Commission instituted an inquiry inviting comment on FCC jurisdiction, tariff requirements under the Communications Act, and requirements for certificates of convenience and necessity.

DATES: Comments must be received on or before February 25, 1979; oppositions must be received on or before March 11, 1979; and replies must be received on or before March 18, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Michael S. Slomin, Policy and Rules Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554 (202-632-9342).

SUPPLEMENTARY INFORMATION:

INQUIRY

Adopted: January 25, 1979.

Released: February 2, 1979.

In the matter of request for Declaratory Ruling and Investigation by Graphnet Systems, Incorporated Concerning a Proposed Offering of Electronic Computer Originated Mail (ECOM), CC Docket No. 79-6.

1. We have before us a Petition for Declaratory Ruling and Request for Expedited Investigation filed on November 1, 1978 by Graphnet Systems, Inc. ("Graphnet") pursuant to § 1.2 of the Commission's rules. An opposition was filed on November 15, 1978 by Western Union Telegraph Company ("Western Union").

2. Graphnet is seeking Commission action concerning a new offering of Electronic Computer Originated Mail ("ECOM") which the United States Postal Service has proposed to begin offering to the public, using services and facilities provided by Western Union. The Postal Service filed a proposed tariff for this service with its regulatory agency, the Postal Rates Commission, on September 8, 1978, and in response that agency instituted a postal rate proceeding, Docket No. MC78-3, to consider the postal issues raised by the proposed tariff. On September 15, 1978, Western Union by letter advised the FCC of its intention to provide electronic communication facilities and services which will be used for ECOM, and claimed that it would be doing so on a non-carrier basis unless otherwise advised. On October 16, 1978, we received a letter from Western Union International, Inc., expressing concern about possible erosion of FCC jurisdiction if it allows Western Union to participate in ECOM without filing a tariff, and on October 23, 1978, we received a letter from American Cable and Radio Corp. requesting us to institute an inquiry into ECOM. The Chief, Common Carrier Bureau, pursuant to delegated authority, responded to Western Union in a November 9, 1978 letter advising it of its obligation to file a tariff.[1] All of the above is relevant to this proceeding and will be associated with its docket file.

3. As described by Western Union in its letter, ECOM operates as follows. A user will prepare its messages in electronic form and transmit them over communications channels to Western Union's facilities, which will check for proper format and sequentially order them by postal zip code. Western Union, employing its switching and communications facilities, will then transmit the messages to appropriate destination post offices as indicated by the zip coding. There, Western Union-provided printers will convert the messages to hard copy form for physical delivery by postal employees. In the preliminary phases, intended to last some 15 months during which the Postal Service will be evaluating public acceptance of ECOM, Western Union will use terrestrial communications channels and its Infomaster message-switching computer system to route, switch and transmit messages to the appropriate post offices. If the Postal Service's evaluation indicates public acceptance, Western Union proposes to switch to using domestic satellite facilities and "a dedicated network of intelligent, computer controlled small earth stations" both to accept users' ECOM messages in electronic form, and to distribute them to appropriate post offices.

4. In its letter, Western Union claimed that its participation in ECOM would not be a common carrier undertaking under the statutory scheme of the Communications Act, requiring a tariff. The Common Carrier Bureau found that a tariff is required for the electronic services and facilities which Western Union will be providing, regardless of who is offering ECOM to the general public. The Bureau's letter is duplicated in an appendix to this order and will not be restated here. However, Graphnet's petition raises issues which are broader than those addressed in the Bureau's letter; Graphnet's issues relate to whether or not the statutory scheme of the Communications Act should be applied to the ECOM service as a whole, and to the parties who are providing it.

5. Graphnet argues that the scope of the Communications Act encompasses the ECOM service, including the electronic portion of it and the physical delivery portion of it. In support, it cites the Act's definitions of "wire communication" and "radio communication."[2] It requests an immediate declaratory ruling that ECOM itself is within the scope of the Communications Act. In essence, therefore, Graphnet is requesting an immediate declaration that ECOM is within the subject-matter jurisdiction of the Communications Act.

6. Assuming that we conclude that ECOM as a service is within the jurisdiction of the Communications Act, Graphnet raises a variety of issues which flow from such determination. Is the Section 203 requirement that communications services be provided under filed tariffs applicable to ECOM? Should such a tariff be filed by Western Union, by the Postal Service, or by both? Is the Section 214 requirement that a carrier receive a certificate of convenience and necessity for extensions of lines applicable to ECOM, to Western Union's role in it, to the Postal Service's role in it, or to a joint role?

7. It is Graphnet's position that we do not have sufficient information on these issues to reach reasoned decisions, and that we should therefore institute an expedited investigatory proceeding to adduce such information. Graphnet acknowledges that we may not have a statutory basis (or desire) to regulate the Postal Service's role in ECOM under the Communications Act, and it submits that this proceeding is also a proper vehicle for receiving briefs and comments on such jurisdictional issues as well.

8. In opposition, Western Union argues that there is nothing in Graphnet's petition to support the requested relief. In Western Union's view, the petition fails because it is premised on the belief that ECOM is jointly held out to the public by Western Union and the Postal Service, while Western Union takes the position that it is held out solely by the Postal Service. Since Western Union's role in ECOM is solely that of a contract supplier to the Postal Service, which itself has complied with its regulatory requirements by filing a tariff with Postal Rates Commission, the FCC has no further interest in the matter. Western Union further argues that since Graphnet has explicitly refrained from addressing whether the FCC's jurisdiction extends to the Postal Service, we should not initiate any proceeding seeking to determine how to exercise jurisdiction over ECOM. Finally, Western Union urges that should we initiate any proceeding on these matters, we should in no way seek to stay inauguration of ECOM, an experimental service which, according to Western Union, could prove to be of substantial public benefit.[3]

DISCUSSION

9. ECOM represents and end-to-end service intended to transfer information from an originating point to single and multiple destination points. Part of this end-to-end service involves a transfer of information in electronic

[1] In response to the Bureau's letter (reproduced in the Appendix hereto), Western Union filed such a tariff on December 19, 1978, accompanied by a request that it be made effective on not less than one day's notice. This request was denied on December 20, 1978, in a ruling which cited the serious questions raised by the filing and its controversial nature. The tariff was re-filed on Jan. 8, 1979.

[2] 47 U.S.C. 153(a)-(b). Graphnet notes that these definition specifically include "receipt, forwarding, and deliver" in physical hard-copy form of communications incidental to the electronic wire or radio transmission.

[3] Western Union claims that even Graphnet appears to recognize the potential public benefits of ECOM.

form, using means (wire and radio communication channels and electronic message routing equipment) within the direct ambit of the Communications Act's regulatory scheme and purpose. The remaining part of this end-to-end service involves physical delivery of information in hard copy form by postal employees. This activity may or may not be within the ambit of the Communications Act's regulatory scheme, depending on whether such delivery of an electronically carried message is to be considered a service "incidential to such (electronic) transmission" by wire or radio, under Sections 3(a) and 3(b) of the Act.

10. Delivery of electronically carried messages has been treated both as within the Communications Act's regulatory ambit and outside it. When Western Union transmits a telegram, and as part of its service offering includes physical delivery of a hard copy message to its ultimate destination (from its electronic message receiving facilities), such delivery has consistently been offered and treated by regulatory agencies as part of the electronic message offering. State regulatory agencies have done so for many years, as has the Interstate Commerce Commission (prior to formation of the FCC), and since 1934 this Commission. At the same time, Western Union has also offered mail delivery of a telegram (at a lower price than messenger delivery) and this delivery has not been directly regulated under the Communications Act.

11. This somewhat schizophrenic regulatory view of what is essentially the same activity—delivery of an electronically carried message—was brought home directly during appellate litigation over MAILGRAM(R). MAILGRAM(R) is a Western Union offering under which various of its electronic message services terminate in printers located at Post Offices, rather than at Western Union offices. The Postal Service takes hard copy messages from these printers, inserts them in envelopes and delivers them as mail, much as it proposes to do with ECOM. When we authorized this Western Union tariffed offering, one of the issues which we necessarily confronted was whether or not the physical delivery of MAILGRAM(R) messages was "incidental" to the electronic carriage of the messages. We declined to directly regulate this activity, and the rates and terms of service for delivery of MAILGRAM(R) messages have remained a postal function since that time. In *United Telegraph Workers* v. *F.C.C.*, 436 F.2d 920 (D.C. Cir., 1970), the proposition was established that delivery of such messages is "ancillary, incidental, supplemental or accessorial" to the regulatory scheme of the Communications Act, 436 F.2d at 924. The Court held open the possibility that if necessary the FCC could control "the end-portion of the service", delivery by the Postal Service.[4]

12. Thus, a decision to control physical delivery under the FCC's jurisdiction over electronically carried messages is discretionary. The Communications Act confers jurisdiction over such activity, but it is jurisdiction which we may decline to exercise, or which we may exercise in non-traditional ways as we did in MAILGRAM(R). Western Union is arguing that if ECOM is solely the Postal Service's service, we must first decide whether or not we have comprehensive regulatory jurisdiction over the Postal Service before we can examine how ECOM fits the Communications Act's regulatory scheme. However, as MAILGRAM(R) illustrates, ECOM is not necessarily an all-or-nothing proposition. We could regulate the electronic carriage of ECOM messages as a non-postal communications activity, and decline to exercise jurisdiction over physical delivery. This would maintain Congress' apparent view that postal rates be determined by the Postal Rates Commission and communications rates by the FCC.

13. Graphnet raises regulatory issues as well as basic jurisdictional issues. It asks that we address questions related to what tariffs, covering what portion(s) of the ECOM offering, are required to be filed with the Commission under Section 203 of the Communications Act, and by whom. It asks that we address questions related to what Section 214 authorizations (certificates of convenience and necessity) are required, and by whom. Our examination of the Graphnet and Western Union pleadings convinces us that the only issues raised which require further information, as opposed to further argument and briefs, are the Section 214 issues. It is not a factual question if we consider the scope of the Communications Act, its possible applicability to the Postal Service, and its tariff filing requirements; these are questions of law and policy and may be resolved on the basis of comments and briefs. On the other hand, Section 214's applicability may turn on questions such as the impact of ECOM on existing facilities usage and assignment, and new construction which might be occasioned by ECOM, issues which will require further information to resolve. The Common Carrier Bureau's letter acknowledged this, and used § 61.38 of our rules as a vehicle for obtaining such information. Moreover, to the extent that the Postal Service might be construed as reselling a service offered by Western Union, our *Resale and Shared Use* decisions[5] may subject this resale activity to the requirements of Section 214 of the Act as an acquisition of lines. This latter Section 214 issue is one of law or policy. Thus, an extended inquiry such as is proposed by Graphnet here is not warranted.

14. In view of these considerations, we will receive briefs, oppositions and replies on an expedited briefing schedule established herein, on the following issues:

JURISDICTION

(a) To what extent, if any, is the ECOM service (or the electronic portion thereof) within the subject-matter jurisdiction of the Communications Act of 1934 as amended?

(b) To what extent, if any, does the Postal Service's role in ECOM remove ECOM (or the electronic portion thereof) from the subject-matter jurisdiction of the Communications Act of 1934 as amended?

(c) To what extent, if any, would Western Union's participation in ECOM by contract to the Postal Service, and not a filed tariff, remove ECOM (or the electronic portion thereof) from the subject-matter jurisdiction of the Communications Act of 1934 as amended?

(d) Since a common carrier is defined in the Communications Act as "any *person* engaged as a common carrier for hire", Section 3(h):

(1) Would Western Union be such a "person" engaged in providing ECOM?

(2) Would the Postal Service be such a "person" engaged in providing ECOM?

(3) Would they jointly be such a "person" engaged in providing ECOM?

(e) Should ECOM be treated in a manner similar to the treatment of MAILGRAM(R), that is as two separate activities, electronic communication subject to the Communications Act, and physical delivery not subject to the Communications Act? If so, what attributes of ECOM would prevent assertion and exercise of jurisdiction over Western Union's role in ECOM?

(f) Is the Postal Service's participation in ECOM one of resale of communications service, subject to the *Resale and Shared Use* decisions and policies? If so, does the Commission have jurisdiction to require the Postal Service to be minimally regulated under the Communications Act as required by those decisions? Is this jurisdiction dis-

[4] The Court carefully declined to decide whether or not the Postal Service is properly within the FCC's conferred jurisdiction. It stated that this issue "need not be resolved at this stage * * *." *Id.*

[5] *Resale and Shared Use*, 60 F.C.C. 2d 261 (1976); *modified*, 60 F.C.C. 2d 588, 61 F.C.C. 2d 70 (1976); *reconsideration denied*, 62 F.C.C. 2d 588 (1977); *aff'd sub nom., Am. Tel. & Tel.* v. *F.C.C.*, 572 F. 2d 17 (2d Cir., 1978), *cert. denied*, —— U.S. —— (1978).

cretionary? Should the Commission exercise its discretion?

(g) In light of the jurisdiction conferred by the Communications Act, to what extent, if any, do the standard of Sections 201 and 202 apply to the services and relationships involved/ in ECOM?

TARIFFS

(h) Under the statutory scheme of the Communications Act, what tariffs on which the general public may rely are required to be filed with the FCC for ECOM? Is a tariff filing before another regulatory agency (the Postal Rates Commission) a sufficient satisfaction of the regulatory scheme of the Communications Act? Who is required to file such tariffs:

(1) If the Postal Service is considered a reseller?

(2) If the Postal Service is not considered a reseller?

(i) To the extent that we have discretion in addressing these tariff issues, what alternative mechanisms to tariffs (if any) may we properly adopt and still assure that the problems identified in the Common Carrier Bureau's letter, attached hereto, do not arise (*e.g.*, discrimination, adverse revenue effects on existing Western Union services because of diversion of traffic to ECOM, affect on overall Western Union earnings, etc.)?

CERTIFICATION

(j) To what extent (if any) is Section 214 of the Communications Act applicable to ECOM, or the electronic portion thereof:

(1) In light of our *Resale and Shared Use* Decisions and policies and the Court's decision affirming them?

(2) In light of the information which Western Union has provided the Commission pursuant to the Bureau's letter and Section 61.38 of our rules (impact on service)?

15. With the possible exception of the last Section 214 issue, we do not foresee questions of fact arising during the course of this inquiry; this inquiry will therefore be focussed on questions of law and policy [6]. Therefore, at this time we are establishing the following dates for submission of briefs and comments: Initial briefs and comments will be due on or before Feb. 25, 1979; oppositions will be due on or before March 11, 1979; and replies will be due on or before March 18, 1979. The record of this proceeding will consist of all material described in paragraph 2 above, the Postal Service's pre-filed testimony in the Postal Rates Commission's Docket No. MC78-3 proceeding (for a detailed description of the operation of ECOM), comments filed in this proceeding, and any other relevant publicly available information and material of which notice may properly be taken.

16. *Accordingly, it is hereby ordered,* Pursuant to Sections 1, 2, 3, 4(i)-(j), 201-03, 214, 403 and 409(e)-(h) of the Communications Act of 1934 as amended, 47 U.S.C. 151-3, 154(i)-(j), 201-03, 214, 403 and 409(e)-(h), That an inquiry is commenced into issues related to Electronic Computer Originated Mail. Comments and briefs, oppositions, and replies may be filed, respectively, on or before February 25, 1979, March 11, 1979, and March 18, 1979 on the issues delineated in Paragraph 14 of this order and on related relevant issues of law and policy [7].

17. *It is further ordered,* Pursuant to § 1.419 of the FCC's rules and regulations, 47 CFR 1.419, That interested members of the public shall file an original and 5 copies of all statements, briefs or comments with the Federal Communications Commission, Washington, D.C. 20554, and that all such filings will be available for public inspection in the Docket Reference Room at the Commission's Washington, D.C. offices.

18. *It is further ordered,* Pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934 as amended, 47 U.S.C. 4(i)-(j), That a Petition for Declaratory Ruling and Request for Expedited Investigation filed by Graphnet Systems, Inc. on November 1, 1978 is hereby granted to the extent indicated herein.

19. *It is further ordered,* Pursuant to Sections 4(j) and 403 of the Communications Act of 1934 as amended, 47 U.S.C. 4(j) and 403, That this proceeding is subject to further order of the Commission.

FEDERAL COMMUNICATIONS COMMISSION,

WILLIAM J. TRICARICO,
Secretary.

ATTACHMENT

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., November 9, 1978.

Mr. JOEL YOHALEM, Esq.,
General Solicitor, Western Union Telegraph Company, Suite 1101, 1828 L Street, N.W., Washington, D.C.

DEAR SIR: This is in reply to your letter of September 15, 1978, describing Western Union's role in a proposed new offering with the United States Postal Service. Your letter states that a new service, denoted Electronic Computer Originated Mail (ECOM), using Western Union's switching and communicatons facilities, will be offered to the public solely by the Postal Service and not by Western Union, and that Western Union's offering of these facilities to the Postal Service is not a common carrier undertaking. Accordingly, you conclude that Western Union and the Postal Service can order their relationship by contract (and not filed tariff) and that Western Union may fulfill its regulatory obligations by filing a report pursuant to Section 43.54 of the FCC's Rules.

In addition to your letter, we have also received an October 16, 1978, letter from Western Union International, Inc., which expresses concern about possible erosion of Commission jurisdiction if it allows Western Union to participate in ECOM without filing a tariff, an October 23, 1978 letter from American Cable and Radio Corporation requesting the FCC to institute an inquiry into ECOM, and a November 1, 1978, petition for declaratory ruling from Graphnet Systems, Inc., raising questions about the scope of Commission jurisdiction over ECOM and Western Union's participation therein.

According to your letter, a user of ECOM will prepare its messages in electronic form and transmit them over wires to Western Union's facilities, which will check for proper format and sequentially order them by zip code. Western Union, employing its switching and communications facilities, will then transmit the messages to appropriate destination post offices as indicated by the zip coding. There, Western Union-provided printers will convert the messages to hard copy form for physical delivery by postal employees. In the preliminary phases, intended to last 15 months, during which the Postal Service will evaluate public acceptance of ECOM, Western Union will use its Infomaster system to route and switch messages to the appropriate post offices. According to your letter, customer-originated messages in electronic form will be received by Infomaster over the nationwide telephone network (WATS and MTS service). It is not clear whether or not Infomaster will also accept ECOM messages over its existing TWX, Telex and INFOCOM input mechanisms. If the Postal Service's evaluation indicates public acceptance, you propose to switch to domestic satellite facilities and "a dedicated network of intelligent, computer controlled small earth stations" both to accept the users' ECOM messages in electronic form and to distribute ECOM messages to appropriate post offices.

You characterize the offering of Western Union's facilities for the electronic portion of the ECOM service as one which runs solely to the Postal Service and not the gen-

[6] Western Union's § 61.38 information may raise questions of fact, and we will be in a better position to assess whether there are material questions of fact warranting further proceedings after comments are filed. We will entertain requests for additional proceedings if it is demonstrated that they are required to resolve the issues herein.

[7] It should be noted that several of the listed issues concern matters already decided in the Bureau's delegated authority letter. As no timely applications for review or petitions for reconsideration were filed, that letter is controlling. However, in view of these matters' relationship to the issues which we are addressing in this proceeding, we do not wish to unduly limit the scope of comprehensive comments and proposals which may be forthcoming. Moreover, in view of the importance of the matters to be addressed in this proceeding, we are declining to grant at this time Graphnet's request for stay and declaratory ruling, except to the extent that the Bureau's letter has made this request moot.

eral public, and conclude that providing such service to the Postal Service is not a common carrier offering requiring a tariff. Moreover, you propose to file no tariffs offering ECOM (or its electronic portion) to the public because, in your view, ECOM is to be marketed solely by the Postal Service and not Western Union. We have reviewed the representations made in your letter, and conclude for the reasons detailed below that Western Union must file a tariff which covers the provision of this service.

First, the Postal Service and the ECOM-using public will be using Western Union's Infomaster and communications facilities in a manner which is no different from their use by other users of these facilities, all of which other uses are currently regulated and governed by filed tariffs (*e.g.*, TWX, Telex, INFO-COM and MAILGRAM). Your sole argument in support of different treatment of use of these facilities by the Postal Service and the ECOM-using public is that only the Postal Service, and not Western Union, will be "holding out" ECOM to the using public. However, this argument appears to relate only to whether or not the Postal Service might be required to file a tariff with the Commission; it does not, of itself, justify Western Union's offering of its facilities in connection with ECOM on a non-carrier basis. In our view, Western Union's long standing and consistent tariffing of these facilities for other purposes clearly demonstrates the common carrier nature of their use in a similar manner for ECOM. In essence, the claim that one user (or group of users) of your facilities will be doing so with an objective different from existing users does not, of itself, justify calling provisions of service to the former a non-carrier activity.

Second, use of the Infomaster and communications facilities for ECOM will apparently be compensated at a rate different from those prevailing for Western Union's other tariffed services. Such discrimination may not be unjust or unlawful, but that is a regulatory determination which is to be made on the basis of tariffs, and cannot be avoided by calling the offering non-carrier, or claiming that it is provided on an agency or contractual basis.

Third, the ECOM service is substantially identical to Western Union's tariffed MAILGRAM offering in scope, service, operation and facilities. MAILGRAM is also an end-to-end communications offering in which messages are accepted in electronic form at Western Union's facilities, are transmitted electronically by Western Union to appropriate post offices, are printed out in hard copy form on Western Union-provided apparatus, and are delivered by postal employees. Western Union has tariffed the electronic communication segment of this end-to-end offering with the FCC in clear recognition that this is the type of interstate communications subject to the Communications Act of 1934. While you argue that ECOM and MAILGRAM differ inasmuch as the former will be the Postal Service's offering to the public and the latter is Western Union's, this difference does not alter the fact that the two services are virtually identical and make similar use of facilities provided by Western Union. The similarity of ECOM and MAILGRAM dictates consistent treatment by the Commission of Western Union's participation therein. Also, this similarity raises serious questions of discrimination between ECOM and MAILGRAM users of Western Union's facilities, since it appears that Western Union will be compensated at a lower rate for ECOM use than for MAILGRAM use. Here too, such discrimination may not be unjust or unlawful, but that is a regulatory determination which must be made by the Commission on the basis of the statutory scheme envisioned by Title II of the Communications Act.

Fourth, a more fundamental issue of potential cross-subsidization is raised by Western Union participating in ECOM as described in your letter. Without regulatory safeguards such as the cost studies required to support a new tariff filing under Section 61.38 of the Commission's rules, we are unable to determine to what extent, if any, the compensation which you will be receiving for use of your facilities for ECOM is adequate (covers relevant costs). Any shortfall might be required to be made up by users of your existing regulated services. Moreover, demand shifts by users of your existing services to ECOM may affect your revenues and your ability to cover your revenue requirements at existing rates. This too dictates that the normal regulatory safeguards of the Communications Act be observed in connection with Western Union's participation in ECOM.

Finally, you observe that the Commission has allowed Western Union to engage in certain undertakings on a non-carrier basis. This is true, but in each case the undertaking was not interstate communications by wire or radio used by the public (*e.g.* delivery of candy and flowers, communications totally in foreign countries, performance of professional accounting, legal or engineering services). The facilities which you will be providing in connection with ECOM are undeniably interstate communications by wire or radio, except in the unlikely event a particular communication originates and terminates in the same state (a situation which presumably can only occur in the case of wire communications).

Though Graphnet Systems, Inc. has filed a petition for declaratory ruling seeking a Commission decision concerning the scope of its jurisdiction over the entire ECOM service, we are not taking a position at this time on the broad set of issues raised by that petition; these will be addressed in the procedural setting of Graphnet's petition. We are addressing here solely your participation in ECOM without a tariff filed with the Commission. As noted above, the facilities and services which Western Union will be providing in connection with ECOM do not differ in any material respect to facilities and services which you are already providing to users of Western Union's existing tariffed services, and you have failed to justify different treatment of the Postal Service and the ECOM-using public from others. Your participation in ECOM raises significant potentials for discrimination against various users of Western Union's existing tariffed services, and this further dictates that a tariff be filed, properly supported pursuant to Section 61.38 of the FCC's rules. Moreover, we note that filing such a tariff would be consistent with and parallel to the existing electronic mail service (MAILGRAM) which is jointly furnished by Western Union and the Postal Service, and therefore represents no new departure in Commission policy.

I trust that this clears up any uncertainty about your proposed service offering.

Sincerely,

LARRY F. DARBY,
Acting Chief,
Common Carrier Bureau.

[FR Doc. 79-4373 Filed 2-7-79; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

AMERICAN EXPRESS CO.

Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation No. P-164

WHEREAS, American Express Company, American Express Plaza, New York, New York 10004, has ceased to charter the passenger vessel ATLAS for voyages to and from United States ports;

WHEREAS, Certificate (Performance) No. P-164 issued to American Express Company has been returned for revocation,

It is ordered, That Certificate (Performance) No. P-164 covering the ATLAS be and is hereby revoked effective January 31, 1979.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served on certificant.

By the Commission January 31, 1979.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 79-4284 Filed 2-7-79; 8:45 am]

[6730-01-M]

[Docket No. 79-6]

PUERTO RICO MARITIME SHIPPING AUTHORITY (PRMSA) AND TRAILER MARINE TRANSPORT CORP. (TMT) PROPOSED REDUCED RATES

Order of Investigation and Hearing

On December 22, 1978, December 28, 1978, and January 5, 1979, PRMSA filed revised pages to its Tariff FMC-F No. 7 with scheduled effective dates of January 25, January 28, and February 7, 1979. (See Appendix A). The pages would change the rate structure pertaining to various commodities moving in the Charleston, South Carolina/Puerto Rico trade, and result in a reduction in rates for this traffic. Currently, cargo moving through the Port of Charleston, South Carolina, moves at the same level of rates applicable to Baltimore, Maryland, and New York, New York. The proposed changes will extend the lower rates and provisions currently applicable to Jacksonville and/or Miami, Florida, to Charleston, South Carolina. PRMSA's operation will utilize one ship on a triangular run which will sail from Charleston each Thursday, call at Jacksonville on Friday and arrive in San Juan, on Monday, with a transit time of less

than three days. This will provide a weekly sailing from Charleston, and, coupled with PRMSA's second vessel already in this trade, will provide a weekly sailing for Miami and a twice a week service for Jacksonville.

Trailer Marine Transport Corporation (TMT) protested the changes proposed by PRMSA, requesting rejection, or, in the alternative, suspension and investigation. The protest of TMT relies in large measure on *Rates from Jacksonville, Florida to Puerto Rico,* 10 FMC 376 (1967). There the Commission concluded that there was no competitive necessity for eliminating TMT's differential since rate parity would probably drive TMT out of the trade. Also, it was ruled that Sea-Land had not justified its proposed differentially lower rates between Jacksonville and Puerto Rico as compared with its rates between other Atlantic ports and Puerto Rico. TMT contends the Commission's interpretation of applicable law and conclusions reached in that case apply in the proposed PRMSA rate modifications here. TMT goes on to argue that there is no justification for the rates in terms of cost of operation, value of service or other transportation conditions. Thus, it concludes that the rates of PRMSA should be found in violation of sections 14, Second, 16, First, and 18(a) of the Shipping Act, 1916.

TMT's allegations regarding the need for a rate differential must be considered in the light of current conditions in the trade. *Rates from Jacksonville,* upon which TMT relies, is over ten years old. Changes in TMT's operations during the intervening ten years may have reduced or eliminated the necessity for a differential. TMT has continued to upgrade its service. It has recently added two new triple deck barges, each having a capacity of 374 40-foot trailers, bringing its fleet capacity to 1,648 trailer spaces. Moreover, TMT has increased its frequency of sailings. It operates two barges directly between Jacksonville and San Juan, with a sailing every five days and a transit time of four days, ten hours. Two additional barges also operate on a triangular run from Jacksonville to Miami to San Juan, with a sailing every seven days and a transit time of five days, seven hours. The tugs used in this operation average ten knots. This has enabled TMT to compete successfully with PRMSA at rate parity at the ports of Jacksonville and Miami. Accordingly, we believe an investigation is appropriate in order to determine if the rationale of *Rates from Jacksonville* is still valid in light of changed circumstances.

Despite TMT's allegation that PRMSA is operating a fighting ship in violation of section 14, Second, we will limit the investigation and hearing to alleged violations of sections 18(a) and 16, First, Shipping Act, 1916. Instead of serving Charleston with a container vessel as it has in the past, PRMSA intends to utilize the same Ro-Ro vessel which currently serves Jacksonville. The mere substitution of vessels at the Port of Charleston does not amount to operation of a fighting ship. The Commission has recognized the distinction between operating a fighting ship on the one hand, and cutting rates for cargo carried on the other. Only the former violates section 14, Second, Shipping Act, 1916. See *Grace Line, Inc. vs. Skips A/S Viking Line et al.,* 7 FMC 432, 450 (1962) and *Rates on U.S. Government Cargoes,* 11 FMC 263, 284 (1967).

On January 5, 1979, TMT filed First Revised Page 98 and Second Revised Page 136 to its Tariff FMC-F No. 5 with scheduled effective dates of February 5, 1979. The pages proposed to reduce trailerload rates on Bakery goods and Furniture, N.O.S. approximately 13 percent and subjects the changes to an expiration date of June 30, 1979. On January 18, 1979, PRMSA filed 2nd Revised Page 238 and 2nd Revised Page 331 to its Tariff FMC-F No. 7 with scheduled effective dates of February 18, 1979. These pages, like TMT's, proposed to reduce trailerload rates approximately thirteen percent on bakery goods and furniture, N.O.S. Unlike TMT's changes they are not subject to an expiration date.

PRMSA has filed a protest against changes of TMT and TMT has filed an offsetting protest against the tariff changes of PRMSA. Both TMT and PRMSA are competing for cargo which apparently originates in the areas of North Carolina, South Carolina and Kentucky. TMT believes that it is entitled to a differential in rates between Charleston, South Carolina and Jacksonville, Florida. PRMSA believes that it should be entitled to compete for a share of the cargo by establishing rate parity with TMT. Thus these commodity rate reductions also raise questions regarding the application of *Rates from Jacksonville.* Accordingly, we believe that they should be included in the investigation and hearing.

The question of whether or not PRMSA has reduced its Charleston rates to noncompensatory level should also be considered in the investigation and hearing. PRMSA was not required to submit financial justification for the changes pursuant to General Order 11 because it certified that the changes would not increase or decrease its domestic offshore gross revenue by 3 percent or more in the trade. Thus, there are no figures to confirm or refute TMT's allegation.

We recognize that PRMSA's Ro/Ro service to Charleston is a new service and therefore there is no experience with these vessels upon which a cost analysis could be based. Nevertheless, PRMSA has served Charleston with containerships for some time. Therefore, it does have experience with the traffic which moves through the port. In addition, it has experience operating Ro/Ro vessels. We believe that these factors may permit the development of meaningful cost analyses despite the lack of Ro/Ro experience in Charleston.

Now, therefore, it is ordered, That, pursuant to the authority of sections 18(a) 16, First, and 22 of the Shipping Act, 1916 and sections 3 and 4 of the Intercoastal Shipping Act, 1933 (46 U.S.C. §§ 815, 817, 821, 845, 845a), an expedited investigation is hereby instituted into the lawfulness of the tariff matters contained on Second Revised Page 136 of Trailer Marine Transport Corporation Tariff FMC-F No. 5 and Second Revised Page 238 and Second Revised Page 331 of Puerto Rico Maritime Shipping Authority FMC-F No. 7 and the tariff matter listed in Appendix A for the purpose of making such findings as the facts and circumstances warrant;

It is further ordered, That Puerto Rico Maritime Shipping Authority and Trailer Marine Transport Corporation be named Respondents in this proceeding;

It is further ordered, That the deadlines imposed by Public Law 95-475 will be observed;

It is further ordered, That this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the Presiding Administrative Law Judge.

The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

It is further ordered, That the parties submit to the Administrative Law Judge, at a prehearing conference, recommendations identifying all unresolved issues and specifying the type of procedure best suited to resolve them. After consideration of these recommendations, the Administrative Law Judge will issue an appropriate order limiting the issues and establishing the procedure for their resolution;

It is further ordered, That during the pendency of this investigation, PRMSA and TMT will serve the Ad-

ministrative Law Judge and all parties of record with notice of any tariff changes affecting the material under investigation at the same time such changes are filed with the Commission;

It is further ordered, That (1) a copy of this Order be forthwith served upon the Respondents and upon the Commission's Bureau of Hearing Counsel and published in the FEDERAL REGISTER, and (2) the Respondents and Hearing Counsel be duly served with notice of time and place of hearing.

All persons (including individuals, corporations, associations, firms, partnerships and public bodies) having an interest in this proceeding and desiring to intervene herein should promptly file petitions for leave to intervene in accordance with Rule 72 of the Commission's rules of practice and procedure (46 CFR 502.72) with a copy to all parties to the proceeding.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

APPENDIX A.—*Puerto Rico Maritime Shipping Authority*

Revised page	Item No.	Effective date	Commodity
1 R/P 331	6350	January 25, 1979.	Furniture, N.O.S.
1 R/P 138	Rule 280	January 28, 1979.	Insurance Provisions.
1 R/P 238	2600	January 28, 1979.	Bakery Goods.
1 R/P 254	3530	January 28, 1979.	Buildings or Houses.
1 R/P 267	3980	January 28, 1979.	Carpets or Carpeting.
1 R/P 328	6300	January 28, 1979.	Freight All Kinds.
1 R/P 329	6300	January 28, 1979.	Freight All Kinds.
1 R/P 347	7170	January 28, 1979.	Household Appliances.
1 R/P 487	14360	January 28, 1979.	Tires or Tubes.
1 R/P 542	16490	January 28, 1979.	Aluminum Cable or Wire.
1 R/P 604	18270	January 28, 1979.	Pocket Books or Purses.
1 R/P 609	18450	January 28, 1979.	Scrap Metal.
1 R/P 228	2300	February 7, 1979.	Aluminum Shapes.
1 R/P 288	4850	February 7, 1979.	Cooling Boxes, Freezers or Refrigerators.
1 R/P 290	5065	February 7, 1979.	Cranes, Electric.
1 R/P 330	6340	February 7, 1979.	Furniture, office.
1 R/P 334	6520	February 7, 1979.	Glass, Plate, prism, decorated or cut.
1 R/P 379	8620	February 7, 1979.	Machinery or Machines or Equipment: Air Conditioning, Cooling, Filtering, Heating, Humidifying, Dehumidifying or Washing.
1 R/P 381	8674	February 7, 1979.	Machinery or Machines or Equipment: Construction, moving on own wheels or tracklaying.
1 R/P 426	11130	February 7, 1979.	Pipe or Tubing: Plastic and Fittings.
2 R/P 436	11262	February 7, 1979.	Plastic Materials: Sleeves, pirn.
1 R/P 466	13030	February 7, 1979.	Snack Items.
1 R/P 484	14165	February 7, 1979.	Thinner, lacquer.
1 R/P 491	14540	February 7, 1979.	Trailers, Empty, boxed or unboxed.

[FR Doc. 79-4285 Filed 2-7-79; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

[Docket No. R-0200]

PRIVACY ACT OF 1974

Proposed New System of Records

Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. § 552a), the Board of Governors of the Federal Reserve System hereby gives notice of a new system of records that it proposes to maintain. The Board filed a new system report with the Office of Management and Budget, the Speaker of the House, and the President of the Senate on January 29, 1979.

Public comments are invited on this notice on or before March 9, 1979, addressed to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, D.C. 20551. All material submitted should be in writing and should contain the docket number R-0200. All written documents will be made available for public inspection during the regular hours of the Office of the Secretary at the above address.

Dated: February 2, 1979.

By order of the Board of Governors.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

BGFRB-18

System name

FRB-Changes in Bank Control Records.

System location

Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, D.C. 20551.

Categories of individuals covered by the system

Individuals who acquire or propose to acquire control of a bank holding company or insured bank.

Categories of records in the system

Contains the name of the individual purchaser of shares of stock, details of the transaction, personal financial and biographical statements, and information regarding the individual's business associations. Identifying information includes name and address and may include date of birth and social security number.

Authority for maintenance of the system

Section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses

The name of the affected bank or bank holding company, the seller and purchaser, the number of shares involved, and other material details of the transaction may be distributed for publication and incorporated in public orders and notices issued by the Board in the discharge of its statutory responsibilities. As required by law, certain of the records will be made available to Federal and State banking authorities and the Board will seek to insure that the receipt of information by those authorities is subject to appropriate safeguards. In the event that the system of records indicates a violation or potential violation of law, the relevant records in the system of records may be referred to the appropriate Federal or State agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the relevant statute, rule, regulation or order. In the event of civil, criminal, or administrative law enforcement proceedings, the relevant records may be disclosed to the appropriate court or counsel for purposes of discovery and the development of the proceedings.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system

Storage

Paper records.

Retrievability

Indexed by name.

Safeguards

Locked in Diebold power file. Access limited to Board staff on a restricted basis.

Retention and disposal

Indefinite.

System manager(s) and address

Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, D.C. 20551.

Notification procedure

Inquiries should be addressed to the System Manager, address above. Inquirers may be required to include notarized statement attesting to identity.

Record access procedures

Same as Notification above.

Contesting record procedures

Same as Notification above.

Record source categories

Principally generated by the individuals to whom the records pertain, supplemented by information from financial institutions and Federal and State banking authorities.

Systems exempted from certain provisions of the act

None.

[FR Doc. 79-4152 Filed 2-7-79; 8:45 am]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on February 1, 1979. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CAB request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before February 26, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

CIVIL AERONAUTICS BOARD

The CAB requests clearance of a new Form 277, Budget Proposal/Reimbursement Claim Form, which relates to Part 304 of the Board's Procedural regulations, "Compensation of Participants in Board Proceedings." The clearance is requested because the form will be required for use in claims for reimbursement for participation in Board proceedings under the Department of Transportation and Related Agencies Appropriations Act, 1979, Pub. L. 95-335, 92 Stat. 435, August 4, 1978. Form 277 may be used voluntarily for a Budget Proposal, but it is mandatory that the form be submitted as a Reimbursement Claim Form. The CAB estimates that respondents will number approximately 25 and that reporting time will average one hour per request.

The CAB in a notice attached to the instruction book entitled "Applying for Compensation for Participation in CAB Proceedings," states that the use of Form 277 for reimbursement claims will be required for claims submitted after March 21, 1979. CAB's notice also implies that optional use of the form for filing a budget proposal can begin immediately. Although the notice specified that claims for reimbursement must be filed on Form 277 after March 21, 1979, and indicated respondents can use the form beginning January 1979 for budget proposals, these effective dates are contingent upon CAB's compliance with 44 U.S.C. 3512 which precludes the collection of information from ten or more persons until the Comptroller General has had the opportunity to advise that the information is not presently available from other Federal sources and that the proposed form is consistent with the provisions of section 3512. This notice represents the beginning of our review.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 79-4304 Filed 2-7-79; 8:45 am]

[6820-38-M]

GENERAL SERVICES ADMINISTRATION

[Intervention Notice 78; Formal Case No. 708]

DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION AND WASHINGTON GAS LIGHT CO.

Proposed Intervention In A Gas Utility Proceeding

The Administrator of General Services seeks to intervene in a proceeding before the District of Columbia Public Service Commission involving an investigation of the purchased gas adjustment (PGA) clause employed by Washington Gas Light Company. The Administrator of General Services represents the interests of the executive agencies of the United States Government as users of utility services.

Persons desiring to make inquiries of GSA concerning this case should submit them, in writing, to Mr. Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th & F Streets, N.W., Washington, DC 20405, telephone (202) 566-0726, within thirty (30) days of the publication of this notice in the FEDERAL REGISTER, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4))

Dated: January 23, 1979.

JAY SOLOMON,
Administrator of General Services.

[FR Doc. 79-4269 Filed 2-7-79; 8:45 am]

[4110-02-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Closing Dates for Receipt of (1) Applications for Determining an Expected Family Contribution, and (2) Student Eligibility Reports

The United States Commissioner of Education gives notice of the following cutoff dates for the receipt of applications for determining expected family contributions (student eligibility indexes) and for submitting Student Eligibility Reports (SER's) under the Basic Educational Opportunity Grant Program. The calculation of an expected family contribution is a prequisite to receiving a Basic Grant award.

Authority for this program is contained in section 411 of the Higher Education Act of 1965, as amended.

(20 U.S.C 1070a)

The Basic Grant Program's purpose is to assist students in the continuation of their training and education at the postsecondary level by providing a "foundation" or "floor" of financial aid to help defray educational costs. In order to insure that applications are received by the deadline, students are encouraged to submit the materials discussed in this notice as early as possible.

I. APPLICATION CLOSING DATE

(1) To receive a Basic Grant for the award period ending June 30, 1979, an application for determining an expected family contribution for the 1978-79 award period must be submitted to BEOG, P.O. Box A, Iowa City, Iowa 52240 on or before March 15, 1979. An application will be considered submitted on time if it is postmarked by March 15, 1979 and received at BEOG, P.O. Box A, Iowa City, Iowa 52240 no later than March 25, 1979.

(2) Applications for determining an expected family contribution for the 1978-79 award period submitted to satellite processors through the Multiple Data Entry System must be postmarked on or before March 15, 1979 and received no later than March 25, 1979 at the appropriate satellite processor. The following are the addresses for those processors: College Scholarship Service, P.O. Box 2700, Princeton, New Jersey 08540; College Scholarship Service, Box 380, Berkeley, California 94701; American College Testing Program Student Assistance Programs, 2201 North Dodge Street, P.O. Box 1000, Iowa City, Iowa 52240; and The Pennsylvania Higher Education Assistance Agency, PHEAA/BEOG Application, P.O. Box 3157, Harrisburg, Pennsylvania 17105.

Corrected Application Closing Date: Applicants whose applications are submitted on a timely basis but are returned to the applicant because of incomplete or inconsistent information must submit the corrected applications to BEOG, P.O. Box C, Iowa City, Iowa 52240 on or before May 5, 1979, in order to be processed. A corrected application will be considered submitted on time if it is postmarked by May 5, 1979 and received at BEOG, P.O. Box C, Iowa City, Iowa 52240 no later than May 15, 1979.

Applicant Recomputation Request: (1) An applicant may request a recomputation of his or her expected family contribution (student eligibility index) because of extraordinary circumstances affecting the expected family contribution determination under the conditions stated in the Basic Grant Program Regulations (45 CFR 190.39 and 190.48).

A recomputation request involving an adjustment to assets for loss or damage resulting from a National disaster as declared by the President will be made when a National Disaster Area Asset Adjustment sheet along with a valid SER is submitted to BEOG, P.O. Box X, Iowa City, Iowa 52240. *This request must be submitted by the deadline applicable to corrected applications.*

All other requests for recomputation under Sections 190.39 and 190.48 will be made when the Supplemental Form for the 1978-79 award period is submitted together with a new regular application to BEOG, P.O. Box S, Iowa City, Iowa 52240. In order to be processed, *this application (the Supplemental Form with the accompanying regular application) must be submitted to BEOG, P.O. Box S, Iowa City, Iowa 52240 on or before March 15, 1979.* An application and Supplemental Form will be considered submitted on time if they are postmarked by March 15, 1979 and received at BEOG, P.O. Box S, Iowa City, Iowa 52240 no later than March 25, 1979.

(2) Applicants may request a recomputation of their expected family contribution (student eligibility index) because of clerical or arithmetic error as stated in the Basic Grant Program Regulations (45 CFR 190.15). In order to be processed, this request must be submitted to BEOG, P.O. Box C, Iowa City, Iowa 52240 on or before May 5, 1979. A request for recomputation of expected family contribution because of clerical or arithmetic error will be considered submitted on time if it is postmarked by May, 5, 1979 and received at BEOG, P.O. Box C, Iowa City, Iowa 52240 no later than May 15, 1979.

II. SUBMISSION OF STUDENT ELIGIBILITY REPORTS (SER'S) FOR 1978-79

(1) *Regular Disbursement System:* To receive payment for attendance at an institution of higher education during the 1978-79 award period, a student must submit a valid SER to that institution while enrolled and eligible for payment at that institution. This can occur no later than May 31, 1979, or the end of the student's academic year, whichever comes first. However, if the student enrolls for the first time during the award period on or after May 1, 1979, the SER must be submitted to the institution while the student is enrolled and eligible for payment no later than June 30, 1979 (45 CFR 190.76).

(2) *Alternate Disbursement System:* Applicants attending institutions that participate in the Basic Grant Program through the Alternate Disbursement System must submit to the institution a valid SER while enrolled and eligible for payment at that institution no later than May 31, 1979, or the end of the student's academic year, whichever comes first. However, if the student enrolls for the first time during the award period on or after May 1, 1979, the SER must be submitted to the institution while the student is enrolled and eligible for payment no later than June 30, 1979.

The student must then submit the valid SER and OE Form 304 to BEOG, P.O. Box K, Iowa City, Iowa 52240, on or before June 10, 1979, if the student's program of study began before May 1, 1979. The forms will be considered submitted on time if they are postmarked by June 10, 1979 and received at BEOG, P.O. Box K, Iowa City, Iowa 52240 no later than June 20, 1979.

If the student's program of study began on or after May 1, 1979, these forms must be submitted to BEOG, P.O. Box K, Iowa City, Iowa 52240 on or before July 10, 1979. The forms will be considered submitted on time if they are postmarked by July 10, 1979 and received at BEOG, P.O. Box K, Iowa City, Iowa 52240 no later than July 20, 1979.

Additional request(s) for payment and/or corrected OE Form 304-1 Student Reports must be submitted on or before July 31, 1979. The forms will be considered submitted on time if they are postmarked on or before July 31, 1979 and received at BEOG, P.O. Box K, Iowa City, Iowa 52240 no later than August 10, 1979.

(3) *Duplicate SER Requests:* A duplicate SER may be requested by a student by writing to BEOG, P.O. Box T, Iowa City, Iowa 52240. The processing time for duplicate requests is generally three to four weeks. A request for a duplicate copy of the SER for the award period 1978-79 will be considered submitted on time if it is postmarked by June 5, 1979 and received at BEOG, P.O. Box T, Iowa City, Iowa 52240 no later than June 15, 1979.

III. VALIDATION OF SER'S

(1) *Regular Disbursement System:* A student whose application is being validated and who leaves school because of graduation, withdrawal or completion of an academic term (quarter, semester or trimester), is eligible for payment if he or she submits a corrected, reprocessed valid SER to the institution within 90 days after the end of the academic term in which he or she was last enrolled.

If an institution does not have traditional academic terms, the student must submit a corrected and reprocessed valid SER to the institution within 90 days after his or her last day of enrollment, or by September 30, 1979, whichever comes first.

(2) *Alternate Disbursement System:* A student whose application is being validated and who leaves school because of graduation, withdrawal or

completion of an academic term (quarter, semester or trimester) is eligible for payment if he or she submits a corrected, reprocessed valid SER and OE Form 304-1 Student Report to BEOG, P.O. Box K, Iowa City, Iowa 52240 within 90 days after the end of the academic term in which he or she was last enrolled, or by September 30, 1979, whichever comes first.

If the student's institution does not have traditional academic terms, the student must submit a corrected and reprocessed valid SER and OE Form 304-1 Student Report to BEOG, P.O. Box K, Iowa City, Iowa 52240 within 90 days after his or her last day or enrollment, or by September 30, 1979, whichever comes first.

A student who submits a corrected SER after these deadlines is not eligible for a Basic Grant payment.

Application Forms: Application forms and information brochures are available and may be obtained from college financial aid officers, high school counselors, or Educational Opportunity Center counselors, or by writing to BEOG, P.O. Box 84, Washington, D.C. 20044.

Appplicable Regulations: The regulations applicable to this program are:

Basic Educational Opportunity Grant Regulations (45 CFR Part 190).

Further Information: For further information, contact Ms. Diane Sedicum, Acting Chief, Basic Grant Branch, Division of Policy and Program Development, Bureau of Student Financial Assistance, U.S. Office of Education, (Room 4100 Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

(20 U.S.C. 1070a)

(Catalog of Federal Domestic Assistance No. 13,539 Basic Educational Opportunity Grant Program.)

Dated: February 2, 1979.

ERNEST L. BOYER,
U.S. Commissioner of Education.

[FR Doc. 79-4369 Filed 2-7-79; 8:45 am]

[4110-89-M]

Office of the Secretary

FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

Extension of Closing Date for Receipt of Applications for New Awards for Fiscal Year 1979

The February 14, 1979, closing date for transmittal of applications under two targeted competitions conducted under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education is extended. These competitions are entitled "Adapting Improvements: Better Strategies for Educating Adults" and "Examining the Varieties of Liberal Education." *The new closing date is May 21, 1979.*

Authority for this program is contained in section 404 of the General Education Provisions Act (20 U.S.C. 1221d).

This program issues awards to institutions of postsecondary education and other public and private educational institutions and agencies.

The purpose of the awards is to improve postsecondary education.

Applications must be mailed or hand delivered by May 21, 1979.

Applications Delivered by Mail: An application sent by mail must be addressed to either "Adapting Improvements" or "Liberal Education", both at the Fund for the Improvement of Postsecondary Education, Office of the Assistant Secretary for Education, DHEW, Attention: 13.925, 400 Maryland Avenue, S.W., Room 3123, Washington, D.C. 20202. Proof of mailing must consist of a legible U.S. Postal Service dated postmark or a legible mail receipt stamped with the date of mailing by the U.S. Postal Service. Private metered postmarks or mail receipts will not be accepted without a ligible date stamped by the U.S. Postal Service.

(NOTE.—The U.S. Postal Service does not uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method.) Applicants are encouraged to use registered or at least first class mail.

Each late applicant will be notified that its proposal will not be considered in the current competition.

Applications Delivered by Hand: An application that is hand delivered must be taken to the Fund for the Improvement of Postsecondary Education, Office of the Assistant Secretary for Education, DHEW, Attention: 13.925, 400 Maryland Avenue, S.W., Room 3123, Washington, D.C.

The Office of the Assistant Secretary will accept hand delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays and Federal holidays.

Applications that are hand delivered will not be accepted after 4:00 p.m. on the closing date.

Program Information: These competitions solicit proposals for projects that will further one or more of the objectives of the Fund for the Improvement of Postsecondary Education. The objectives of the Fund are contained in 45 CFR 1501.8. The preapplication and application steps will be combined for these two competitions. A single application is thus required, but procedures applicable at both steps will apply in these competitions. Applications will be evaluated in accordance with the criteria contained in 45 CFR 1501.7. The Fund's objectives, evaluation criteria, and application procedures for these competitions are described in two publications: (1) "Program Information and Application Procedures for Adapting Improvements: Better Strategies for Educating Adults," and (2) "Program Information and Application Procedures for Examining the Varieties of Liberal Education." These documents may be obtained from the Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue, S.W., Room 3123, Washington, D.C. 20202.

Available Funds: Approximately $1,000,000 is expected to be available for new grant awards in FY 79 for these two competitions.

It is estimated that these funds could support approximately 30 new grants. Of these, approximately 15 new grants would be funded in each program.

Under the competition entitled "Adapting Improvements: Better Strategies for Educating Adults," the anticipated award for new grants will be between $5,000 and $80,000 for a twelve-month period. Applicants may request approval of a multi-year work plan of up to three years in duration.

Under the competition entitled "Examining the Varieties of Liberal Education," the anticipated award for new grants will be between $20,000 and $30,000 for a seventeen month period: in addition, a resource agency will be funded at approximately $70,000-$90,000 for each of two years.

These estimates do not bind the Assistant Secretary for Education except as may be required by applicable statute and regulations.

Application Forms: Application forms and program information packages are available and may be obtained by writing to the Fund for the Improvement of Postsecondary Education, Office of the Assistant Secretary for Education, DHEW, Attention: 13.925, 400 Maryland Avenue, S.W., Room 3123, Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages.

Applicable Regulations: The regulations governing awards made by the Fund for the Improvement of Postsecondary Education are contained in 45 CFR Part 1501. Awards are also subject to the provisions contained in 45 CFR Parts 100 and 100a, except that awards are not subject to the provisions of 45 CFR 100a. 26(b) relating to criteria for awards.

Further Information: For further information contact the Fund for the Improvement of Postsecondary Education, Office of the Assistant Secretary for Education, DHEW, Attention: 13.925, 400 Maryland Avenue, S.W.,

Room 3123, Washington, D.C. 20202. Telephone: (202) 245-8091.

(20 U.S.C. 1221d)

Dated: January 29, 1979.

MARY F. BERRY,
Assistant Secretary for Education.

(Catalog of Federal Domestic Assistance No. 13.925, Fund for the Improvement of Postsecondary Education)

[FR Doc 79-4368 Filed 2-7-79; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-79-912]

PUBLIC HOUSING MANAGERS

Certification

Application for Accreditation as Approved Certifying Organizations

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notice is given announcing that HUD is ready to receive and process applications for accreditation of organizations to act as Approved Certifying Organizations under the Public Housing Managers Certification Program.

DATE FOR SUBMISSION: An application may be submitted immediately upon publication of this Notice, or at any time thereafter until further notice to the contrary.

ADDRESS FOR SUBMISSION: Address application to: Chairman, Public Housing Managers Certification Review Committee, Office of Housing, Room 6246, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Wayne Hunter, Office of Public Housing, at the address listed above, 202-755-6460. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Requirements pertaining to the Public Housing Managers Certification Program, including eligibility standards and accreditation criteria pertaining to Approved Certifying Organizations, are set forth in Part 867 of Title 24 of the Code of Federal Regulations. Note that the original formulation of Part 867, as issued on September 29, 1976, was recently changed in some important respects by amendments published in Volume 43, No. 210 of the FEDERAL REGISTER (page 50426) on October 30, 1978. Three copies of the application shall be submitted. The application shall include information sufficient to permit HUD to decide whether the applicant meets the prescribed standards. After review of an application, HUD will inform the applicant of its decision.

Issued at Washington, D.C., February 1, 1979.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 79-4281 Filed 2-7-79; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-16164]

ALASKA NATIVE CLAIMS SELECTION

This decision rejects various Native and State selections surrounding Womens Bay near Kodiak, Alaska, and approves lands for conveyance to Koniag, Inc., Regional Native Corporation.

I. VILLAGE SELECTION APPLICATION REJECTED IN ENTIRETY VILLAGE SELECTION APPLICATIONS REJECTED IN PART

The below-listed village selection applications were filed pursuant to Sec. 12(a) and (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 withdrawn by Executive Order 8278, as amended, in the Womens Bay area of Kodiak Island:

Application No.	Date	Village corporation
AA-6688-A, Sec. 12(a)	Sept. 24, 1974, as amended Dec. 13, 1974.	Ouzinkie Native Corporation.
AA-8448-B, Sec. 12(a)	October 17, 1974, as amended Dec. 13, 1974.	Leisnoi, Inc.
AA-8448-F3, Sec. 12(b)	Dec. 17, 1975	Leisnoi, Inc.
AA-8448-K3, Sec. 12(b)	Dec. 17, 1975	Leisnoi, Inc.
AA-8448-L3, Sec. 12(b)	Dec. 17, 1975	Leisnoi, Inc.
AA-8448-M3, Sec. 12(b)	Dec. 17, 1975	Leisnoi, Inc.
AA-8459—A Sec. 12(a)	Oct. 7, 1974, as amended Dec. 13, 1974.	Bells Flats Natives, Inc.

Section 12 provides that each village corporation shall select the acreage allocated to it from lands withdrawn by Sec. 11(a) which provides that lands withdrawn or reserved for national defense purposes are excluded from withdrawal under this section.

Executive Order 8278, dated October 28, 1939, as amended, withdrew lands surrounding Womens Bay for military purposes. On December 1, 1975, PLO 5550 transferred jurisdiction of the lands from the Department of the Navy to the U.S. Coast Guard for defense purposes. On December 17, 1975, PLO 5566 partially revoked PLO 5550 and withdrew lands for Native selection. On December 14, 1977, PLO 5627 transferred jurisdiction to the Bureau of Land Management of a portion of the lands in the Womens Bay area that were withdrawn by PLO 5550 and withdrew it for conveyance to Koniag, Inc., Regional Native Corporation.

Those lands withdrawn by PLO 5550 and PLO 5627 are not available for Native selection pursuant to Sec. 12. The statutory deadline for filing selections pursuant to Sec. 12(a) was December 18, 1974 and Sec. 12(b) was December 18, 1975. The lands currently withdrawn by PLO 5566 were withdrawn for defense purposes (PLO 5550) until December 17, 1975 and therefore were only available for selection pursuant to Sec. 12(b).

Accordingly, village selections AA-6688-A, AA-8448-B, AA-8448-F3, AA-8448-K3, AA-8448-L3, AA-8448-M3 and AA-8459-A are hereby rejected as to the following described lands:

VILLAGE SELECTION AA-6688-A

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

That portion of U.S. Survey 2539 more particularly described as (protracted):

T. 28 S., R. 20 W.

Sec. 19, that portion formerly within PLO 5550;
Sec. 20, all;
Sec. 29 (fractional), that portion within and formerly within PLO 5550;
Sec. 30, that portion within and formerly within PLO 5550;
Sec. 31, that portion within PLO 5627 and PLO 5550;
Sec. 32 (fractional), that portion within PLO 5627 and PLO 5550.
Containing approximately 1,935 acres.

VILLAGE SELECTION AA-8448-B

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

That portion of U.S. Survey 2539, more particularly described as (protracted):

T. 28 S., R. 20 W.

Secs. 2, 10, 11 and 16, all;
Secs. 21 and 22 (fractional), all;
Sec. 23, that portion on Azimka Island, excluding U.S. Survey 444H;
Secs. 24 and 25 (fractional), all;

Sec. 26 (fractional), exculuding U.S. Survey 4441;
Sec. 27 (fractional), that portion south and east of Womens Bay and Blodgett Island;
Sec. 28 (fractional), all.
Sec. 29 (fractional), that portion within and formerly within PLO 5550;
Sec. 30, that portion within and formerly within PLO 5550;
Sec. 31, that portion within PLO 5627 and PLO 5550;
Sec. 32 (fractional), that portion within PLO 5627 and PLO 5550;
Sec. 33 (fractional), all;
Secs. 34 and 35 (fractional), that portion within PLO 5550.
T. 29 S., R. 20 W.
Secs. 5 and 6 (fractional), that portion within PLO 5627.
29 S., R. 21 W.
Sec. 1, that portion within PLO 5627.
Aggregating approximately 3,562 acres.

VILLAGE SELECTION AA-8448-K3

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

That portion of U.S. Survey 2539 more particularly described as (protracted):
T. 28 S., 20 W.
Sec. 21 (fractional), that portion within PLO 5627 and PLO 5550;
Secs. 28 and 29 (fractional), that portion within PLO 5627.
Containing approximately 120 acres.

VILLAGE SELECTION AA-8443-M3

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

That portion of U.S. Survey 2539 more particularly described as (protracted):
T. 28 S., R. 20 W.
Sec. 25 (fractional), all;
Sec. 26 (fractional), excluding Zaimka Island and U.S. Survey 444I;
Sec. 27 (fractional), that portion south and east of Womens Bay and Blodgett Island.
Containing approximately 488 acres.

VILLAGE SELECTION AA-8459-A

SEWARD, MERIDIAN, ALASKA (UNSURVEYED)

That portion of U.S. Survey 2539 more particularly described as (protracted):
T. 28 S., R. 20 W.
Sec. 23, that portion on Zaimka Island, including U.S. Survey 444H;
Sec. 25 (fractional), all;
Sec. 26 (fractional), including U.S. Survey 444I;
Sec. 27 (fractional), that portion south and east of Womens Bay;
Sec. 29 (fractional), that portion within and formerly within PLO 5550;
Sec. 30, that portion within and formerly within PLO 5550;
Sec. 31, that portion within PLO 5627 and PLO 5550;
Sec. 32 (fractional), that portion within PLO 5627 and PLO 5550;
Sec. 33 (fractional), all;
Secs. 34 and 35 (fractional), that portion within PLO 5550.
T. 29 S., R. 20 W.
Secs. 5 and 6 (fractional), that portion within PLO 5627.
T. 29 S., R. 21 W.
Sec. 1, that portion within PLO 5627.
Aggregating approximately 2,291 acres.

AA-8448-F3

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

That portion of U.S. Survey 2539 more particularly described as (protracted):
T. 28 S., R. 20 W.
Sec. 24, that portion of Zaimka Island and excluding U.S. Survey 444H;
Sec. 24 (fractional), that portion within PLO 5550;
Sec. 26, that portion on Zaimka Island.
Containing approximately 32 acres.

AA-8448-L3

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

That portion of U.S. Survey 2539 more particularly described as (protracted):
T. 28 S., R. 20 W.
Sec. 33 (fractional), excluding Nome Island;
Secs. 34 and 35 (fractional), that portion within PLO 5550.
Containing approximately 955 acres.

When this decision becomes final, selection application AA-8448-M3 will be closed of record. The lands remaining within the other selection applications will be processed at a later date.

II. 14(H)(3) SELECTION APPLICATION REJECTED IN ENTIRETY

On December 16, 1975, Natives of Kodiak, Inc. filed selection application AA-9106-E pursuant to Sec. 14(h)(3) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613 (Supp. V, 1975)) for the surface estate of certain lands in the Womens Bay area of Kodiak Island.

Executive Order 8278, as amended, withdrew all of the selected lands on October 28, 1939 for military purposes and it was still withdrawn for military purposes on December 31, 1976, the last date for filing Sec. 14(h)(3) selections.

Section 14(h) of the Act authorizes the Secretary of the Interior to withdraw unreserved and unappropriated public lands for conveyance to Natives residing in Kodiak. Therefore, since the lands were withdrawn for military purposes and were not withdrawn for selection by the Natives of Kodiak, AA-9106-E is rejected in its entirety.

14(H)(3) SELECTION AA-9106-E

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

That portion of U.S. Survey 2539 more particularly described as (protracted):
T. 28 S., R. 20 W.
Sec. 26 (fractional), excluding U.S. Survey 444I and Zaimka Island;
Sec. 27 (fractional), that portion within Blodgett Island.
Containing approximately 323 acres.

When this decision becomes final, selection application AA-9106-E will be closed of record.

III. 14(H)(2) SELECTION APPLICATION REJECTED IN PART

On July 22, 1975, Bells Flats Native Group filed selection application AA-9592 pursuant to Sec. 14(h)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613 (Supp. V, 1975)) for the surface estate of certain lands in the Womens Bay area of Kodiak Island.

Executive Order 8278, as amended, withdrew the lands which are the subject of this decision on October 28, 1939 for military purposes. The land was still withdrawn for military purposes until December 14, 1977, when PLO 5627 withdrew the lands pursuant to Sec. 14(h)(8) for selection by Koniag, Inc., Regional Native Corporation, who properly selected it on December 16, 1977.

Section 14(h) of the Act authorizes the Secretary of the Interior to withdraw unreserved and unappropriated public lands for conveyance to Native groups. Accordingly, Sec. 14(h)(2) selection application AA-9592 is hereby rejected as to the lands described below:

14(H)(2) SELECTION AA-9592

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

That portion of U.S. Survey 2539 more particularly described as (protracted):
T. 28 S., R. 20 W.
Sec. 29 (fractional), that portion within PLO 5627;
Sec. 31, that portion within PLO 5627;
Sec. 32 (fractional), that portion within PLO 5627.
T. 29 S., R. 21 W.
Sec. 1, that portion within PLO 5627.
Aggregating approximately 215 acres.

IV. STATE SELECTION APPLICATIONS REJECTED IN PART

The State of Alaska filed general purpose selection applications A-062768, as amended, on July 2, 1965; AA-597, as amended, on December 21, 1966; and AA-651, as amended, on January 6, 1967, 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 Womens Bay area of Kodiak Island.

Application A-062768 initially selected lands relinquished by the Navy at Gibson Bay (PLO 3507). This application was amended on February 15 and 17, 1967 to include all the land in Ts. 28 and 29 S., R. 20 W., Seward Meridian, Alaska, subject to prior valid existing rights. On June 12, 1972, the State submitted another amendment selecting all lands except patented lands in T. 29 S., R. 20 W. Application AA-597 initially selected the southern portion of the U.S. Naval Reserve relinquished by the Navy (PLO 4119). An amendment was filed on June 16, 1972, selecting all lands except patent-

ed lands within Ts. 28 and 29 S., Rs. 20 and 21 W., Seward Meridian, Alaska.

On January 6, 1967, application AA-651 initially selected T. 29 S., R. 21 W., Seward Meridian, Alaska, excluding two grazing leases and the U.S. Naval Reserve. An amendment was filed on June 16, 1972 which selected all lands except patented lands within T. 29 S., R. 21 W.

Section 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)) states that general purpose selections are to be made "* * * from the public lands * * * which are vacant, unappropriated and unreserved at the time of selection." The June 16, 1972 amendment to A-062768, AA-597 and AA-651 selected lands that were withdrawn for military purposes from October 29, 1939 to December 14, 1977, when PLO 5627 withdrew the lands for regional selection.

Accordingly, State selection applications A-062768, AA-597 and AA-651 are hereby rejected as to the following described lands:

STATE SELECTION A-062768

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

Those portions of U.S. Survey 2539 more particularly described as (protracted):

T. 29 S., R. 20 W.

Secs. 5 and 6 (fractional), that portion within PLO 5627.

State Selection AA-597

U.S. Survey 444I

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

Those portions of U.S. Survey 2539 more particularly described as (protracted):

T. 28 S., R. 20 W.

Secs. 21, 22 and 25 (fractional), that portion within PLO 5627;

Sec. 26 (fractional), that portion within PLO 5627 and excluding U.S. Survey 444I;

Secs. 27, 28 and 29 (fractional), that portion within PLO 5627;

Sec. 31, that portion within PLO 5627;

Sec. 32 (fractional), that portion within PLO 5627.

T. 29 S., R. 20 W.,

Secs. 5 and 6 (fractional), that portion within PLO 5627.

T. 29 S., R. 21 W.,

Sec. 1, that portion within PLO 5627.

STATE SELECTION AA-651 SEWARD MERIDIAN, ALASKA (UNSURVEYED)

T. 29 S., R. 21 W.,

Sec. 1, that portion within PLO 5627.

Aggregating approximately 844 acres.

The lands remaining within the selection applications will be processed at a later date.

LANDS PROPER FOR 14(h)(8) REGIONAL SELECTION APPROVED FOR INTERIM CONVEYANCE AND PATENT

On December 16, 1977, Koniag, Inc., Regional Native Corporation filed Sec. 14(h)(8) regional selection application AA-16164 under the provisions of Sec. 14(h) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 705; 43 U.S.C. 1601, 1613 (Supp. V, 1975)) for the surface and subsurface estates of lands at Womens Bay withdrawn for its selection by PLO 5627.

As to the lands described below, the application submitted by Koniag, Inc., Regional Native Corporation, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entries perfected under or being maintained in compliance with laws leading to acquisition of title.

This decision approves approximately 844 acres selected pursuant to Sec. 14(h)(8) for conveyance to Koniag, Inc., Regional Native Corporation, for a cumulative total of approximately 844 acres. This does not exceed the 44,418 acres allocated to Koniag, Inc., Regional Native Corporation for Sec. 14(h)(8) selection (42 FR 6431).

In view of the foregoing, the surface and subsurface estates of the following described lands (PLO 5627) are considered proper for acquisition by Koniag, Inc., Regional Native Corporation, and are hereby approved for conveyance pursuant to Sec. 14(h)(8) of the Alaska Native Claims Settlement Act:

U.S. Survey 444, Tract I, of the Russian Greek Church Mission Reserves situate at Kodiak, District of Alaska.

Containing 21.78 acres.

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

That portion of U.S. Survey 2539 more particularly located within (protracted) T. 28 S., R. 20 W., Secs. 21, 22, 28, 29, 31 and 32; T. 29 S., R. 20 W., Secs. 5 and 6; and T. 29 S., R. 21 W., Sec. 1 and described as follows:

Beginning at a point at the line of mean high tide on the southerly shore of Womens Bay, NORTH of USGS triangulation station "CHRIS"; thence westerly and northerly, along the line of mean high tide of Womens Bay, to a point at the line of mean high tide on the northwesterly shore of Womens Bay, near the most northerly end of the old shipyard, located northeasterly of USGS triangulation station "SHANNON"; thence N.38°30'W., approximately 500 feet to a point on the boundary of PLO 5566 described as bearing S.51°30'W., thence S.51°30'W.; approximately 1500 feet to a point; thence S.38°30'E., approximately 125 feet to a point, which is N.38°30'W., 300 feet distant from the centerline of the Chiniak Road, thence southwesterly, along a line which is 300 feet from and parallel to, the centerline of the Chiniak Road to a point which is common to the line described in Tract B of PLO 4119 as bearing N.25°49'30"W.; thence S.25°49'30"E., along a portion of the line described in Tract B of PLO 4119 to a point which is 50 feet southeasterly from the centerline and on the seaward side of the Chiniak Road; thence southerly and easterly, along a line which is 50 feet and parallel to, the centerline of the Chiniak Road, to a point NORTH of USGS triangulation station "CHRIS"; thence NORTH, to the line of mean high tide on the southerly shore of Womens Bay, the point of Beginning.

Containing approximately 377 acres.

That portion of U.S. Survey 2539 more particularly located within (protracted) T. 28 S., R. 20 W., Secs. 25, 26 and 27, described as follows:

Beginning at a point located S.59°E., 290 feet from USGS triangulation station "ENGLISH"; thence S. 31°W., 3800 feet to a point; thence EAST, approximately 4000 feet to a point at the line of mean high tide on the westerly shore of Chiniak Bay; thence northeasterly, northerly, and southwesterly, along the line of mean high tide of Chiniak and Womens Bays to a point; thence S.31°W., 220 feet more of less to the point of Beginning, excluding ANCAS Sec. 3(e) application AA-12828 and U.S. Survey 444, Tract I.

Containing approximately 445 acres.

Aggregating approximately 844 acres.

This conveyance is for all lands selected by application AA-16164, except possibly U.S. Coast Guard application ANCSA Sec. 3(e) AA-12828 of two acres, more or less, for the Womens Bay Entrance Light. It is currently impossible to determine whether AA-12828 and AA-16164 have lands in common. If survey shows that there is a conflict, then a Sec. 3(e) determination will be made.

The conveyance issued for the surface and subsurface estates of the lands described above shall contain the following reservations to the United States:

1. A right-of-way, AA-8174, 100 feet in width, traversing lands in protracted Secs. 21, 22, 28 and 29, T. 28 S., R. 20 W., Seward Meridian, Alaska, for a Federal Aid Highway. Act of August 27, 1958, as amended (72 Stat. 885; 23 U.S.C. 317);

2. A right-of-way, AA-11198, containing approximately 5.510 acres within protracted Sec. 21 T. 28 S., R. 20 W., Seward Meridian, Alaska, for a Federal Aid material site. Act of August 27, 1958, as amended (72 Stat. 885; 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 case file AA-16164-8E, 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 specificallly listed are prohibited:

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-

wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs Gross Vehicle Weight (GVW)).

a. (EIN 20a D9, L) An easement for a proposed access trail twenty-five (25) feet in width from site easement EIN 20b along the State highway northerly to the tidelands on Womens Bay. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

b. (EIN 20b D9, L) A one (1) acre site easement in Sec. 6, T. 29 S., R. 20 W., Seward Meridian, along the State highway which extends around the coast of Womens Bay. The uses allowed for a one (1) acre site are: Vehicle parking (e.g., aircraft, boats, ATV's, snowmoblies, cars, trucks), and loading or unloading. Loading or unloading shall be limited to 24 hours. Uses which are not specifically listed are prohibited.

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 of access as is now provided for under existing law;

3. The naval airspace reservation of Executive Order 8597, dated November 18, 1940; and

4. The terms and conditions of the agreement dated December 9, 1977, among Koniag, Inc., the Secretary of the Interior, and the Commandant of the U.S. Coast Guard. A copy of the agreement shall be attached to and become a part of the conveyance document and shall be recorded therewith. A copy of the agreement is located in the Bureau of Land Management case file for Koniag, Inc., Regional Native Corporation, serialized AA-16164. Any person wishing to examine this agreement may do so at the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501.

Koniag, Inc., Regional Native Corporation, is entitled to conveyance of 44,418 acres of land selected pursuant to Sec. 14(h)(8) of the Alaska Native Claims Settlement Act. To date, 844 acres of this entitlement have been approved for conveyance; the remaining entitlement of 43,574 acres will be conveyed at a later date.

The use permit dated June 24, 1978 between the Bureau of Land Management and Koniag, Inc., will terminate upon conveyance of these lands in accordance with Condition No. 1 of said permit.

There are no navigable water bodies within the described lands.

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 the Kodiak Mirror. 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 12, 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:

Koniag, Inc., Regional Native Corporation, P.O. Box 746, Kodiak, Alaska 99615.

Ouzinkie Native Corporation, P.O. Box 89, Ouzinkie, Alaska 99644.

Leisnoi, Inc., P.O. Box 641, Kodiak, Alaska 99615.

Bells Flats Natives, Inc., P.O. Box 794, Kodiak, Alaska 99615.

Natives of Kodiak, Incorporated, P.O. Box 164, Kodiak, Alaska 99615.

Bells Flats Native Group, P.O. Box 794, 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 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. 79-4320 Filed 2-7-79; 8:45 am]

[4310-84-M]

[CA 2545; CA 2545-A]

CALIFORNIA

Application; Correction

JANUARY 30, 1979.

In FR Doc. 78-29344, appearing on page 48083 of the Wednesday, October 18, 1978 issue, the notice is corrected to include, "T. 37 N., R. 4 E., Secs. 5, 7, 8, 18 and 19" under the heading "Mount Diablo Meridian, California."

JOAN B. RUSSELL,
Chief, Lands Section, Branch of Lands and Minerals Operations.

[FR Doc. 79-4305 Filed 2-7-79; 8:45 am]

[4310-84-M]

[ES 20065]

FLORIDA

Notice of Proposed Withdrawal and Reservation of Lands

The National Park Service, Department of the Interior, on October 16, 1978, filed application, Serial No. ES 20065, for the withdrawal of the following described lands from settlement, sales, location or entry, under all of the general land laws, including the mining and mineral leasing laws, subject to valid existing rights:

All that tract of land lying and being situate on Perdido Key, Township 3 South, Range 31 West, Tallahassee Meridian, in the County of Escambia, State of Florida, being more particularly bounded and described as follows:

Lot 2, in fractional Section 25;
Lots 1 and 2, in fractional Section 28;
Lot 2, in fractional Section 30;
Lot 3, in fractional Section 24.

Containing 195.26 acres of land, more or less, above the water line.

Being the same land set apart for the use of the War Department by Executive Order No. 8508 dated August 8, 1949.

Also being the same land classified for disposal by Public Land Order 1603 dated March 18, 1958;

A tract of land being all of fractional Sections 25, 26, and 27, Township 2 South, Range 26 West situated on Santa Rosa Island, Tallahassee Meridian, Escambia County, Florida.

Containing 767.68 acres, more or less;

A tract of land being all of fractional Sections 19 through 24 inclusive and 26 through 30 inclusive, Township 2 South,

Range 25 West and all of fractional Sections 19 through 23 inclusive, Township 2 South, Range 24 West, situated on Santa Rosa Island, Tallahassee Meridian, Okaloosa County, Florida.

Excepting from the above described tract of land that portion of Santa Rosa Island lying East of a line which lies East 1,327,473.95 feet of the origin of the State Co-ordinate System (Lambert Projection, Florida, North Zone).

Containing 2499.70 acres, more or less;

A tract of land situated, lying and being on Santa Rosa Island, Okaloosa County, Florida, being more particularly described as follows:

Beginning at a point on the centerline of the south end of Brooks Bridge over Santa Rosa Sound at Fort Walton, Florida: Thence South 39° 39', East, 996.60 feet to a point on the southerly right-of-way line of U.S. Highway No. 98, said point also being the point of beginning, the co-ordinates of said point are North 514, 250.43 feet and East 1,338,660.53 feet; thence easterly along said southerly right-of-way line curving to the left having a radius of 3175.36 feet for a distance of 662.40 feet and a long chord which bears South 56° 56' East, 661.31 feet; thence South 8° 14' West, 1090.00 feet, more or less, to the north shoreline of the Gulf of Mexico; thence westerly along the said shoreline to a point which bears North 78° 39' West, 601.00 feet; thence North 8° 14' East, 1,335.00 feet, more or less, to the point of beginning.

Bearings are grid bearings referred to in Lambert Co-ordinate System, State of Florida, North Zone.

Being known as radar station "Dick", and containing 17.00 acres, more or less; and

A tract of land being all of fractional Sections 19 through 23 inclusive and 26 through 29 inclusive in Township 2 South, Range 23 West of Tallahassee Meridian on Santa Rosa Island in Okaloosa County, Florida.

Expecting from the above described tract of land that portion of Santa Rosa Island lying West of a line which lies East 1,343,313.95 feet of the origin of the State Co-ordinate System (Lambert Projection, Florida, North Zone).

Also excepting from the above described tract of land that portion of Santa Rosa Island lying North of the Northerly right-of-way line of U.S. Highway No. 98 and West of a line which lies East 1,344,813.95 feet of the origin of the State Co-ordinate System (Lambert Projection, Florida, North Zone).

Containing 951.33 acres, more or less.

The applicant agency desires that the land be withdrawn and reserved for inclusion in the Gulf Islands National Seashore. The lands on Santa Rosa Island were withdrawn for the use of the War Department by Presidential Proclamation No. 2659 on August 13, 1945, and are presently part of Eglin Air Force Base.

On or before March 12, 1979, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Pursuant to Section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the undersigned officer of the Bureau of Land Management on or before March 12, 1979. Notice of the public hearing will be published in the FEDERAL REGISTER giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM Manual, Sec. 2351.16B.

The Department of the Interior's regulations provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of assuring that the area sought is the minimum essential to meet the applicant's needs, providing for the maximum concurrent utilization of the lands for purposes other than the applicant's, and reaching agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior, who will determine whether or not the lands will be withdrawn and reserved as requested by the applicant agency. The determination of the Secretary on the application will be published in the FEDERAL REGISTER. The Secretary's determination shall, in a proper case, be subject to the provisions of section 204(c) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2752. The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws and the mineral leasing laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. The segregative effect of this proposed withdrawal shall terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications in connection with this proposed withdrawal should be addressed to the Director, Eastern States Office, Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland 20910.

DAVID P. LODZINSKI,
Acting Director,
Eastern States.

[FR Doc. 79-4270 Filed 2-7-79; 8:45 am]

[4310-84]

[ES 20066]

FLORIDA

Proposed Withdrawal and Reservation of Lands

The National Park Service, Department of the Interior, on October 16, 1978, filed application, Serial No. ES 20066, for the withdrawal of the following described lands from settlement, sale, location or entry, under all of the general land laws, including the mining and mineral leasing laws, subject to valid existing rights:

All that certain tract or parcel of land known as Fort McRae Military Reservation lying and being situate at the east end of Perdido Key, County of Escambia, State of Florida, and being more particularly described as follows:

Tallahassee Meridian
Township 3 South
Range 31 West
Section 34, Lot 1
Sections 33 and 34, the former Robertson Island, now connected to Lot 1 of Sec. 34, unsurveyed.

Containing 135.00 acres of land, more or less, above the water-line.

The applicant agency desires that the land be withdrawn and reserved for inclusion in the Gulf Islands National Seashore.

The lands were withdrawn from the public domain and reserved for use of the Department of the Navy by Public Land Order 1603, dated March 18, 1958.

On or before March 12, 1979, all persons who wish to submit comments, suggestions, or objections in connection with the propsed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Pursuant to Section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the undersigned officer of the Bureau of Land Management on or before March 12, 1979. Notice of the public hearing will be published in the FEDERAL REGISTER giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM Manual, Sec. 2351.16B.

The Department of the Interior's regulations provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of assuring that the area sought is the minimum essential to meet the applicant's needs, providing for the maximum concurrent utilization of the lands for purposes other than the applicant's, and reaching an agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior, who will determine whether or not the lands will be withdrawn and reserved as requested by the applicant agency. The determination of the Secretary on the application will be published in the FEDERAL REGISTER. The Secretary's determination shall, in a proper case, be subject to the provisions of section 204(c) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2752. The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws and the mineral leasing laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. The segregative effect of this proposed withdrawal shall terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications in connection with this proposed withdrawal should be addressed to the Director, Eastern States Office, Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland 20910.

DAVID P. LODZINSKI,
Acting Director,
Eastern States.

[FR Doc. 4271 Filed 2-7-79; 8:45 am]

[4310-84-M]

[ES 20059]

FLORIDA

Proposed Withdrawal and Reservation of Land

The National Park Service, Department of the Interior, on October 13, 1978, filed application, Serial No. ES 20059, for the withdrawal of the following described land from settlement, sale, location or entry, under all of the general land laws, including the mining and mineral leasing laws, subject to valid existing rights:

All those tracts of land lying and being situate in fractional Section 16, T. 3 S., R. 31 W., Tallahassee Meridian, Escambia County, Florida, being more particularly bounded and described as follows:

Commencing at a granite monument on the easterly boundary of the Fort Barrancas Military Reservation, which is also the westerly boundary of the Pensacola Naval Reservation, said granite monument bearing South 89° 44' 57" East and 6012 feet distant from the Pensacola Light; thence South 8° 31' East, 466 feet, more or less, along aforesaid boundary line, to the shore of Pensacola Bay; thence Westerly along the meanders of the shoreline an approximate distance of 5600 feet to the point of beginning: thence North 00°00'03" West a distance of 1150.00 feet; thence North 89° 44' 57" West a distance of 1200.31 feet; thence South a distance of 2350 feet to the shore of Pensacola Bay; thence Northeasterly and Easterly along the meanders of the shoreline approximately 1880 feet to the point of beginning.

Containing 43.50 acres of land, more or less, above the water line.

Being part of the same land transferred to the Department of Commerce for use as a lighthouse reservation, by Executive Order 4739, dated October 5, 1927; and

Commencing at a granite monument on the easterly boundary of the Fort Barrancas Military Reservation, which is also the westerly boundary of the Pensacola Naval Reservation, said granite monument bearing South 89° 44' 57" East and 6012 feet distant from the Pensacola Light; thence South 8° 31' East, 466 feet, more or less, along aforesaid boundary line, to the shore of Pensacola Bay; thence Westerly along the meanders of the shoreline an approximate distance of 4400 feet to the point of beginning; thence North, a distance of 1250 feet, more or less; thence North 89° 44' 57" West, a distance of 1200 feet, more or less, to the east boundary of the Coast Guard Station; thence South 00° 00' 03" East, by and with the east boundary of the Coast Guard Station, a distance of 1150 feet, more or less, to the shore of Pensacola Bay; thence Easterly, along the meanders of the shoreline, an approximate distance of 1200 feet, to the point of beginning.

Containing 31.50 acres of land, more or less, above the water line.

Being part of the same land transferred to the Department of Commerce for use as a lighthouse reservation by Executive Order 4739 dated October 5, 1927. Also being the same land transferred by the United States Coast Guard to the Department of the Navy on August 24, 1955.

The applicant agency desires that the land be withdrawn and reserved for inclusion in the Gulf Islands National Seashore.

On or before March 12, 1979, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Pursuant to Section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the undersigned officer of the Bureau of Land Management on or before March 12, 1979. Notice of the public hearing will be published in the FEDERAL REGISTER giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM Manual, Sec. 2351.16B.

The Department of the Interior's regulations provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of assuring that the area sought is the minimum essential to meet the applicant's needs, providing for the maximum concurrent utilization of the lands for purposes other than the applicant's, and reaching agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior, who will determine whether or not the lands will be withdrawn and reserved as requested by the applicant agency. The determination of the Secretary on the application will be published in the FEDERAL REGISTER. The Secretary's determination shall, in a proper case, be subject to the provisions of section 204(c) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2752. The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws and the mineral leasing laws, to the extent that the withdrawal applied for, if and when effected, would prevent and form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. The segregative effect of this proposed withdrawal shall terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications in connection with this proposed withdrawal should be addressed to the Director, Eastern States Office, Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland 20910.

DAVID P. LODZINSKI,
Acting Director,
Eastern States.

[FR Doc. 79-4272 Filed 2-7-79; 8:45 am]

[4310-84-M]

[ES 20054]

MISSISSIPPI

Proposed Withdrawal and Reservation of Lands

The National Park Service, Department of the Interior, on October 12, 1978, filed application, Serial No. ES 20054, for the withdrawal of the following described land from settlement, sale, location or entry, under all of the general land laws, including the mining and mineral leasing laws, subject to valid existing rights:

All those tracts or parcels of land lying and being on Ship Island, Harrison County, Mississippi, more particularly described as follows:

Commencing at the Ship Island Lighthouse, said Lighthouse having the longitude of 88° 57' 57.8" West and latitude of 30° 12' 45.1" North; thence Westerly, 1000 feet to a point on the North shoreline of Ship Island, said point being the point of beginning; thence along the meanders of the North shoreline of said island, in a generally easterly direction to a point 400 feet East of aforesaid Lighthouse; thence due South across Ship Island to the South shoreline of said island; thence with the meanders of the South shoreline of Ship Island, in a generally Westerly direction to a point 1000 feet West of aforedescribed Lighthouse; thence due North across Ship Island to the North shoreline and the point of beginning.

Containing 42.000 acres, more or less, above the water line.

Being a portion of those lands not conveyed out of Ship Island Military Reservation, but retained for Lighthouse purposes. The West boundary herein described being described also in Parcel "A", and the East boundary being described in Parcel "B", of a quitclaim deed from the United States of America to Joe Graham Post Number 119, The American Legion, Incorporated, dated September 15, 1933, and recorded among the land records of Harrison County, Mississippi in Deed Book 199 pages 197 to 199.

Also being known as Parcel "A" (II) of the Ship Island Light Reservation as defined by the Acting Secretary of Commerce on August 15, 1929, pursuant to Public Law No. 1022, 70th Congress, approved March 4, 1929; and

Commencing at the Ship Island Lighthouse, said lighthouse having the longitude of 88° 57' 57.8" West and latitude of 30° 12' 45.1" North; thence Westerly, 3640 feet to a point on the North shoreline of Ship Island, said point being the Northwest corner of a parcel of land conveyed to the American Legion from the United States of America by deed dated September 15, 1933, said tract being designated as Parcel "A" and recorded among the land records of Harrison County, Mississippi in Deed Book 199 pages 197 to 199, said point also being the beginning of the hereafter described tract of land; thence due South, across Ship Island to the South shoreline of said island; thence along the meanders of the South shoreline of said island, in a generally westerly direction to meet the North shoreline on the most westerly point of Ship Island; thence along the meanders of the North shoreline of said island to the point of beginning.

Containing 50.00 acres, more or less, above the water line.

Being known as Parcel "B" (I) of the Ship Island Light Reservation as defined by the Acting Secretary of Commerce on August 15, 1929, pursuant to Public Law No. 1022, 70th Congress, approved March 4, 1929.

The applicant agency desires that the land be withdrawn and reserved for inclusion in the Gulf Islands National Seashore. The land is presently withdrawn for lighthouse purposes by Executive Order No. 4584, February 15, 1927, as amended by the Act of Congress of March 4, 1929 (45 Stat. 1556), and by the Executive order of July 7, 1852.

On or before March 12, 1979, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Pursuant to Section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the undersigned officer of the Bureau of Land Management on or before March 12, 1979. Notice of the public hearing will be published in the FEDERAL REGISTER giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM Manual, Sec. 2351.16B.

The Department of the Interior's regulations provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of assuring that the area sought is the minimum essential to meet the applicant's needs, providing for the maximum concurrent utilization of the lands for purposes other than the applicant's, and reaching agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior, who will determine whether or not the lands will be withdrawn and reserved as requested by the applicant agency. The determination of the Secretary on the application will be published in the FEDERAL REGISTER. The Secretary's determination shall, in a proper case, be subject to the provisions of section 204(c) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2752. The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws and the mineral leasing laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. The segregative effect of this proposed withdrawal shall terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications in connection with this proposed withdrawal should be addressed to the Director, Eastern States Office, Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland 20910.

DAVID P. LODZINSKI,
Acting Director,
Eastern States.

[FR Doc. 79-4274 Filed 2-7-79; 8:45 am]

[4310-84-M]

[M 42697]

MONTANA

Application

FEBRUARY 2, 1979.

Notice is hereby given that, pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Shell Oil Company has applied for a 6-inch oil and gas pipeline right-of-way for the following lands:

PRINCIPAL MERIDIAN, MONTANA

T. 22 N., R. 60 E.,
Sec. 20, Lot 4 and SE¼SW¼.

FIFTH PRINCIPAL MERIDIAN, NORTH DAKOTA

T. 148 N., R. 105 W.,
Sec. 10, Lots 3 and 4; and
Sec. 15, Lot 1.

This pipeline will convey natural gas across 0.75 miles of public lands in Richland County, Montana, and McKenzie County, North Dakota.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to District Manager, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301.

EDWARD H. CROTEAU,
Acting Chief, Branch of
Lands and Minerals Operations.

[FR Doc. 79-4306 Filed 2-7-79; 8:45 am]

[4310-84-M]

[N-912]

NEVADA

Initial Inventory of Wilderness

JANUARY 30, 1979.

The Nevada State Office of the Bureau of Land Management has begun its initial inventory of wilderness in Nevada pursuant to Section 603 of the Federal Land Policy and Management Act of 1976. The initial inventory will review all public lands in Nevada and ascertain which obviously and clearly do not contain wilderness characteristics as specified by Congress in the 1964 Wilderness Act. Those that do not qualify will be dropped from further wilderness consideration and all restrictions imposed by Section 603 of the Federal Land Policy and Management Act to protect wilderness values will be lifted. Those areas that may have wilderness values will be intensively studied to determine which actually do contain wilderness characteristics specified by law and should be designed Wilderness Study Areas for ultimate consideration by Congress for inclusion in the National Wilderness Preservation System. Information on the Bureau's progress can be obtained from the Bureau of Land Management, Federal Building, 300 Booth Street, Room 3008, Reno, Nevada 89509.

Dated: January 30, 1979.

E. I. ROWLAND,
State Director, Nevada.

[FR Doc. 79-4307 Filed 2-7-79; 8:45 am]

[4310-84-M]

[OR 17390; 2310 (943.4)]

OREGON

Proposed Withdrawal and Reservation of Lands

The Bureau of Land Management, Department of the Interior, on January 15, 1979, filed application Serial No. OR 17390 for the withdrawal of the following described lands from operation of the mining laws but not the mineral leasing laws, subject to valid existing rights:

WILLAMETTE MERIDIAN

T. 2 S., R. 6 E.,
Sec. 21, E½SE¼NE¼, SW¼SE¼NE¼.

The area described contains 30 acres of revested Oregon and California Railroad grant lands in Clackamas County, Oregon.

The land encompasses the Rock Corral, an historic campsite on the Barlow Road branch of the Oregon Trail. The Bureau of Land Management desires that the land be withdrawn and reserved for protection of the historic and scenic values of this significant cultural resource.

For a period of 40 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the State Director, Bureau of Land Managment, at the address shown below, on or before March 12, 1979. Notice of the public hearing will be published in the FEDERAL REGISTER giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM Manual, Sec. 2351.16B.

The Department of the Interior's regulations provide that the authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will also assure that the area sought is the minimum essential for the proposed use and provide for the maximum concurrent utilization of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn and reserved as requested. The determination of the Secretary on the application will be published in the FEDERAL REGISTER. The Secretary's determination shall, in a proper case, be subject to the provisions of section 204(c) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2752.

The above described lands are temporarily segregated from the mining laws but not the mineral leasing laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. The segregative effect of this proposed withdrawal shall terminate upon (a) rejection of the application by the Secretary, (b) withdrawal of the lands by the Secretary, or (c) two years from the date of publication of this notice. If the withdrawal is approved, the segregation will continue for the duration of the withdrawal.

All communications (except public hearing requests) in connection with this proposed withdrawal should be addressed to the undersigned officer, Bureau of Land Management, Department of the Interior, P.O. Box 2965, Portland, Oregon 97208.

Dated: January 30, 1979.

HAROLD A. BERENDS,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-4273 Filed 2-7-79; 8:45 am]

[4310-84-M]

UTAH; MANAGEMENT OF WILDERNESS STUDY AREAS

Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the following public meeting will be held to discuss the Draft Interim Management Policy and Proposed Mining Regulations for Wilderness Study Areas (published in FEDERAL REGISTER January 12, 1979): Public Meeting—Salt Lake City, February 27, Little Theater, Salt Palace, 7 p.m.

Written and oral comments will be accepted at the meeting. People who cannot attend the meeting should address their written comments to the Director (303), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240. The period for public review and comment continues through March 13, 1979.

Dated: February 2, 1979.

WILLIAM LEAVELL,
Associate State Director.

[FR Doc. 79-4310 Filed 2-7-79; 8:45 am]

[4310-84-M]

[Wyoming 66267]

WYOMING

Application

JANUARY 30, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Cities Service Gas Company of Oklahoma City, Oklahoma filed an application for a right-of-way to construct a 4½ inch pipeline and related anode facilities for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 23 N., R. 94 W.,
Sec. 20, E½SW¼.

The pipeline with appurtenant anode facilities will transport natural

gas produced from the AMOCO P-1 well located in the NW¼SW¼ of sec. 20 to a point of connection with Cities Service Gas Company's existing gathering line in the SW¼NE¼ of sec. 29, all within T. 23 N., R. 94 W., 6th P.M., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-4308 Filed 2-7-79; 8:45 am]

[4310-84-M]

[Wyoming 66691]

WYOMING

Application

JANUARY 30, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation of Salt Lake City, Utah filed an application for a right-of-way to construct a 4½ inch O. D. pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 12 N., R. 94 W.,
Sec. 18, S½NE¼, NE¼NE¼, E½SW¼ and NW¼SE¼;
Sec. 19, lot 1.

The pipeline is a proposed addition to an existing gathering system transporting natural gas from a well in the NE¼NE¼ of section 18 into an existing pipeline in lot 1 of section 19, T. 12 N., R. 94 W., in Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-4309 Filed 2-7-79; 8:45 am]

[4310-31-M]

Geological Survey

OIL AND GAS WELL COMPLETION AND WORKOVER OPERATIONS ON THE OUTER CONTINENTAL SHELF

Proposed Development of Standard for Training and Qualifications of Personnel and Solicitation of Public Comment on Content and Scope of the Standard

Notice is hereby given that pursuant to 30 CFR 250.11, 250.41, 250.43, and 250.46, the U.S. Geological Survey (USGS) intends to develop a standard for the training and qualification of personnel engaged in offshore oil and gas well completion and workover operations and in the support services and activities associated with those operations.

The purpose of the standard is to ensure that personnel possess the required knowledge and skills in operations, equipment, techniques, and procedures to maintain the control of oil and gas wells during completion and workover operations or during any operation where a well which is capable of flowing oil or gas is opened to the atmosphere, its wellhead is removed, or the normal safety controls on the well are taken out of service.

The USGS contemplates that the developed standard will provide the minimum criteria for the training of all well completion and workover personnel whose decisions or actions have a significant bearing on safety or environmental protection.

It is intended that the developed standard will be referenced as a requirement in the finalized Outer Continental Shelf (OCS) Order No. 6, which is now being developed for all OCS Areas. This Order would also require personnel, whose job duties relate to a conventional rig operating in a drilling mode to deepen or sidetrack a well, to be trained and qualified in accordance with the USGS OCS Training Standard, "Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations," No. T 1 (GSS-OCS-T 1).

Interested parties may submit written comments and suggestions on the proposed standard to the Chief, Conservation Division, U.S. Geological Survey, Mail Stop 600, National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092, on or before April 9, 1979.

Comments are specifically requested on the following points:

1. The identification of those specific operations, activities, job responsibilities, and job classifications to be considered in the establishment of standards.
2. The criteria for qualifying personnel and for the maintenance of the qualification.
3. The criteria for accreditation of organizations who provide or seek to provide training and certification of qualifications of personnel.
4. Procedures to be used in the development and implementation of the standard.
5. Date and time interval considerations for the implementation process.

For further information, contact Mr. Richard B. Krahl, Chief, Branch of Marine Oil and Gas Operations, Conservation Division, U.S. Geological Survey, Mail Stop 620, National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092, telephone 703-860-7531.

Dated: February 2, 1979.

HENRY W. COULTER,
Acting Director.

[FR Doc. 79-4267 Filed 2-7-79; 8:45 am]

[4310-84-M]

Office of the Secretary

LIVESTOCK GRAZING ON PUBLIC LANDS

Schedule of Fees, 1979

Pursuant to the authority vested in the Secretary of the Interior, notice is hereby given of the schedule of fees for the 1979 fee year beginning March 1, 1979, and ending February 29, 1980, for livestock grazing on the public lands.

For the purpose of establishing charges, one animal unit month (AUM) shall be considered equivalent to grazing use by one cow, five sheep, or one horse for one month.

Bills shall be issued in accordance with the rates prescribed in this notice.

INSIDE STATUTORY GRAZING DISTRICTS

Pursuant to Departmental regulations (43 CFR 4130.5-1(a)), as published January 10, 1979 (44 FR 2173), fees within districts, except as otherwise provided herein, shall be $1.89 per AUM.

Exceptions to the above rates are hereby set as follows for certain LU project lands (Bankhead-Jones Land) in order to continue the basis of fees that has heretofore been established:

Arizona. For the San Simon project (Cienega area) transferred to the Department by Executive Order 10322, the fees shall be $2.03 per AUM.

Colorado. For the Great Divide project transferred to the Department by Executive Order 10046, the fees shall be $2.03 per AUM.

Montana. For all LU lands within districts transferred to the Department by Executive Order 10787, the fees shall be $2.03 per AUM.

New Mexico. For the Hope Land project transferred to the Department by Executive Order 10787, the fees shall be $1.98 per AUM. For the San Simon project (Cienega area) transferred to the Department by Executive Order 10322, the fees shall be $2.03 per AUM.

OUTSIDE STATUTORY GRAZING DISTRICTS (EXCLUSIVE OF ALASKA)

Pursuant to Departmental regulations (43 CFR 4130.5-(a)), the rate for grazing leases except as otherwise provided herein, shall be $1.89 per AUM.

Exceptions to the above rate are hereby set as follows for certain Lu project lands and for all O&C and intermingled public domain lands in Western Oregon in order to continue the basis of fees that has heretofore been established:

Montana. For those Milk River project lands outside districts transferred to the Department by Executive Order 18787, the fees shall be $2.03 per AUM.

Wyoming. For the Northeast Wyoming project lands transferred to the Department by Executive Order 10046 and amended by Executive Order 10175, the fee shall be $2.03 per AUM.

Western Oregon: For Western Oregon, the fee shall be $2.03 per AUM.

GARY J. WICKS,
Deputy Assistant Secretary of the Interior.

FEBRUARY 1, 1979.

[FR Doc. 79-4366 Filed 2-7-79; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES V. BRISTOL-MYERS COMPANY ET AL.

Public Comments and Government's Response Thereto Relating to Proposed Final Judgment Against the Beecham Defendants

Pursuant to requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), set out below are: two separate public comments received from (1) Professor John C. Sheehan, Massachusetts Institute of Technology, and Arthur D. Little, Inc., and (2) Ayerst Laboratories Division of American Home Products Corporation; objections of Bristol-Myers Company (a defendant in this lawsuit); and the government's responses thereto, all relating to a proposed final Judgment against Beecham Group Limited and Beecham Inc. in *U.S.* v. *Bristol-Myers et al.*, M.D.L. Docket No. 50, Civil Action No. 822-70 (D.D.C.).

Dated: January 29, 1979.

CHARLES F. B. MCALEER,
Special Assistant for Judgment Negotiations.

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Bristol-Myers Company, Beecham Group Limited, and Beecham Inc.* Defendants.

M.D.L. Docket No. 50.

Civ. No. 822-70.

RESPONSE OF THE UNITED STATES TO COMMENTS OF SHEEHAN ET AL., RELATING TO PROPOSED FINAL JUDGMENT AGAINST THE BEECHAM DEFENDANTS

Pursuant to 15 U.S.C. 16 (b), the United States submits this response to comments [1] received from Professor John C. Sheehan, Arthur D. Little, Inc., and Massachusetts Institute of Technology (collectively "Sheehan et al."), in connection with a proposed Final Judgment that would, if approved by the Court, dispose of this action against Beechan Group Limited and Beecham Inc. The comments seek certain modifications in both the proposed Judgment and the Competitive Impact Statement ("CIS"). These modifications are intended, according to the comments, to remove any possible "inaccuracy or ambiguity concerning the ownership of U.S. Patent No. 3,159,617," [2] and to avoid the possibility of any unfavorable and inadvertent impact on Sheehan et al.'s interests concerning that patent.

After careful consideration of these comments, we have concluded that the changes requested by Sheehan et al. are unnecessary for two reasons. First, the clarification provided in this response makes it reasonably certain, even without the modifications requested, that neither the proposed final judgment nor the CIS will have any unfavorable impact on Sheehan et al.'s interests in U.S. Patent No. 3,159,617, or will result in any ambiguity concerning the ownership of that patent. Second, such modifications would probably be largely ineffective as a remedial measure anyway since both the proposed judgment and CIS have already been published in the FEDERAL REGISTER and a summary of them published in at least one newspaper.

1. A statement is made in the comments about "possible inaccuracy * * * concerning the ownership of U.S. Patent No. 3,159,617." Apparently, that statement refers, in turn, to a statement in the CIS (p. 5, n. 3) that U.S. patent No. 3,159,617 was "assigned" to defendant Bristol-Myers Company ("Bristol"). Actually, the patent issued to Dr. Sheehan, a professor at M.I.T., who had previously assigned to Arthur D. Little, Inc. ("ADL") the patent application that ultimately issued as U.S. Patent No. 3,159,617. By an agreement of April 25, 1961, ADL, in turn, granted to Bristol certain rights in that patent application; those rights are described in the agreement as "an exclusive license, including the right to grant sublicenses" (Art. II). Bristol has exercised that right several times; on January 1, 1967, Bristol granted to Beecham Group Limited, under U.S. Patent No. 3,159,617, rights that are described as "a non-exclusive sublicense, *not* including the right to grant further sublicenses" (emphasis added). Therefore, it seems clear from this that Beecham has no right to grant to anyone else any rights in that patent.

2. Several statements are made in the comments about the possibility of an inadvertently unfavorable impact upon Sheehan et al., and about possible ambiguity in the ownership of U.S. Patent No. 3,159,617. Apparently, those statements refer, in turn, to references to that patent in footnotes 3 and 7, on pages 5 and 16, respectively, of the CIS. The patent is referred to in the CIS because it is part of the factual background of this litigation, because the defendants Beecham and Bristol both have some rights under it, and because the patent is the subject of an agreement between them. Whatever possibility of unfavorable impact or ambiguity may exist by virtue of references to the patent in the CIS, it is clear, from the facts set forth above, that those semisynthetic penicillin patents that Beecham has the right to license do not include U.S. Patent No. 3,159,617.

3. As for the proposed Final Judgment, it makes no specific reference at all to U.S. Patent No. 3,159,617, although the patent is embraced within the Judgment's broad definition of "semisynthetic penicillin patents" (Art. II(L)). That definition also embraces a number of other patents that Beecham has licensed to Bristol, and that, like U.S. Patent No. 3,159,617, Beecham has no further right to license or sublicense. The proposed Judgment was so structured because we did not know, and did not want to assume the burden of finding out, precisely what relevant Patents Beecham actually had the right to license. By broadly defining

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[1] "Comments on Final Judgment Published November 3, 1978, in the FEDERAL REGISTER Vol. 34—No. 214," dated December 20, 1978 ("comments").

[2] As the CIS correctly notes, that patent relates to a process (called acylation) for making semisynthetic penicillins from 6-aminopenicillanic acid.

the class of relevant patents, the Judgment would shift that burden to Beecham. Nevertheless, we think the proposed Judgment is clear and unambiguous about Beecham's compulsory licensing obligation under it. Article VI(C) of the proposed Final judgment requires Beecham to grant a license, upon written request, under any "semisynthetic penicillin patent", *but only if* "Beecham has the right to license [such patent] as of the date of any such request [for it]." Thus, since Beecham has no such right now with respect to U.S. Patent No. 3,159,617 (as noted above), the proposed Final Judgment does not require, or even purport to require, Beecham to grant any rights under that patent. And the proposed Judgment would do so only if Beecham subsequently acquires such right and retains it at the time of a request for such a license under the proposed Judgment.

Dated: January 29, 1979.

Respectfully submitted: Thomas H. Liddle, Robert S. Schwartz, Lee J. Keller, *Attorneys, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530, 202/724-7969.*

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Response of the United States to Comments of Sheehan et al., Relating to Proposed Final Judgment Against the Beecham Defendants and Comments on Final Judgment Published November 3, 1978, in the Federal Register Vol. 34—No. 214 were served this date by certified mail upon the following counsel:

Richard A. Whiting, Esq., Steptoe & Johnson, 1250 Connecticut Ave., N.W., Washington, D.C. 20036.

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Dated: January 29, 1979.

THOMAS H. LIDDLE,
Attorney, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530.

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Bristol-Myers Company Beecham Group Limited*, and *Beecham Inc.*, Defendants.

Civil No. 822-70.

COMMENTS ON FINAL JUDGMENT PUBLISHED NOVEMBER 3, 1978, IN THE FEDERAL REGISTER VOL. 34—NO. 21

These comments are submitted by Professor John C. Sheehan, Arthur D. Little, Inc. (hereinafter LITTLE) and Massachusetts Institute of Technology (hereinafter MIT), because the proposed Final Judgment may inadvertently affect their interests with respect to U.S. Patent No. 3,159,617, covering an invention made by Prof. Sheehan of MIT. Prof. Sheehan is a world recognized authority on the chemistry of penicillin and in addition to his patents he has authored or co-authored a large number of journal articles on penicillins and related subjects. Prof. Sheehan and MIT assigned the application which matured into U.S. Patent No. 3,159,617 to LITTLE, a Massachusetts corporation having its principal place of business at 25 Acorn Park, Cambridge, Massachusetts. MIT, Prof. Sheehan and LITTLE share in royalties received from the licensing of U.S. Patent 3,159,617. LITTLE has licensed U.S. Patent 3,159,617 to Bristol-Myers Company, who in turn has granted sublicenses to Beecham Inc., as well as to other manufacturers of semisynthetic penicillin. Prof. Sheehan, MIT and LITTLE receive income under the license and sublicenses.

It is believed that the proposed Final Judgment as presently phrased may inadvertently have an unfavorable impact upon MIT, Prof. Sheehan and LITTLE. As set forth more fully below, it is respectfully submitted that any such inadvertent effect with respect to U.S. Patent 3,159,617 may be easily avoided by changes which would not alter the competitive impact detailed in the Competitive Impact Statement. Accordingly, it is respectfully requested that

(1) the statement, "a patent (No. 3,159,617) assigned to Bristol and relating to the acylation of 6-APA (a crucial step in commercial production of all semisynthetic penicillins)" be striken from footnote [3] of Paragraph II.B. of the Competitive Impact Statement;

(2) "(U.S. Pats. Nos. 3,159,617 and 3,576,797)" of footnote [7] of Paragraph III.D.3. of the Competitive Impact Statement be modified to read "(U.S. Pat. No. 3,576,797)"; and

(3) "United States Patent 3,159,617" be added as subparagraph (3) after the statement, "The term 'semisynthetic penicillin patent' does not include:" in Paragraph II(L) of the proposed Final Judgment.

These requested amendments in the proposed Final Judgment and Competitive Impact Statement would remove any present inaccuracy or ambiguity concerning the ownership of U.S. Patent No. 3,159,617, would eliminate the possibility of any undesirable and unintended impact upon Prof. Sheehan, MIT or LITTLE, none of whom are parties to the original suit or to the Final Judgment, and would not alter the relative positions of the United States Government and the defendant Beecham.

These comments and requests for modification of the proposed Final Judgment and Competitive Impact Statement are submitted in accordance with the provisions of Section V of the Competitive Impact Statement. Favorable consideration and entering of the requested amendments to the Final Judgment and Competitive Impact Statement is respectfully requested.

Dated: December 20, 1978.

Respectfully submitted: Richard T. Murphy, Jr., *Vice President and Corporate Counsel, Arthur D. Little, Inc.;* R. J. Horn, *Kenway and Jenney, Attorneys, Massachusetts Institute of Technology and* John C. Sheehan, *Patentee, U.S. Patent 3,159,617.*

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Bristol-Myers Company, Beechan Group Limited*, and *Beecham Inc.*, Defendants.

M.D.L. Docket No. 50

Civ. No. 822-70

RESPONSE OF THE UNITED STATES TO COMMENTS OF AYERST LABORATORIES DIVISION OF AMERICAN HOME PRODUCT CORPORATION, RELATING TO PROPOSED FINAL JUDGMENT AGAINST THE BEECHAM DEFENDANTS

I. INTRODUCTION

Pursuant to 15 U.S.C 16(b), the United States of America submits this response to comments and supporting materials [1] filed by Ayerst Laboratories Division of American Home Products Corporation ("Ayerst"), relating to a proposed Final Judgment that would, if approved by the Court, dispose of this action against Beecham Group Limited and Beecham Inc. (collectively "Beecham"). In its comments, Ayerst asks that certain provisions of Article VIII of the proposed Judgment be revised to require Beecham to assign to Ayerst without charge Beecham's trademarks Penbritin and Penbritin S (collectively "Penbritin"). As currently drafted, those provisions (which expressly exclude Penbritin) would require Beecham to assign, without charge, certain other trademarks to persons by whom the trademarks were exclusively used in the United States, in marketing semisynthetic penicillins that Beecham supplied to them (see pp. 17-18, Competitive Impact Statement).

In support of its request, Ayerst makes essentially the following three arguments: (1) "there is no justifiable basis for distinguishing the Penbritin trademarks from the other trademarks covered by Article VIII" of the proposed Judgment (p. 4, Comments); (2) exclusion of the Penbritin trademarks from the provisions of Article VIII will put Ayerst at a substantial competitive disadvantage in the ampicillin market vis-a-vis those of its competitors who purchase ampicillin from Beecham and resell under trademarks that, unlike the Penbritin trademarks, are to be assigned to then pursuant to the Judgment; and (3) putting Ayerst at such a disadvantage will have anticompetitive consequences. We will, in this response, deal with each of these arguments in Parts II and III, below. In addition, while we do not believe that the public interest requires the revision of the proposed Judgment that Ayerst seeks, we nevertheless recognize the possible adverse effect that Article VIII of

[1] "Comments of Ayerst Laboratories Division of American Home Product Corporation, Relating to Proposed Final Judgment Against Beechman Group Limited and Beecham, Inc.," dated December 29, 1978 ("Comments").

the proposed Judgment may have on Ayerst's private interests, and we discuss that matter in Part IV, below.

II. THE PUBLIC INTEREST DOES NOT REQUIRE COST-FREE ASSIGNMENT OF THE PENBRITIN TRADEMARKS

Assignment of trademarks, as required by Article VIII of the proposed of Judgment, amounts to divestiture. Article VIII was the result of our conclusion that the divestiture of certain trademarks was (1) appropriate under the special circumstances surrounding the creation, ownership, and use of those marks, and (2) justified as pro-competitive. Althought assignment of the Penbritin trademarks to Ayerst without cost might also be marginally competitive, different circumstances concerning the ownership and use of the Penbritin trademarks indicate a different result. Our decision resulted from an evaluation of (1) whether it was appropriate under those different circumstances to divest Beecham of Penbritin without compensation, (2) the adverse impact on Beecham of doing so, and (3) the public interest in requiring assignment of that trademark to Ayerst.

A. *Penbritin*

In its April 2, 1959, agreement with Bristol-Myers Company ("Bristol") Beecham agreed to market semisynthetic penicillins in the United States only in consumer package form, and only under its own trademarks. When Beecham entered the U.S. antibiotic market in 1963, it did so by means of Beecham Research Laboratories, Inc. ("BRL), a joint venture with Ayerst in which Beecham held the controlling share, so that Beecham could take advantage of Ayerst's established marketing force.[2] Beecham manufactured the products (including ampicillin) that it sold in the United States through BRL. For ampicillin, it chose the trademark Penbritin—Beecham's "flagship" trademark, the same ampicillin trademark it has used in entering other world markets, and which it has promoted in international scientific and medical literature. Beecham registered the Penbritin trademark in the United States in 1960, three years before it entered into any relationship with Ayerst. Thus, the arrangement with Ayerst was designed *not* to avoid the trademark restriction in the 1959 agreement, but rather to get Beecham itself into the U.S. market with its own Penbritin trademarks.

Until mid-1969, when Beecham began marketing ampicillin itself under the trademark "Totacillin," Penbritin was Beecham's only U.S. ampicillin trademark. Moreover, prior to that time, Ayerst sold Penbritin not for its own separate and independent account, but rather on behalf of Beechan and Ayerst as a marketing agent for their joint venture company.

In its Comments, Ayerst asserts that "from the outset Penbritin was closely associated with the name Ayerst, not Beecham," (p. 7) and "it is Ayerst, not Beecham, which has promoted the trademark Penbritin* * *" (p. 8). That is a considerable overstatement. First, Beecham has made substantial investments in the promotion of the Penbritin trademarks. Beecham either shared with Ayerst or reimbursed Ayerst for a major portion of BRL's expenditures in promoting Penbritin. Second, for the period 1963-1969 at least, all Penbritin capsules were individually marked with the name Beechman. (*See, e.g.*, p. VII, Product Identification Sections of the 1968 and 1969 Editions of the Physicians Desk Reference.) Third, it appears that, prior of 1969 at least, Penbritin packages in the United States carried both the Ayerst and Beechman names in about equal prominence, but sometimes Beecham was more prominent than Ayerst. (*See, e.g.*, documents 2061(u) and 019738 in the Document Depository.)

B. *Other "Beecham" Trademarks*

The trademarks affected by Article VIII, including those referred to in Ayerst's Comments ("Pen-A") and "Alpen"),[3] have a different history. These trademarks never received any investment or promotion by Beecham. Moreover, they were used exclusively by persons who bought ampicillin from Beecham for their own independent and separate resale, not as selling agents for Beecham. It appears that Beecham registered in the U.S. Patent and Trademark Office and retained "ownership" of these trademark *only* because the 1959 agreement with Bristol gave Beecham no other way to sell ampicillin to customers at the manufacturing level of trade in the United States. As we said in the Competitive Impact Statement ("CIS"):

"In an effort to get around this trademark restriction, Beecham allowed its customers to select, from a number of unused names or Beecham ideas for possible trademarks, a name under which each customer would like to resell the dosage form semisyntheic penicillin that Beecham supplied to it. Beecham then registered as a trademark in the Patent Office the name selected by its customers; each customer the promoted and marketed the product supplied by Beecham under that name. As a result of this promotional effort, Beecham's customers, rather than Beecham, developed whatever good will is associated with, and provided whatever value there is in, these trademarks in the United States."

The purpose of Article VIII is to release what we believe are non-*bona fide* "Beecham" trademarks from Beecham's control, to the greatest extent possible. Thus, Beecham is required to assign these trademarks, without cost, to their exclusive users (to whom we think they belong anyway). It must do this as soon as it acquires the right to sell semisynthetic penicillin under trademarks other than those "owned" by it, or there is a determination that agreements restricting Beecham sales to sales under such trademarks are unenforceable. In the meantime, Paragraph VIII(D) requires Beecham to authorize the exclusive users of these trademarks to sell, under these trademarks, ampicillin not purchased from Beecham. We anticipate that the effect of this provision will be to create additional competition for the supply of products sold under trademarks in which Beecham made no investment and therefore has no real interest.

C. *Ayerst's Position*

Ayerst contends that these provisions of the Judgment should apply to Penbritin as well, because "[w]hatever goodwill Beecham had derived indirectly through Ayerst and BRL prior to September 1969 has now been totally and irretrievably lost by Beecham" (p. 10, Comments). Later, however (p. 11), Ayerst refers to its expenditures in developing "the well known Penbritin trademark * * * over a period of 15 years at great expense."[4] This period includes 1963-1969, in which Beecham decided to launch the Penbritin trademark, and *shared* the expense of promoting and sustaining it. Beecham's benefit from this investment is "lost" only if one accepts Ayerst's conclusion that Beecham no longer has any *bona fide* interest in the trademark. We do not accept that conclusion.

It appears to us that Beecham and Ayerst have each invested in, and derived benefit from, the Penbritin trademark. Under these circumstances, we do not believe that divesting Beecham of Penbritin without compensation is justified by the possibility of achieving the marginal pro-competitive effect that may be associated with such a divestiture. Moreover, before interfering with present and future contractual relationships concerning ownership of the Penbritin trademark, we would have to be persuaded (and we are not) that such interference is necessary to protect the public interest.

III. ALTHOUGH A COST-FREE ASSIGNMENT OF PENBRITIN WOULD HAVE BEEN A MORE FAVORABLE RESULT FOR AYERST, AYERST OVERSTATES THE ALLEGED ANTICOMPETITIVE EFFECT OF THE FAILURE TO REQUIRE SUCH AN ASSIGNMENT

Ayerst's claim that its ability to compete will be harmed so substantially as to affect the public interest is succinctly stated in its Comments (pp. 11 and 16):

"Under the Judgment, Ayerst must continue to buy from Beecham pursuant to the price and trademark royalty terms of its distribution agreement, while other present bulk [sic] customers of Beecham are free to seek more favorable terms from other suppliers and may become free to manufacture ampicillin themselves.

* * * * *

"Impairing or destroying Ayerst's competitive position will almost certainly have anticompetitive consequences and will be contrary to the public interest."

We think Ayerst overstates the consequences of not assigning Penbritin to it free of charge. Ayerst's argument that its competitive position will thus be impaired or destroyed is based, it seems to us, upon the assumption that only two possibilities exist: (1) Ayerst's marketing practices of ampicillin must remain unchanged, or (2) the Judgment must require assignment of Penbritin. We believe that additional options exist.

First, for some markets at least, Ayerst may not need the Penbritin trademark, and therefore may not have to continue to buy ampicillin from Beecham pursuant to its distribution agreement with Beecham seriously damages "Ayerst's ampicillin injectable business. Ampicillin injectables are sold primarily on a bid basis to hospitals and governmental entities." (St. John Affidavit,

[2] Neither that arrangement nor any subsequent arrangement between Beecham and Ayerst is specifically challenged in the complaint in this case.

[3] Lederle entered the market under the trademark Alpen in 1969, and Pfizer under the trademark Pen-A in 1972.

[4] Ayerst's reference to "the well known Penbritin trademark" is an apparent recognition that that trademark is probably more valuable than the trademarks affected by Article VIII of the proposed Judgment, since those trademarks have not been in use nearly as long as Penbritin has.

p. 2). These institutional bids, however, are won on the basis of price and quality, not trademark identification or promotion. If Ayerst can indeed obtain ampicillin from sources other than Beecham,[5] it should be able to obtain bid business equally well *without* using a brand name as it does using Penbritin. Thus, by dropping use of a brand name, Ayerst can, for bid business, attain the same competitive position as the companies that are assigned trademarks under Article VIII.[6] Like the other companies, Ayerst can bid to supply ampicillin it makes itself or obtains elsewhere.

Second, although trademarks do play more of a role in non-bid markets, the public will not necessarily be injured if Ayerst must choose among adhering to the status quo (*i.e.*, its present arrangement with Beecham), finding a new ampicillin trademark, or using no trademark at all in these markets. Ayerst relies upon the observation in the CIS that Beecham's customers "have been (and will likely continue to be) unwilling to make the requisite additional investment in another trademark under which to promote and market the same product purchased from another source." This does not mean, however, that Ayerst must continue with Penbritin. If, indeed, Ayerst can obtain ampicillin from another source, it might well prefer to stay in the market *without* a brand name (other than "Ayerst"), thereby reducing its advertising and promotional expenses. The success of smaller and less well established drug companies in selling non-branded ampicillin would appear to make this a very viable option.

IV. EVEN THOUGH SOME SORT OF INTERMEDIATE RESOLUTION (BETWEEN COST-FREE ASSIGNMENT AND AYERST'S PRESENT ARRANGEMENT WITH BEECHAM) MIGHT BE FAIR TO AYERST AND STILL ACCOMMODATE BOTH BEECHAM'S AND AYERST'S INTEREST IN PENBRITIN, IT DOES NOT JUSTIFY OUR JEOPARDIZING THE PROPOSED JUDGMENT BY INSISTING ON SUCH A RESOLUTION

We recognize that Ayerst, as a result of the proposed Final Judgment, will be in a less favorable position in some instances than certain of its competitors; such as Pfizer and Lederle. Because we could not justify a cost-free divestiture of the Penbritin trademarks, it may be necessary for Ayerst to change its marketing practices or to renegotiate its arrangement with Beecham in order to improve its competitive position.[7]

Upon receiving and considering Ayerst's Comments, the government first proposed to Beecham that the government and Beecham agree to add to Article VIII of the proposed Judgment a Beecham undertaking to offer Ayerst an additional license option. The option would be roughly as follows: for the life of the present trademark and distribution agreement with Ayerst, and any renewals contemplated therein, Beecham would give Ayerst the right to use the Penbritin trademarks for sales of ampicillin procured from any non-Beecham source, subject to a reasonable royalty for such use, and appropriate provisions for assurance of quality. The actual terms, we suggested, probably ought to be left to direct negotiation between Beecham and Ayerst. Beecham declined, however, to accept our proposal or to reopen negotiation of the proposed Judgment on that point.

We then asked Beecham whether a satisfactory compromise along the lines proposed above might be negotiated directly with Ayerst about Penbritin. Beecham responded that it was not able to make any immediate offer along such lines, although counsel for Beecham has informed us that Beecham would be willing to talk with Ayerst about this and other related matters.[8]

Although we believe a solution as outlined above would be fairer to Ayerst's private interests than the one that we negotiated with Beecham, we are unable to obtain it now without seriously jeopardizing the proposed Judgment. Because Ayerst still has viable options available to it, and because we have determined that the public interest should not be significantly affected by the treatment of Penbritin in the proposed Final Judgment, we have not insisted that the terms of that Judgment be renegotiated.

CONCLUSION

For the reasons stated above, entry of the proposed Final Judgment is in the public interest, and the public interest does not require cost-free divestiture of a *bona fide* Beecham trademark.

Dated: January 29, 1979.

Respectfully submitted: Thomas H. Liddle, Robert S. Schwartz, Lee J. Keller, *Attorneys, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530, 202/724-7969.*

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Response of the United States To Comments of Ayerst Laboratories Division of American Home Products Corporation, Relating To Proposed Final Judgment Against the Beecham Defendants were served this date by certified mail upon the following counsel:

Richard A. Whiting, Esq., Steptoe & Johnson, 1250 Connecticut Ave., N.W., Washington, D.C. 20036.

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Dated: January 29, 1979.

THOMAS H. LIDDLE,
Attorney, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530, 202/724-7969.

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Bristol-Myers Company, Beecham Group Limited*, and *Beecham, Inc.*, Defendants.
M.D.L. Docket No. 50

Civ. No. 822-70

Filed:———

COMMENTS OF AYERST LABORATORIES DIVISION OF AMERICAN HOME PRODUCTS CORPORATION, RELATING TO PROPOSED FINAL JUDGMENT AGAINST BEECHAM GROUP LIMITED AND BEECHAM, INC.

Willkie Farr & Gallagher, *Attorneys for American Home Products Corporation, One Citicorp Center, 153 East 53rd Street, New York, New York 10022, (212) 935-8000.*

WILLKIE FARR & GALLAGHER,
New York, N.Y., December 29, 1978.

Re United States of America v. Bristol-Myers Company, Beecham Group Limited and Beecham, Inc., M.D.L. Docket No. 50 Civ. No. 822-70

ROBERT V. ALLEN, ESQ.,
Chief, Intellectual Property Section, Antitrust Division, SAFE 704, United States Department of Justice, Washington, D.C. 20530.

DEAR MR. ALLEN: Enclosed herewith are copies of "Comments of Ayerst Laboratories Division of American Home Products Corporation Relating to Proposed Final Judgment Against Beecham Group Limited and Beecham, Inc." and the supporting affidavit of Judson St. John. The originals of these documents have been filed with the Court.

Very truly yours,

STEPHEN GREINER.

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Bristol-Myers Company, Beecham Group Limited*, and *Beecham, Inc.*, Defendants.
M.D.L. Docket No. 50

Civ. No. 822-70

Filed:———

[5] One obvious possible source for Ayerst would be Wyeth Laboratories, which, like Ayerst, is also a division of American Home Products. Wyeth is also a sublicensee of defendant Bristol-Myers under the ampicillin and many other of Beecham's semisynthetic penicillin patents.

[6] We have been informed by counsel for Ayerst that "Ayerst's ampicillin injectible business" represents a significant portion of Ayerst's overall ampicillin business. In 1977, it represented about 47% of ampicillin sales, and in 1978 about 55%.

[7] Since Ayerst might prefer to sell non-branded ampicillin in some or all markets, it would appear to be in a favorable negotiating position with Beecham.

[8] While expressing no opinion as to what the outcome of any such negotiations should be, there are other possibilities aside from the one we proposed. One would be an assignment of Penbritin to Ayerst, similar to the provisions of Article VIII, but with some negotiated payment by Ayerst reflecting the present value of Beecham's contributions. Another would be modification of the terms of the present agreement, so as to preserve the continued interest of each party in Beecham's supplying ampicillin to Ayerst.

COMMENTS OF AYERST LABORATORIES DIVISION OF AMERICAN HOME PRODUCTS CORPORATION, RELATING TO PROPOSED FINAL JUDGMENT AGAINST BEECHAM GROUP LIMITED AND BEECHAM, INC.

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 USC 16(b)), Ayerst Laboratories ("Ayerst"), a division of American Home Products Corporation ("AHP"), hereby files these written comments[1] relating to the proposed final judgment ("Judgment") submitted for entry against Beecham Group Limited ("Beecham Group") and Beecham, Inc. ("Beecham") in this civil antitrust action.

1. THE PROVISIONS OF THE JUDGMENT TO WHICH THESE COMMENTS RELATE

These comments relate to Section VIII of the Judgment. That section provides that Beecham will assign, without charge, certain trademarks to persons by whom the trademarks were used in the United States in marketing semisynthetic penicillins that Beecham supplied to them. These trademarks include at least Alpen, the trademark used by the Lederle Laboratories Division ("Lederle") of American Cyanamid Company for the ampicillin it markets, and Pen-A, the trademark used by Pfizer Inc. ("Pfizer") for the ampicillin it sells.

Beecham is precluded under its 1959 licensing agreement with Bristol-Myers Company ("Bristol") from selling semisynthetic penicillins in the United States except under trademarks which Beecham owns. Therefore, the Judgment provides that the trademarks owned by Beecham will be assigned when Beecham (i) acquires the right to sell the semisynthetic penicillins involved under a trademark other than one owned by it or (ii) when there is a determination that the agreements restricting Beecham's right to sales under its own trademarks are unenforceable. Until either one of the foregoing occurs, Beecham is required by the Judgment to authorize those persons using its trademarks to continue to use such trademarks for the sale of the same semisynthetic penicillin purchased from persons other than Beecham. The only trademarks excluded from the provisions of Section VIII are "Penbritin" and "Penbritin S", the trademarks used by Ayerst in connection with its sales of ampicillin.

The purported rationale for Section VIII is set forth in the competitive impact statement ("CIS") filed by the United States in compliance with the Antitrust Procedures and Penalties Act:

In an effort to get around [the restriction permitting Beecham to sell semisynthetic penicillins only under its own trademarks], Beecham allowed its customers to select from a number of unused names or Beecham ideas for possible trademarks, a name under which each customer would like to resell dosage form semisynthetic penicillin that Beecham supplied to it. Beecham then registered as a trademark in the Patent Office the names selected by its customer; each customer then promoted and marketed the product supplied by Beecham under that name. As a result of this promotional effort, Beecham's customers, rather than Beecham, developed whatever goodwill is associated with, and provided whatever value there is in, these trademarks in the United States. And the fact that Beecham's customer made an investment in a trademark registered by Beecham, rather than in a trademark registered by them in their own name, was attributable directly to the trademark restriction in the 1959 agreement and the way in which Beecham sought to avoid it. Finally, Beecham authorized its customers to use the trademarks that Beecham registered only for the sale of the semi-synthetic penicillin that Beecham supplied to them.

The effect of this practice has been to insulate Beecham from competition from other suppliers in sales to its customers of ampicillin and other semisynthetic penicillins. [CIS at Section III E]

The purported rationale for the exclusion of "Penbritin" and "Penbritin S" from the application of Section VIII of the Judgment is also set forth in the CIS:

Beecham's world-wide trademarks, "Penbritin" and "Penbritin S", are specifically excluded from the application of Section VIII of the proposed judgment. They are so excluded even though the "Penbritin" trademark is the subject of an arrangement (with the Ayerst Division of AMHO) similar to the arrangements that Beecham has with other customers involving trademarks that Beecham is required to assign under the proposed judgment. The reason for this exclusion is that, unlike the trademarks to be assigned under Section VIII, Beecham used its "Penbritin" trademarks itself extensively in the United States (and elsewhere) well before entering into its present arrangement with Ayerst. They appear therefore to be bona fide Beecham trademarks. [CIS at Section III E]

2. THE UNDERLYING FACTS DO NOT SUPPORT THE ALLEGED RATIONALE UPON WHICH THE EXCLUSION OF THE PENBRITIN TRADEMARK FROM SECTION VIII IS BASED

As indicated above, the Judgment provides that Beecham's bulk customers (which include at least Lederle and Pfizer) will be allowed to use (for the sale of ampicillin purchased from sources other than Beecham) the trademarks under which they have previously sold semisynthetic penicillum purchased from Beecham. The reason for this provision is that (i) such customers, rather than Beecham, promoted the trademark and developed whatever goodwill is associated with it, and (ii) such customers invested in the trademark registered by Beecham rather than in a trademark registered by them in their own name because of the trademark restriction in the 1959 agreement and the way Beecham sought to avoid it. [CIS Section III E] These same facts characterize Ayerst's use of the Penbrition and Penbritin S trademarks. Accordingly, there is no justifiable basis for distinguishing the Penbritin trademarks from the other trademarks covered by Section VIII.

The Penbritin trademarks were introduced into the United States in 1963 when Beecham and Ayerst first entered into marketing arrangements with regard to ampicillin. Since that time Ayerst has been continuously involved directly in the use and promotion of the Penbritin trademarks, neither of which have ever been used by Beecham independent of Ayerst in the United States. The CIS recognizes Ayerst's continuous use of the Penbritin marks when it recites (at p. 6) that "since about November 1962, Beecham and the Ayerst Division of AMHO have entered into various marketing arrangements, trademark licenses and purchase agreements, pursuant to which Beecham has supplied Ayerst with ampicillin for Ayerst's sale under Beecham's 'Penbritin' trademark. * * *" Since September 2, 1969 neither Beecham nor any of its subsidiaries have used the trademark Penbritin or played any role whatsoever in the promotion or selling of Penbritin.

From January 3, 1963 through September 1969, Ayerst marketed ampicillin under the trademark Penbritin for Beecham Research Laboratories, Inc. ("BRL"), a corporation 51% owned by Beecham and 49% by Ayerst, pursuant to a marketing agency agreement. Long prior to the effective date of the marketing agency agreement, Ayerst was an established firm in the prescription drug business in the United States whose name was well known to physicians, druggists, hospitals and other large purchasers of such drugs. As the marketing agency agreement specified, Ayerst, unlike BRL, had a large staff of detailmen to sell and promote prescription drugs. It was for this reason that BRL was willing to appoint Ayerst to market Penbritin. On the other hand, BRL had been formed only in 1962. From 1963 through 1969, when BRL ceased operations, its business activities were limited to the sale of semisynthetic penicillins (principally ampicillin) through Ayerst. During that period, BRL was not well known to physicians and large purchasers of prescription drugs. Moreover, prior to 1970 at least, Beecham, like BRL, was not well known in this country in the prescription drug field and its sales of prescription drugs were small.

During the period of the marketing agency agreement, the trademark Penbritin became associated with the name Ayerst, and Ayerst developed the goodwill associated with that trademark because of three principal factors. First, during that period the promotional material used by Ayerst specified that Penbritin was distributed by Ayerst, Laboratories, as distributors for BRL. The name Ayerst, however, was more prominently displayed on that material than the name BRL. (*see, e.g.*, documents A04772, A04783, A04846, A04950, A04919, and A04974 in the document depository). Second, during the period 1963 through 1969, the detailmen who sold and promoted Penbritin were employed by—and were known by the physicians and trade to be employees of—Ayerst, not BRL or Beecham. The large majority of the persons to whom Penbritin was sold or promoted by the Ayerst detailmen, together with other Ayerst products, undoubtedly identified the name Penbritin with Ayerst. third, the identification of the trademark Penbritin with Ayerst was strengthened by the fact, as indicated above, that Ayerst was a long-established and well-known firm in the prescription drug field in the United States, whereas BRL and Beecham were newcomers to the prescription drug business in this country and were relatively unknown here. Consequently, from the outset Penbritin was closely associated with the name Ayerst, not Beecham, and it was Ayerst that developed and was the beneficiary of the goodwill associated with the trademark.[2]

[1] Ayerst is submitting herewith the supporting affidavit of its Executive Vice President, Judson St. John.

[2] Under the Judgment Ayerst will be permitted to use the Beecham "Veracillin" trademark and may receive an assignment of it. Veracillin is the trademark under which Ayerst has sold dicloxacillin since 1968. Ayerst now sells veracillin pursuant to a distribution agreement with Beecham

Footnotes continued on next page

Effective September 2, 1969, Beecham and Ayerst entered into a distribution agreement pursuant to which Ayerst has purchased ampicillin from Beecham and sold it under the "Penbritin" trademark. (See document A03022-A03056 in the document depository) The distribution agreement provides that Ayerst may use the Penbritin trademark only with respect to ampicillin purchased from Beecham (with certain exceptions in the event Beecham is unable to fill Ayerst's orders). The purchase price for such ampicillin is (i) Beecham's cost, (ii) an amount for interest on the investment made by Beecham in its plant devoted to the production of Penbritin, (iii) 5% of Beecham's manufacturing cost and such interest on investment; and (iv) the royalties payable by Beecham to third parties and Beecham Group. In addition, the agreement provides for the payment of a trademark royalty by Ayerst equal to 50% of its net profits before taxes.

As before, under this arrangement, it is Ayerst, not Beecham, which has promoted the trademark Penbritin and has continued to develop all goodwill associated with that trademark in the United States. Thus, it is the name of Ayerst which appears on advertisements for Penbritin in medical journals, on promotional material sent to physicians and on package labels and inserts (See, e.g., documents A04987, A05017, A04998, A04999, A05029 and A05025-26 in the document depository)—much the same as the names of Beecham's other bulk customers appear on promotional material used in connection with the semisynthetic pencillin products which they market.

Moreover, after September 2, 1969 the reason Beecham retained ownership of the Penbritin trademark and the reason Ayerst invested in the trademark registered in Beecham's name rather than in a trademark registered in Ayerst's name, was attributable directly to the trademark restriction in the 1959 agreement and the way Beecham sought to avoid it. This is precisely the same reason, according to the CIS, that Beecham retained ownership of the trademarks developed by Beecham's other bulk customers and that such customers invested in those trademarks. Therefore, the rationale set forth in the CIS for the provisions in the Judgment requiring Beecham to assign trademarks such as Pen-A and Alpen applies in all respects to Penbritin.

In sum, when the CIS states that the reason for the exclusion of Penbritin from Section VIII is that "Beecham used its Penbritin trademark itself extensively in the United States (and elsewhere)[3] well before entering into its present arrangements with Ayerst" it is in error. As noted, Ayerst was involved from the beginning in the use of the mark Penbritin in the United States, and from the beginning it was Ayerst which primarily promoted the mark and was identified with it. Moreover, for the last nine years in the United States Ayerst alone has promoted the Penbritin marks, has invested heavily in those trademarks and has developed *all* goodwill now associated with those trademarks. Whatever goodwill Beecham had derived indirectly through Ayerst and BRL prior to September 1969 has now been totally and irretrievably lost by Beecham.

3. AYERST WILL BE SUBSTANTIALLY DISADVANTAGED UNDER THE TERMS OF THE JUDGMENT VIS-A-VIS OTHER PRESENT PURCHASERS FROM BEECHAM AND OTHERS WHO MARKET AMPICILLIN.

If Ayerst desires to sell ampicillin under the Penbritin trademark, it will be required to abide by the terms of the September 2, 1969 distribution agreement. Under that agreement, it must purchase ampicillin only from Beecham (at specified prices) and must pay Beecham a substantial trademark royalty on its sales. Because of current market conditions, Ayerst must sell ampicillin, if at all, under the well known Penbritin trademark which it has developed over a period of 15 years at great expense. As a practical matter Ayerst cannot at this time develop a new trademark under which to sell ampicillin. The CIS recognizes the difficulty faced by Beecham's customers in developing new trademarks:

For after having once made such an investment in a trademark registered by Beecham, these customers have been (and will likely continue to be) unwilling to make the requisite additional investment in another trademark under which to promote and market the same product purchased from another source. [CIS at Section III E]

Under the Judgment, Ayerst must continue to buy from Beecham pursuant to the price and trademark royalty terms of its distribution agreement, while other present bulk customers of Beecham are free to seek more favorable terms from other suppliers and may become free to manufacture ampicillin themselves. This will plainly and unfairly disadvantage Ayerst in a number of ways.

First, under the Judgment, persons other than Ayerst who currently purchase in bulk from Beecham, can seek better prices from other suppliers.[4] Bristol, Wyeth, and Squibb all manufacture and may sell bulk ampicillin without violating any contractual obligation or any other persons' patent rights. Not only will Beecham's present bulk customers have the potential of purchasing from other sources at lower prices, but their ability to purchase elsewhere may enable such persons to negotiate better terms with Beecham. Second, if an adverse determination is rendered against Bristol in the litigation, or Bristol settles on terms similar to those contained in the Judgment against Beecham, additional sources of bulk ampicillin might become available from which Beecham's present customers could make purchases. Such sources could include (1) ampicillin manufactured by other persons not now licensed by Bristol (including Beecham's present bulk customers), (2) ampicillin manufactured outside the United States, and (3) compulsory bulk sales by Bristol itself. Third, in the event of an adverse determination against Bristol, Beecham's present bulk customers, other than Ayerst, will have the option of manufacturing ampicillin themselves. Fourth, in all events by November 1981, when Bristol's ampicillin trihydrate patent expires, (1) the additional sources of supply mentioned above (except compulsory bulk sales by Bristol) may become available and (2) Beecham's bulk customers will be allowed to manufacture ampicillin. Under the Judgment, Ayerst, unlike its competitors, will not be able to take advantage of these potential sources of supply or to manufacture ampicillin itself because it will be required to continue to purchase from Beecham.[5]

Ayerst will be subjected to other serious competitive disadvantages if it alone is forced to purchase from Beecham. In the last several years, Ayerst has been unable to obtain the quantities of ampicillin from Beecham, particularly the injectable forms, which it needs to meet its orders. In addition, many deliveries by Beecham to Ayerst have been delayed. As a result, Ayerst has lost substantial revenues. For example, Ayerst's inability to obtain needed supplies from Beecham has forced it to give up large bids which it had won to supply certain states and hospitals with Penbritin. Under the distribution agreement Ayerst has no effective way of overcoming the problems caused by Beecham's failure to supply and its late deliveries. While the distribution agreement provides that in the event Beecham does not fulfill Ayerst's ampicillin orders, Ayerst may, if certain conditions are met, obtain its requirements from other suppliers, this provision does not help Ayerst significantly. In the case of ampicillin contracts for which Ayerst must bid, it is essential that Ayerst be assured many months in advance that it will be able to fulfill its obligations. Under the distribution agreement, Ayerst is unable to obtain timely assurances that it will be supplied by Beecham or other sources.

Not requiring Beecham to assign the Penbritin trademark to Ayerst poses another major problem for Ayerst. By its terms, the distribution agreement expires at the very latest in 1989. At that time, Ayerst can no longer use the Penbritin trademark (unless it enters into another agreement with Beecham) and Beecham will become free to use that mark. In contrast, the trademarks now used by Beecham's other bulk purchasers will be assigned to them. Under these circumstances, as a practical matter, it will be

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Footnotes continued from last page

identical to the distribution agreement relating to Penbritin. Moreover, prior to September 2, 1969, Ayerst sold Veracillin pursuant to a marketing agency agreement dated August 5, 1966. That agreement is *identical* to the marketing agency agreement of the same date under which Ayerst sold "Penbritin". (See, e.g., documents A01553-A01579 in the document depository) Since the arrangements between Ayerst and Beecham relating to "Veracillin" and "Penbritin" before and after September 2, 1969 were the same, there is no reason for the Judgment to treat Penbritin differently.

[3] Use by Beecham of the Penbritin trademark outside of the United States does not give Beecham any trademark rights or goodwill in the United States. Trademark rights or goodwill in the United States can be obtained only by use of the trademark in this country.

[4] In addition, Ayerst will be forced to continue to pay Beecham a trademark royalty, thereby increasing its costs, whereas it would appear others who now purchase in bulk from Beecham (pursuant to arrangements requiring them to pay Beecham a trademark royalty) and compete with Ayerst such as Lederle will be relieved of this expense. The significance of this is obvious. Ayerst pays Beecham a trademark royalty equal to 50% of its net profits before taxes on Penbritin sales.

[5] The competitive disadvantage to Ayerst of being forced to buy ampicillin from Beecham is evident from a review of current ampicillin pricing. Currently, Beecham and other competitors give deals to pharmacies and wholesalers permitting those persons to purchase ampicillin below the cost at which Ayerst purchases it from Beecham.

difficult for Ayerst to justify making the required investment in the promotion of Penbritin which will enable it effectively to compete in the ampicillin market.

4. INSOFAR AS THE JUDGMENT EXCLUDES PENBRITIN FROM THE PROVISIONS OF SECTION VIII, THE JUDGMENT IS NOT IN THE PUBLIC INTEREST

The CIS concludes that the arrangements by which Beecham's present customers (presumably including Ayerst) are required to purchase only from Beecham has an anticompetitive effect:

The effect of this practice has been to insulate Beecham from competition from other suppliers in sales to its customers of ampicillin and other semisynthetic penicillins. This effect will continue unless each of Beecham's customers is free to use, with a semisynthetic penicillin purchased from a source other than Beecham, the trademark that Beecham registered (but only the customer used) in the United States and in which such customer has already made a substantial investment * * * Thus, requiring assignment of (or authorization to use) such trademarks should, the Government believes, further open up the semisynthetic penicillin market to effective competition. [CIS Section III E]

Allowing Beecham to retain the Penbritin trademark will not only insulate Beecham in its sales of ampicillin to Ayerst from competition from other suppliers, but it may seriously weaken the competitive position of Ayerst in the market as indicated above and this fact itself may have important anticompetitive effects on the ampicillin market.

Historically, Ayerst has been an important competitor in the ampicillin market. Throughout the 1960s, Ayerst was among the market leaders in sales of ampicillin. Although its market share has dropped [6] since that time, Ayerst is still a significant competitor and its presence in the market is likely to have an effect on price competition.

As indicated above, forcing Ayerst alone to adhere to the trademark provisions of its distribution agreement with Beecham may substantially impair its competitive position and may, in fact, force it from the market. Impairing or destroying Ayerst's competitive position will almost certainly have anticompetitive consequences and will be contrary to the public interest.

5. CONCLUSION

For the reasons indicated above, the Judgment should be revised so as not to exclude Penbritin from the provision of Section VIII.

Dated: December 29, 1978.

Respectfully submitted: Willkie Farr & Gallagher, *Attorneys for American Home Products Corporation.*

By: Stephen Greiner (a member of the firm), One Citicorp Center, 153 East 53rd Street, New York, N.Y. 10022.

[6] A portion of Penbritin's decline in market share is directly attributable to Ayerst's inability to obtain its ampicillin needs from Beecham on a timely basis.

AFFIDAVIT OF JUDSON ST. JOHN

AFFIDAVIT

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Bristol-Myers Co., Beecham Group Limited,* and *Beecham, Inc.* Defendants.

M.D.L. Docket No. 50

Civ. No. 822-70

Filed:————

State of New York ss.:
County of New York

JUDSON ST. JOHN, being duly sworn, deposes and says:

1. I am an Executive Vice President of Ayerst Laboratories ("Ayerst"), a division of American Home Products Corporation ("AHP"). I submit this affidavit to document certain facts which are referred to in the written comments of Ayerst submitted herewith relating to the proposed Judgment against Beecham Group Limited ("Beecham Group") and Beecham, Inc. ("Beecham") in this litigation.

2. As set forth in the comments, Ayerst has been unable to obtain from Beecham the quantities of ampicillin injectables which Ayerst's business requires. For example, during the three year period 1976 through 1978, Ayerst ordered 3,377 kilos of ampicillin injectables from Beecham but received shipments totaling only 1,743 kilos, or 52% of the amount ordered. The problem during 1977 and 1978 has become increasingly acute. During the latter period orders aggregating 2,428 kilos have been placed while shipments amounting to only 845 kilos have been made.

3. Because of the nature of the ampicillin injectable market, Beecham's failure to make deliveries has had a serious affect on Ayerst's ampicillin injectable business. Ampicillin injectables are sold primarily on a bid basis to hospitals and governmental entities. To compete effectively in this market, it is imperative for the bidder to know well in advance that it will have an adequate supply with which to meet its obligations in the event it is awarded the contract. Because of Beecham's failure to supply Ayerst's requirements of ampicillin injectables, Ayerst's competitive position in this market has been seriously hurt. It should be noted that the September 2, 1969 distribution agreement between Ayerst and Beecham contains a provision allowing Ayerst, under certain circumstances, to obtain ampicillin from suppliers other than Beecham. In practice, however, this provision affords Ayerst little protection. frequently, Ayerst has not been given sufficient notice by Beecham that it would not supply Ayerst with enough ampicillin to meet Ayerst's needs so as to enable Ayerst to obtain (or attempt to obtain) ampicillin injectables from another source on a timely basis.

4. Beecham's failure to meet Ayerst's ampicillin injectable needs has resulted in Ayerst's loss of several large bids which it had won to supply Penbritin to hospitals and governmental entities. During the fiscal year ended March 31, 1977 Ayerst was forced to give up, because of lack of Penbritin injectable, a bid of $500,000 to supply the Joint Purchasing Corporation (the corporation which buys, among other things, drugs for those hospitals, principally in New York City, who are members of the Federation of Jewish Philanthropies), a bid of $500,000 to supply western New England Hospital Purchasing Group, and bids aggregating $200,000 to supply the purchasing arms of the states of Maine and Connecticut—all of which Ayerst had won.

5. Besides Beecham's failure to deliver sufficient ampicillin to Ayerst, the majority of ampicillin injectable shipments made in recent years were delivered late. During the three year period from 1976 through 1978, 70% of Beecham's deliveries of ampicillin injectables were more than one month late.

6. Ayerst's comments also state that in terms of pricing, Ayerst has been placed at a severe competitive disadvantage because it can purchase only from Beecham under the distribution agreement. In fact, the prices Ayerst must pay to Beecham for several size and dosage packages of Penbritin capsules have exceeded the prices at which Totacillin capsules have been sold to pharmacists and wholesalers during deals offered by Beecham. For example, effective June 1, 1977, Ayerst's purchase prices from Beecham (which do not include other costs such as those for promotion, distribution, etc.) for capsules have been as follows:

Package size and dosage:	*Cost*
250 mg. x 100	$4.88
250 mg. x 500	23.45
500 mg. x 50	4.51
500 mg. x 500	42.65

In a promotional brochure dated July 10, 1978, a copy of which is annexed hereto as Exhibit "A", Beecham offered ampicillin capsules to pharmacists at the following prices:

Package size and dosage	Price	Price ($250-399)	Price ($400 or more)
250 mg. x 100's	$4.09	$3.94	$3.79
250 mg. x 500's	18.48	17.99	17.50
500 mg. x 50's	4.07	3.96	3.85
500 mg. x 500's	37.14	36.17	35.20

Squibb also has offered pharmacists lower prices than those paid by Ayerst to Beecham. During the period from July 1, 1978 through September 30, 1978 Squibb offered the following prices for ampicillin capsules:

Package size and dosage	Price	Early buy incentive discount price
250 mg. x 100	$4.85	$4.71
250 mg. x 500	20.90	20.27
500 mg. x 500	41.50	40.26

7. Information has also been obtained by Ayerst that within the last two years, certain of Ayerst's competitors have won bids to supply ampicillin injectables to hospitals and governmental entities at prices less than Beecham's price on such injectables to Ayerst.

8. For the reasons set forth above and in the comments of Ayerst, I respectfully request that Section VIII of the Judgment be amended so as not to exclude the Penbritin trademarks from the terms thereof.

JUDSON ST. JOHN.

Sworn to before me this 29th day of December, 1978.

BRENDA R. GARNER,
Notary Public.

BEECHAM LABORATORIES,
Bristol, Tenn., July 10, 1978.

DEAR PHARMACIST: Beecham, the discoverer and developer of ampicillin as well as most of the important semisynthetic penicillins, is pleased to announce a significant reduction in prices for the following penicillin products through a 1978 Special Antibiotic Combination offer to the direct customer.

TOTACILLIN® (ampicillin)
BACTOCILL® (oxacillin sodium)
CLOXAPEN® (cloxacillin sodium)
DYCILL® (dicloxacillin sodium)

The attached sheet displays the new reduced prices on the above products based upon certain minimum qualifying order levels valued at the "special offer list prices" of any combination of the items listed. You can obtain the special prices by purchasing qualifying orders before November 30, 1978, and then unlimited reorders will be honored through March 31, 1979 at the lowest prices earned during the offer period ($150 minimum order at special offer list prices required).

Beecham has one of the most complete product lines of oral forms of ampicillin, both capsules and oral suspensions.

The oral anti-staph products, BACTOCILL® (oxacillin sodium), CLOXAPEN® (cloxacillin sodium), and DYCILL® (dicloxacillin sodium) are offered at prices which are up to 15% below other competitive products.

To take advantage of these "most" competitive prices, contact your Beecham representative or your local Beecham Distribution Center through one of the following toll free numbers:

Bristol, TN.—Ask for Customer Service, 1-800-251-0271. (Except Tennessee—615/764-5141)—States Serviced: Arkansas, Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia and West Virginia.

Piscataway, N.J., 1-800-526-3540. (Except New Jersey—201/469-5441)—States Serviced: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont.

Elmhurst, Illinois, 1-800-323-1033. (Except Illinois—1-800-942-2488)—States Serviced: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

Arlington, Texas, 1-800-433-1553. (Texas outside Dallas/Ft. Worth 1-800-792-8921). (Dallas/Ft. Worth—1-817-261-6626)—States Serviced: Colorado, Louisiana, New Mexico, Oklahoma, and Texas.

TOTACILLIN ORAL/ORAL ANTI-STAPH PRICES; 1978 SPECIAL ANTIBIOTIC COMBINATION OFFER

[Effective July 10, 1978-November 30, 1978]

	Special offer list prices	Mix A special offer list price $150-$249	Mix B special offer list price $250-$399	Mix C special offer list price $400 or more
Totacillin capsules (ampicillin):				
250mg. x 100's	4.09	4.09	3.94	3.79
250mg. x 500's	18.48	18.48	17.99	17.50
500mg. x 50's	4.07	4.07	3.96	3.85
500mg. x 500's	37.14	37.14	36.17	35.20
Totacillin for oral suspension (ampicillin):				
125mg./5ml. x 80ml	.73	.73	.71	.69
125mg./5ml. x 100ml	.83	.83	.81	.79
125mg./5ml. x 150ml	1.14	1.14	1.12	1.10
125mg./5ml. x 200ml	1.43	1.43	1.41	1.39
250mg./5ml. x 80ml	1.07	1.07	1.05	1.03
250mg./5ml. x 100ml	1.23	1.23	1.21	1.19
250mg./5ml. x 150ml	1.78	1.78	1.74	1.70
250mg./5ml. x 200ml	2.17	2.17	2.13	2.09
Bactocill (oxacillin sodium):				
250mg. x 100's	16.48	16.48	16.32	16.16
500mg. x 100's	30.74	30.74	30.43	30.13
Cloxapen (cloxacillin sodium):				
250mg. x 100's	19.79	19.79	19.59	19.39
500mg. x 100's	39.29	39.29	38.89	38.50
Dycill (dicloxacillin sodium):				
250mg. x 100's	19.75	19.75	19.55	19.35
500mg. x 100's	34.55	34.55	34.20	33.86

Reorder privileges: Unlimited reorders from December 1, 1978 through March 31, 1979 at lowest prices earned during the offer period ($150 minimum order at special offer list prices required); All prices subject to 2% additional cash discount if paid within 30 days of invoice date, net 31 days.

Sacramento, California, 1-800-824-5022 (California except area code 916—1-800-852-7578), Sacramento to A.C. 916—381-4030—States Serviced: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

If you order exclusively through a wholesaler, contact your local wholesaler about new reduced prices for TOTACILLIN, BACTOCILL, CLOXAPEN and DYCILL under the 1978 Special Antibiotic Combination Offer.

Very cordially yours,

M. MARION JONES,
Vice President—Sales & Marketing.

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Bristol-Myers Company, Beecham Group Limited*, and *Beecham Inc.* Defendants.

M.D.L. Docket No. 50

Civ. No. 822-70

RESPONSE OF THE UNITED STATES, UNDER 15 U.S.C. 16(b), TO OBJECTIONS OF DEFENDANT BRISTOL-MYERS COMPANY TO ENTRY OF PROPOSED FINAL JUDGMENT AGAINST THE BEECHAM DEFENDANTS

INTRODUCTION

Pursuant to 15 U.S.C. 16(b), the United States submits this partial response to certain objections made by defendant Bristol-Myers Company ("Bristol") to entry of a proposed Final Judgment against Beecham Group Limited and Beecham Inc. (collectively "Beecham"). On December 29, 1978, Bristol filed a paper,[1] objecting to entry of the proposed Judgment, and seeking certain relief (including modification of that Judgment). Bristol purported to base its objections on 15 U.S.C. 16(b), and to seek relief pursuant to F.R.Civ.P. 41(a)(2) and 54(b). Bristol objected on the following grounds (p. 2, Objections):

(A) the decree would violate Bristol's fundamental rights to Due Process by granting the government unfair procedural advantages in the continued prosecution of its claims against Bristol, and

(B) the decree would require Beecham to infringe Bristol's rights under the United States Patent No. 3,164,604 covering 6-amino penicillanic acid ("6-APA"), . . . by making compulsory sales of 6-APA, and might encourage additional infringement of that patent by recipients of Beecham's proposed covenants not-to-sue.

On January 22, 1979, the government filed a separate paper responding to Bristol's due process "objection" and to the relief Bristol sought under Rules 41(a)(2) and 54(b). That response demonstrates that the proposed Judgment would not deny Bristol due process of law, that the relief Bristol requested is unnecessary, and that Bristol's deposition rights (as ensured by Order of this Court) fully protect its legitimate procedural interests. In our view, 15 U.S.C. 16(b) does not require the government to publish that response.[2]

In this paper, we (1) show that Bristol's due process "objection" is not directed to the "public interest" determination required by 15 U.S.C. 16(e), and (2) respond on the merits only to Bristol's objections concerning its asserted rights under the 6-APA patent (U.S. No. 3,164,604). Pursuant to 15 U.S.C. 16(d), we are publishing this response, and we are also publishing (even though, in our view, not required by that statute to do so) Bristol's entire filing concerning the proposed Judgment.

I. BRISTOL HAS NO VALID PROCEDURAL OBJECTION TO THE PROPOSED FINAL JUDGMENT UNDER 15 U.S.C. 16

Bristol cites no authority in support of its demand to modify the substantive provisions of this proposed consent judgment. The only basis for Bristol to attempt to do so is pursuant to 15 U.S.C. 16. Subsection (e) of that statute provides that no consent judgment may be entered without a determination by the Court that such judgment is "in the public interest." That same subsection also provides that in making such determination, a court may consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipat-

[1] "Objections of Defendant Bristol-Myers Company To Entry of Proposed Final Judgment Against Beecham Defendants and Request for Relief" ("Objections").

[2] This is because (a) the relief Bristol sought pursuant to Rules 41(a)(2) and 54(b) is directed solely to Bristol's due process "objection", and (b) neither that objection nor the relief requested is directed to the "public interest" determination required by 15 U.S.C. 16(e).

ed effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

The "public interest" is in no way involved in Bristol's purely private concerns as a litigant in this case. Indeed, the only reference in Bristol's paper to the public interest appears in the conclusion. There, Bristol contends (p. 9):

"[t]he proposed consent decree is not in the public interest as it would cause serious injury to Bristol's Constitutional and economic rights."

Bristol's access to Beecham witnesses and documents (as compared with that of the plaintiffs) has nothing whatever to do with (1) the "competitive impact" of the proposed Judgment, (2) the impact of entry of that Judgment upon the public generally or on persons allegedly harmed by Bristol's conduct, or (3) the public's interest in free and open competition in the pharmaceutical market. Obviously, Bristol has confused its own interest with the public interest. As we said in our January 22 response, to the extent that Bristol believes that it is being treated unfairly (although we do not believe it is) in its defense against charges brought on the public's behalf, Bristol's recourse lies in the provisions of the Federal Rules of Civil Procedure.

II. THE PROPOSED JUDGMENT DOES NOT REQUIRE BEECHAM, OR ENCOURAGE OTHERS, TO VIOLATE WHATEVER RIGHTS BRISTOL MAY HAVE UNDER THE 6-APA PATENT OR ITS 1959 AGREEMENT WITH BEECHAM

A. *Alleged "Infringement"*

Bristol objects to the proposed judgment on the grounds that it "requires" infringement of Bristol's exclusive rights under U.S. Patent No. 3,164,604, which claims 6-APA.[3] Article V(F) of the proposed Judgment does require Beecham, under certain circumstances, to sell 6-APA in the United States. It is not all that clear, however, that Beecham's sales of 6-APA would involve any infringement of the 6-APA patent, because, in our view, Beecham's April 2, 1959, agreement with Bristol (which is specifically challenged in this lawsuit) permits Beecham to make such sales. But even if we are wrong about that, there is no substantial likelihood of any violation of either Bristol's contractual or patent rights, because there is apparently little likelihood of any sales of 6-APA under the proposed Judgment.

1. The 1959 agreement does not prevent sales of 6-APA.

Bristol contends that Beecham's so-called "reserved right" in the license agreement of April 2, 1959, "provides *no* right under United States Patent No. 3,164,604 to sell 6-APA * * *" (p. 6, Objections; emphasis added). Bristol is clearly wrong about that, for Beecham has at least some right to sell 6-APA. While granting Bristol certain exclusive rights in a number of United States patents (including the 6-APA patent), the 1959 agreement also expressly recognized Beecham's right "to sell in the United States of America Licensed Products A * * * in consumer package form under trademarks owned by Beecham * * *." And, as we understand the 1959 agreement, 6-APA is a "Licensed Product A".[4] Thus, Beecham has an express right under that agreement to sell Licensed Products A (including 6-APA) in "consumer package form."

6-APA is a starting material from which all semisynthetic penicillins are made. It is neither sold nor used as a phrmaceutical or for clinical purposes. Thus, it is not sold, used, or consumed in a "dosage form,"[5] such as pills, tablets, or capsules. Instead, 6-APA is made, sold, and used by its ultimate consumer in powder (or other bulk) form, as a raw material in making semisynthetic penicillins. And for 6-APA the ultimate consumers are manufacturers of semisynthetic penicillins. Thus, for this product and for those consumers, whatever the package form may be in which 6-APA powder is ordinarily sold to its ultimate consumers, that package form must necessarily, and as a matter of common sense, be a "consumer package form" within the meaning of the 1959 agreement.[6] In view of this, it seems to us that a fair and reasonable interpretation of the 1959 agreement is that Beecham would not violate any of "Bristol's exclusive rights under the 6-APA patent" if Beecham were to sell 6-APA in the United States pursuant to the proposed Judgment.

In any event, Beecham is a party to both this proposed Judgment and the 1959 agreement. Therefore, whatever risks of violating either Bristol's contractual or patent rights exist, by reason of having to sell 6-APA pursuant to the proposed Judgment, they are risks that Beecham has obviously already assumed by agreeing to the Judgment. In addition, the proposed Judgment would have no effect whatsoever on Bristol's right to enforce whatever contractual or patent rights it may have. Thus, if Bristol now has a right to sue Beecham, because of any Beecham sales of 6-APA, Bristol would still have the same right to do so after the Judgment is entered.

2. Sales of 6-APA under the proposed Judgment are unlikely anyway.

Beecham is obliged under the proposed Judgment to sell 6-APA in the United States only in certain limited circumstances, all of which must exist concurrently in order for the obligation to apply. Those circumstances include:

(1) 6-APA becomes "temporarily unavailable commercially from a source other than Beecham or Bristol";

(2) a request for 6-APA is made in writing for delivery in the United States to meet *bona fide* stated requirements for manufacture and sale of semisynthetic penicillins in the United States;

(3) a person making such a request is practicing under a license granted pursuant to Article VI of the Judgment, and is neither a 6-APA nor semisynthetic penicillin bulk-customer or licensee of either Beecham or Bristol as of the date of entry of the Judgment; and

(4) Beecham made, or had made for it, at least some 6-APA that it used in making >semisynthetic penicillins sold in the United States during the previous calendar year.

As for the commercial availability of 6-APA, Bristol itself informed us, during joint settlement discussions, that 6-APA was now virtually a commodity on the world market, and therefore was readily available from a number of sources. If Bristol is right about that, there may be few, if any, occasions when Beecham will be obliged to sell 6-APA in the United States pursuant to the proposed Judgment.[7]

B. *Covenants Not-To-Sue*

Bristol also objects to entry of the proposed Judgment because, Bristol claims, it might encourage persons other than >Beecham to infringe the 6-APA patent. Such encouragement might occur, Bristol contends, because the proposed Judgment "does not require Beecham to disclose to all recipients of Beecham's covenant not-to-sue that Bristol, as exclusive licensee, [as well as Beecham] has the right to bring suit to enjoin or seek damages for infringement" (p. 7, Objections).

It is unnecessary, we submit, for the Judgment to require Beecham to do so, because the competitive impact statement makes it clear that Bristol has that right (pp. 9 and 15). In any event, Beecham has advised us that they will so inform each applicant for a covenant not-to-sue.

CONCLUSION

For the foregoing reasons, Bristol has failed to show that the proposed Final Judgment is not in the public interest, or that it would cause any serious injury to Bristol's Constitutional or economic rights. Entry of the proposed Judgment is, we submit, in the public interest.

Dated: January 29, 1979.

[3] The 6-APA patent issued with only one claim. That claim covers "solid, nonhygroscopic 6-aminopenicillanic acid having [a specific] structural formula . . . and melting at about 209-210°C." Thus, any 6-APA that is hygroscipic, or that is not a solid, or that melts at some temperature outside the narrow two-degree range specified in the claim should not infringe the patent.

[4] That term is defined in the agreement as "all products embodying or made in accordance with or through the use of any of the inventions disclosed or claimed in (1) Licensed Beecham Patents * * *", which includes the 6-APA patent.

[5] "Dosage form" is defined in the proposed Judgment (Article II(D)) as "any form in which ethical phrmaceuticals are package or formulated for use by or administration to their ultimate human or animal consumer, and includes, among other things, pills, tablets, capsules, elixirs, syrups, vials, and ampules."

[6] Indeed, it would be economically wasteful and impracticable to sell 6-APA to semisynthetic-penicillin manufacturers in any form other than powder or another bulk form. The cost of converting bulk powder to a dosage form is not insubstantial, and since 6-APA is usually reacted while in solution in the manufacture of semisynthetic penicillins, the powder form is likely to be far easier to get into solution than a tablet or pill would be.

[7] Also, Bristol contends that "there is no economic reason for . . . a provision [requiring the Beecham defendants to sell 6-APA] since Bristol has granted rights to manufacture and sell 6-APA to . . . American Home Products Corporation, E. R. Squibb & Sons, Inc. and Pfizer" (p. 6, Objections). In view of this, Bristol itself (as well as American Home Products, Squibb, and Pfizer) would certainly be possible (although unlike Beecham not certain) sources of 6-APA.

Respectfully submitted,

THOMAS H. LIDDLE,
ROBERT S. SCHWARTZ,
LEE J. KELLER,
Attorneys, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530, 202/724-7969.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Response of the United States, Under 15 U.S.C. § 16(b), To Objections of Defendant Bristol-Meyers Company To Entry of Proposed Final Judgment Against the Beecham Defendants were served this date by certified mail upon the following counsel:

Richard A. Whiting, Esq., Steptoe & Johnson, 1250 Connecticut Ave., N.W., Washington, D.C. 20036.

Philip A. Lacovara, Esq., Hughes Hubbard & Reed, 1660 L Street, N.W., Washington, D.C. 20036.

David I. Shapiro, Esq., Dickstein Shapiro & Morin, 2101 L Street, N.W., Washington, D.C. 20037.

Arnold Bauman, Esq., Shearman & Sterling, 53 Wall Street, New York, New York 10017.

Jerome G. Shapiro, Esq., Hughes Hubbard & Reed, 1 Wall Street, New York, New York 10005.

Daniel A. Rezneck, Esq., Arnold & Porter, 1229 19th Street, N.W., Washington, D.C. 20036.

Dated: January 29, 1979.

THOMAS H. LIDDLE,
Attorney, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530, 202/724-7969.

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, against *Bristol-Myers Company, Beecham Group Limited* and *Beecham Inc.*, Defendants.

M.D.L. Dkt. No. 50

C. A. No. 822-70

OBJECTIONS OF DEFENDANT BRISTOL-MYERS COMPANY TO ENTRY OF PROPOSED FINAL JUDGMENT AGAINST BEECHAM DEFENDANTS AND REQUEST FOR RELIEF

On October 25, 1978, the United States ("the government") and defendants Beecham Group Limited and Beecham Inc. (collectively "Beecham") submitted to the Court for approval a proposed Final Judgment ("the proposed consent decree") which, if approved, would settle both equitable and legal claims asserted by the government against Beecham. Defendant Bristol-Myers Company ("Bristol") objects to entry of the proposed consent decree pursuant to 15 U.S.C. 16(b), and, pursuant to Rules 41(a)(2) and 54(b) of the Federal Rules of Civil Procedure, requests relief against entry of judgment except upon such terms and conditions as will preserve Bristol's rights to fundamental fairness and even-handed justice.

I. OBJECTIONS TO PROPOSED CONSENT DECREE

Bristol objects to the proposed consent decree on the grounds that

(A) the decree would violate Bristol's fundamental rights to Due Process by granting the government unfair procedural advantages in the continued prosecution of its claims against Bristol, and

(B) the decree would require Beecham to infringe Bristol's rights under the United States Patent No. 3,164,604 covering 6-amino penicillanic acid ("6-APA"), whose validity is unchallenged, by making compulsory sales of 6-APA, and might encourage additional infringement of that patent by recipients of Beecham's proposed covenants not-to-sue.

A. *Judicial enforcement of provisions granting the government procedural advantages would deprive Bristol of due process and would violate principles of fundamental fairness.*

Article XVII of the proposed consent decree incorporates in the decree an agreement, denominated "Exhibit A", between Beecham and the government concerning Beecham's continued availability to the government as a witness during pretrial proceedings and at trial of the action against Bristol. In Exhibit A, Beecham agrees to produce its personnel to testify for the government either at pretrial depositions or at trial, as the government elects, and agrees to use its best efforts to assist the government in deposing and securing the presence at trial of retired or former Beecham personnel (Exhibit A, pars. 1(c) and 1(e)). Beecham also agrees to use its best efforts to obtain written statements for the government from present and former Beecham personnel, and agrees to comply with requests by the government to inspect and copy documents relating to the subject matter of the action (Exhibit A, pars. 1(b), 1(c) and 1(d)).

Article XIII of the proposed consent decree provides that jurisdiction will be retained over Beecham by this Court to implement the decree including "the enforcement of compliance therewith, or for the punishment of violations thereof."

There are no comparable procedural rights afforded to Bristol for its defense of the action, and no provision for judicial protection and intervention to assure fairness to Bristol.

Where an unlawful conspiracy is charged, it is particularly important that the defense, the judge and the jury have access equal to that of the prosecution to the "storehouse of relevant fact." Thus, in *Dennis* v. *United States*, 384 U.S. 855 (1966), the Supreme Court stated (*id.* at 873):

"A conspiracy case carries with it the inevitable risk of wrongful attribution of responsibility to one or more of the multiple defendants. *See, e.g., United States* v. *Bufalino*, 285 F.2d 408, 417-418 (C. A. 2d Cir. 1960). Under these circumstances, it is especially important that the defense, the judge and the jury should have the assurance that the doors that may lead to truth have been unlocked. In our adversary system for determining guilt or innocence, it is rarely justifiable for the prosecution to have exclusive access to a storehouse of relevant fact. * * *" [Footnote omitted.]

A decree entered upon consent is more than a mere contract between the parties; it is a judicial act. *Pope* v. *United States*, 323 U.S. 1, 12 (1944); *United States* v. *Swift & Co.*, 286 U.S. 106, 115 (1932). Enforcement by this Court of the provisions of Exhibit A for the sole benefit of the government, without affording Bristol the same rights and the same protection of this Court, would constitute a judicial deprivation of Bristol's rights to Due Process, and could result in clearly erroneous determinations by the trier of fact.

Court approval of Exhibit A to the proposed consent decree would constitute entry of an enforceable order of this Court (i) judicially providing pretrial discovery by documents and testimony for one side of a lawsuit, while such relief is not equally available to the other side,[1] and (ii) judicially providing for trial witnesses who are out of subpoena range to be available to one side in a lawsuit, while not similarly providing for the other side.

Testimony by Beecham witnesses at pretrial and trial is essential to Bristol's rebuttal of any adverse inferences which the government may seek to draw from documents produced by Beecham in pretrial proceedings or from testimony of Beecham witnesses at trial. Although the Court, by order dated December 6, 1978, has ordered Beecham to submit to depositions by Bristol beginning in February, 1979, until the government has designated its intended trial witnesses and documentary exhibits, Bristol will not know what testimony by Beecham personnel will be necessary to present a rebuttal case. As a consequence of the provision in Exhibit A by which Beecham agrees to provide the government with witnesses to testify *either* at deposition *or* at trial, but *not both*, the government is free to elect not to depose its key witnesses but rather to present them only as trial witnesses.

Beecham Group Limited is a British corporation. Bristol will not be able to subpoena its employees at trial if it ceases to be a party to this litigation. Thus, should the Court enter judgment in the form of the proposed consent decree, Bristol will be deprived of adequate pretrial preparation and, at trial, will be denied the power to compel attendance of Beecham witnesses to testify in its defense. The government, on the other hand, will have the unfair advantage of being able to invoke the full powers of the Court to compel Beecham to appear and testify on its behalf at trial.

"Due process is that which comports with the deepest notions of what is fair and right and just." *Solesbee* v. *Balkcom*, 339 U.S. 9, 16 (1950). Due process requires that a defendant be given the benefit of compulsory process to secure and present evidence in its behalf and to require the attendance of witnesses and the production of documents. *Oregon R.R. & N. Co.* v. *Fairchild*, 224 U.S. 510, 525 (1912). Due process requires that justice be "even-handed". *Poller* v. *Columbia Broadcasting System, Inc.*, 368 U.S. 464, 473 (1962). Bristol respectfully submits that Due Process requires that this proposed consent decree providing for judicial enforcement of procedural unfairness should not be entered by this Court.

B. *The proposed decree improperly requires beecham to infringe and to encourage others to infringe bristol's rights under the 6-apa patent.*

Bristol objects to the proposed consent decree on the grounds that it requires in-

[1] On December 28, 1978, counsel for Beecham assured counsel for Bristol that if Beecham produces documents or statements of witnesses to plaintiffs, they will also be made available in the document depository. Based upon this representation, Bristol has no objection to those aspects of pars. 1(b), 1(c) and 1(d) of Exhibit A.

fringement of Bristol's exclusive rights under the 6-APA patent, a basic and valid patent whose validity has never been challenged by the government or anyone else.

Article V(F) of the proposed consent decree requires Beecham, under certain circumstances, to sell 6-APA in the United States. 6-APA is claimed in United States Patent No. 3,164,604 to which Bristol has exclusive rights, subject to Beecham's reserved right in the license agreement of April 2, 1959. Since the reserved right provides no right under United States Patent No. 3,164,604 to sell 6-APA, any such sales by Beecham would constitute an infringement of Bristol's patent rights. *Littlefield* v. *Perry*, 88 U.S. 205, 222-23 (1874); *Research Frontiers Inc.* v. *Marks Polarized Corp.*, 290 F. Supp. 725 (E.D.N.Y. 1968).

There is no legal justification for entry of an order of this Court which would require a foreign corporation to infringe a valid United States patent. The 6-APA patent issued from the United States Patent Office pursuant to a decision by the Court of Customs and Patent Appeals attesting to its validity. *Application of Doyle*, 327 F.2d 513 (C.C.P.A. 1964). No one, including the government, has challenged the validity of this patent despite the fact that this litigation has been pending for nearly nine years. The requirement that Beecham violate the patent rights of others by selling 6-APA is inconsistent with the approach taken by the government on other equitable relief which is limited to requiring Beecham to do only that which it has a right to do under the patents in question.[2] Furthermore, there is no economic reason for the government to seek such a provision since Bristol has granted rights to manufacture and sell 6-APA to several major pharmaceutical manufacturers including American Home Products Corporation, E. R. Squibb & Sons, Inc. and Pfizer.

Bristol also objects to entry of the proposed consent decree on the grounds that it does not require Beecham to disclose to all recipients of Beecham's covenant not-to-sue that Bristol, as exclusive licensee, has the right to bring suit to enjoin or seek damages for infringement. As a result, recipients may be misled and unlawful infringement of a valid United States patent may be fostered by conduct engaged in pursuant to the terms of the proposed consent decree.[3]

II. REQUEST FOR RELIEF

Rule 41(a)(2) of the Federal Rules of Civil Procedure provides that where an action may not be dismissed save upon order of the court, such order shall be "upon such terms and conditions as the court deems proper."

Rule 54(b) provides that when multiple parties are involved in an action, "the court may direct the entry of a final judgment as to one or more but fewer than all * * * parties only upon an express determination that there is no just reason for delay * * *."

Bristol submits that entry of the proposed consent decree dismissing the government's claims against Beecham would not be proper, and that there are compelling reasons for delay in entering such a final judgment, unless entry of the proposed decree is subject to the following terms and conditions:

(1) that the government identify for Bristol at least 45 days prior to dismissal of its action against Beecham those Beecham witnesses whom the government intends to call at trial and those Beecham documents which it intends to introduce at trial;

(2) that Beecham be required to produce for deposition by Bristol any of the government's intended trial witnesses whom the government does not depose;

(3) that Beecham be required to produce at trial any Beecham employees designated by Bristol upon the further condition that reasonable expenses of the witnesses be paid by Bristol; and

(4) that this Court retain jurisdiction over Beecham to enforce Bristol's rights under the above terms and conditions.

In *duPont Glore Forgan, Inc.* v. *Arnold Bernhard & Co., Inc.*, 73 F.R.D. 313, 315 (S.D.N.Y. 1976), dismissal of plaintiff's claims against one of several defendants under Rule 21 in a securities fraud case was expressly conditioned on that defendant making material witnesses available to other defendants at trial. Similarly, in *Hudson Engineering Company* v. *Bingham Pump Company*, 298 F. Supp. 387, 389 (S.D.N.Y. 1969), a patent-antitrust action, voluntary dismissal of the action by one of two plaintiffs against a single defendant under Rule 41(a)(2) was expressly conditioned on the requirement that the dismissed plaintiff make its employees available to the remaining plaintiff for interviews prior to trial and to testify at trial.

Similar relief is essential in the circumstances of this case. The procedural unfairness inherent in the terms of Exhibit A to the proposed consent decree cannot be overcome by Bristol once Beecham Group Limited, a British corporation, ceases to be a party to this action and is no longer subject to the compulsory process of the Court.

CONCLUSION

The proposed consent decree is not in the public interest as it would cause serious injury to Bristol's Constitutional and economic rights. Bristol therefore respectfully urges this Court not to enter the proposed decree. However, Bristol would not oppose entry of a decree modified to omit provisions relating to the 6-APA patent if Bristol's fundamental rights Due Process and a fair trial are protected by granting the additional relief requested herein.

Dated: New York, New York, December 29, 1978.

Respectfully submitted, Hughes Hubbard & Reed.

By: Jerome G. Shapiro, *a Member of the Firm, Attorneys for Defendant, Bristol-Myers Company, One Wall Street, New York, New York 10005, (212) 943-6500; 1660 L Street, N.W., Washington, D.C. 20036, (202) 862-7400.*

CERTIFICATE OF SERVICE

I certify that on December 29, 1978 true copies of the within papers were served by hand upon the persons listed below, except that where indicated by an asterisk (*), copies were served by first-class mail:

Robert V. Allen, Chief, Intellectual Property Section, Antitrust Division, SAFE 704, United States Department of Justice, Washington, D. C. 20530.

Thomas H. Liddle, Esq., Intellectual Property Section, Antitrust Division, United States Department of Justice, 521 12th St., N.W., Washington, D.C. 20004.

*Thomas H. Liddle, Esq., Attorney for the United States, 5715 Glenwood Road, Bethesda, Maryland 20034.

*Stephen Greiner, Esq., Willkie, Farr & Gallagher, Attorneys for American Home Products Corp., 153 East 53rd Street, New York, New York 10022.

Daniel A. Rezneck, Esq., Arnold & Porter, Attorneys for American Home Products Corp., 1229 Nineteenth St., N.W., Washington, D.C. 20036.

Robert F. Dobbin, Esq., Shearman & Sterling, Attorneys for Beecham Group Ltd., 53 Wall Street, New York, New York 10005.

Richard A. Whiting, Esq., Steptoe & Johnson, Attorneys for Beecham Group Ltd., 1250 Connecticut Ave., N.W., Washington, D.C. 20036.

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WILLIAM R. STEIN.

[FR Doc. 79-4311 Filed 2-7-79; 8:45 am]

[2]See Articles V(A)(1), V(A)(2)(c), VI(C) and Competitive Impact Statement pp. 9, 11 and 16.

[3]Article VI(A) of the proposed consent decree also requires Beecham to grant royalty-free covenants not-to-sue for infringement of any patent used in connection with the manufacture, use, or sale of ampicillin. Among the patents used in connection with the manufacture of ampicillin, is United States Patent No. 3,159,617 ("the Sheehan patent") owned by A. D. Little and licensed exclusively by A. D. Little to Bristol. Beecham has no right to license or enforce this patent, a right which remains with A. D. Little and Bristol. Beecham's covenant not-to-sue for infringement of the Sheehan patent would be entirely meaningless and misleading.

[4410-18-M]

Law Enforcement Assistance Administration

NATIONAL ADVISORY COMMITTEE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION

Meeting

Notice is hereby given that the National Advisory Committee for Juvenile Justice and Delinquency Prevention (the Committee) and its subcommittees will meet Wednesday, Thursday, Friday and Saturday, February 21, 22, 23, and 24, 1979, at the Hanalei Hotel in San Diego, California. The meeting will be open to the public.

On Wednesday, February 21, preceding the full committee, the Subcommittee to Advise the Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the Subcommittee on the Concentration of Federal Effort will hold a Public Hearing. The Subcommittees have invited testimony from all interested persons on three topics: 1) Reauthorization of the Juvenile Jus-

tice and Delinquency Prevention Act, 2) the Location of OJJDP, and 3) Recommendations Regarding the Level of Appropriations for OJJDP in Fiscal Year 1980. The hearing is scheduled to begin at 9:00 a.m. Following a luncheon recess at noon, the hearing will reconvene at 2:00 p.m. and end at 5:00 p.m. Following the public hearing, the Executive Committee will meet at 6:30 p.m. Wednesday evening.

The meeting of the full Committee is scheduled to convene at 9:00 a.m. on Thursday, February 22. The session will begin with a report from the Executive Committee and a report by the Administrator of the Office of Juvenile Justice and Delinquency Prevention. At 10:30 a.m. following a brief recess, the four subcommittees: Advisory Committee for the National Institute for Juvenile Justice and Delinquency Prevention; Advisory Committee on Standards for Juvenile Justice; Advisory Committee to the Administrator of the Office; and Advisory Committee on the Concentration of Federal Effort, will meet. The Subcommittee to Advise the Administrator and the Subcommittee on the Concentration of Federal Effort will meet in joint session from 10:30 a.m. until 12:30 p.m. Following a 12:30 p.m.-1:30 p.m. luncheon recess, the subcommittees will reconvene in individual sessions for the remainder of the day. Topics scheduled to be addressed by subcommittees include: Training Functions of the National Institute, Second National Meeting of State Advisory Groups, Formula Grant Guidelines, Location of the Runaway Youth Act Program and the NAC Newsletter.

On Friday, February 23, at 10:00 a.m., the full Committee will reconvene to hear a joint report on the public hearing from the Subcommittee to Advise the Administrator and the Subcommittee on the Concentration of Federal Effort. Following a 12:30 p.m.-1:30 p.m. luncheon recess, the full Committee will meet to hear reports from the Subcommittee to Advise the Administrator and the Subcommittee on the Concentration of Federal Effort. After a brief recess at 3:15 p.m., the full Committee will reconvene at 3:30 p.m. to hear reports from the Subcommittee on the Institute and the Subcommittee on Standards. The subcommittee reports will be followed by an opportunity for public commentary.

The full Committee will reconvene on Saturday, February 24, at 9:00 a.m. to discuss recommendations concerning the juvenile who has committed a violent offense. This discussion will be followed by a review of plans for the May meeting of the Committee. The meeting of the full Committee is scheduled to adjourn at 11:30 a.m.; an hour long meeting of the Executive Committee will follow.

For further information, contact Mr. John M. Rector, Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Department of Justice, 633 Indiana Avenue, N.W. Washington, D.C. 20531.

JOHN M. RECTOR,
Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 79-4268 Filed 2-7-79; 8:45 am]

[6820-49-M]

NATIONAL COMMISSION ON THE INTERNATIONAL YEAR OF THE CHILD, 1979

MEETING; CORRECTION

JANUARY 31, 1979.

Meeting correction, FEDERAL REGISTER Document No. 79-2912, published at p. 5730, in issue of January 29, 1979.

National Commission on the International Year of the Child Meeting scheduled for February 9, 1979, should read—9:30 A.M. to 1:00 P.M.

BENEDICT J. LATTERI,
Administrative Officer, National Commission on the International Year of the Child.

[FR Doc. 79-4312 Filed 2-7-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON SPENT FUEL STORAGE

Meeting

The ACRS Subcommittee on Spent Fuel Storage will hold a meeting on February 23, 1979 in Room 1046, 1717 H St., N.W., Washington, DC 20555, to continue its review of the NRC proposed rule on Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation (ISFSI).

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978 (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Friday, February 23, 1979—8:30 a.m. until the conclusion of business.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, and their consultants, pertinent to this review. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions to permit discussion of provisions for the physical security of licensed nuclear facilities of this type. I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that, should such sessions be required, it is necessary to close these sessions, (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Elpidio G. Igne, (telephone 202/634-3314) between 8:15 a.m. and 5:00 p.m., EST.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555.

Dated: February 1, 1979.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 79-4118 Filed 2-7-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-516 and STN 50-517]

LONG ISLAND LIGHTING CO. AND NEW YORK STATE ELECTRIC & GAS CORP., JAMESPORT NUCLEAR POWER STATION, UNITS 1 AND 2

Availability of Partial Initial Decision and Initial Decision of the Atomic Safety and Licensing Board

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Partial Initial Decision dated May 9, 1978, and an Initial Decision dated December 26, 1978, by the Atomic Safety and Licensing Board in the above-captioned proceedings are available for inspection by the public in the Commission's Public Document Room at 1717 H Street, NW, Washington, DC and at the Riverhead Free Library 300 Court Street, Riverhead, New York.

Based on the record developed in the public hearing in the above-captioned matter, the Partial Initial Decision and Initial Decision modified in certain respects the contents of the Final Environmental Statement prepared by the Commission's Office of Nuclear Reactor Regulation relating to the proposed construction of the Jamesport Nuclear Power Station, Units 1 and 2.

Pursuant to the provisions of § 51.52(b)(3) of 10 CFR Part 51, the Final Environmental Statement is deemed modified to the extent that the Findings and Conclusions contained in the Partial Initial Decision and Initial Decision differ from those contained in the Final Environmental Statement. As required by § 51.52(b)(3) of 10 CFR Part 51, a copy of the Partial Initial Decision and Initial Decision, which modify the Final Environmental Statement, have been transmitted to the Environmental Protection Agency and other interested agencies and persons in accordance with § 51.26(c) of 10 CFR Part 51.

The Partial Initial Decision, the Initial Decision, and the Final Environmental Statement are available for public inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, DC, and in the Riverhead Free Library, 330 Court Street, Riverhead, New York. Copies of the Final Environmental Statement (Document No. NUREG-75/079) may be purchased at $10. for printed copies and $2,25 for microfiche from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 1st day of February 1979.

For the Nuclear Regulatory Commission.

WM. H. REGAN, Jr.,
Chief, Environmental Projects Branch 2, Division of Site Safety and Environmental Analysis.

[FR Doc. 79-4297 Filed 2-7-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-354 and 50-355]

PUBLIC SERVICE ELECTRIC AND GAS CO. AND ATLANTIC CITY ELECTRIC CO., HOPE CREEK GENERATING STATION, UNITS 1 AND 2

Issuance of Amendment to Construction Permits and Availability of Decision

Notice is hereby given that pursuant to a Decision dated January 12, 1979, by the Atomic Safety and Licensing Appeal Board, the Nuclear Regulatory Commission has issued Amendment No. 5 to Construction Permit No. CPPR-120 and Amendment No. 5 to Construction Permit No. CPPR-121 issued to Public Service Electric and Gas Company and Atlantic City Electric Company for construction of the Hope Creek Generating Station, Units 1 and 2, located in Salem County, New Jersey. The Appeal Board's Decision directed the addition of conditions to the construction permits designed to ensure that the Commission's staff will be promptly alerted should circumstances arise which suggest that either liquefied natural gas traffic or a significant increase in liquefied petroleum gas traffic on the Delaware River will materialize or that other factors which govern the flammable vapor cloud probability calculation will change.

The Nuclear Regulatory Commission has found that the provisions of the amendments comply with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations published in 10 CFR Chapter I and has concluded that the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

A copy of the Decision dated January 12, 1979, Amendment No. 5 to Construction Permit No. CPPR-120, Amendment No. 5 to Construction Permit No. CPPR-121, and other related documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. Single copies of the Decision, Amendment No. 5 to CPPR-120, and Amendment No. 5 to CPPR-121 may be obtained by writing the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management.

Dated at Bethesda, Maryland this 1st day of February, 1979.

For the Nuclear Regulatory Commission.

ROBERT L. BAER,
Chief, Light Water Reactors Branch No. 2, Division of Project Management.

[FR Doc. 79-4299 Filed 2-7-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-354 and 50-355]

SECOND SUPPLEMENTARY INITIAL DECISION OF THE ATOMIC SAFETY AND LICENSING BOARD AND DECISION OF ATOMIC SAFETY AND LICENSING APPEAL BOARD FOR THE HOPE CREEK GENERATING STATION, UNIT NOS. 1 AND 2

Availability

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in § 51.52(b)(3) of 10 CFR Part 51, notice is hereby given that a Second Supplementary Initial Decision by the Atomic Safety and Licensing Board, dated April 13, 1978, and a Decision of the Atomic Safety and Licensing Appeal Board, dated January 12, 1979 have been issued.

Copies of both documents are available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C., and in the Salem Free Library, 112 West Broadway, Salem, New Jersey. Copies are also available at the State Clearinghouse, Bureau of State and Regional Planning, Department of Community Affairs, 329 West State Street, Trenton, New Jersey. The Final Environmental Statement issued February 14, 1974 is also available at these locations.

Based on the record developed in the public hearing in the above captioned matter, the Decision of the Atomic Safety and Licensing Appeal Board and the Second Supplementary Initial Decision of the Atomic Safety and Licensing Board modified in certain aspects the contents of the Final Environmental Statement prepared by the Commission's Office of Nuclear Reactor Regulation dated February 1974 relating to the construction of the Hope Creek Generating Station.

Pursuant to the provisions of § 51.52(b)(3) of 10 CFR Part 51, the Final Environmental Statement is deemed modified by the Licensing Board and Appeal Board issuances to show that the flammable cloud accident is so unlikely that its environmental impact need not be considered. As required by § 51.52(b)(3) of 10 CFR

Part 51, copies of the Decision by the Atomic Safety and Licensing Appeal Board and copies of the Second Supplementary Initial Decision by the Atomic Safety and Licensing Board have been transmitted to the Environmental Protection Agency and other interested agencies and persons in accordance with § 51.26(c) of 10 CFR Part 51.

Single copies of the Second Supplementary Initial Decision by the Atomic Safety and Licensing Board and the Decision by the Atomic Safety and Licensing Appeal Board may be obtained by writing the U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Director, Division of Site Safety and Environmental Analysis.

Dated at Bethesda, Maryland, this 1st day of February 1979.

For the Nuclear Regulatory Commission.

RONALD L. BALLARD,
Chief, Environmental Projects Branch 1 Division of Site Safety and Environmental Analysis.

[FR Doc. 79-4298 Filed 2-7-79; 8:45 am]

[7590-01-M]

[Docket No. 50-112]

THE UNIVERSITY OF OKLAHOMA

Proposed Issuance of Amendment to Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility License No. R-53, issued to the University of Oklahoma (the licensee), for operation of the AGN-211 Reactor located on the licensee's campus in Norman, Oklahoma.

The amendment would authorize an increase in the reactor's licensed maximum power level from 15 watts (thermal) to 100 watts (thermal), in accordance with the licensee's application for license renewal dated October 6, 1978 (43 FR 53073, November 15, 1978), as revised January 5, 1979.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 12, 1979, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert Reid: (petitioner's name and telephone number); (date petition was mailed); (Oklahoma AGN-211); and (publication date and page number of this FEDERAL REGISTER notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)-(v) and 2.714(d).

For further details with respect to this action, see the licensee's application for renewal dated October 6, 1978, and the January 5, 1979 letter which revises the application. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C.

Dated at Bethesda, Maryland this 31st day of January 1979.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 79-4119 Filed 2-7-79; 8:45 am]

[7590-01-M]

[Docket No. PRM-2-7]

WELLS EDDLEMAN

Petition for Rule Making

Notice is hereby given that Mr. Wells Eddleman, Rt. 1, Box 183, Durham, North Carolina, has filed with the Nuclear Regulatory Commission a petition for rule making dated January 4, 1979 to amend § 2.714 of the Commission's regulation "Rules of Practice for Domestic Licensing Proceedings," 10 CFR Part 2.

The petitioner states that: Notwithstanding my belief that 10 CFR § 2.714

allows a person newly arrived in the vicinity of a nuclear power plant site to petition with good cause to intervene, and notwithstanding my belief that any organization legitimately formed after the closing date for intervention petitions (and not formed with the purpose of circumventing the rules and procedures of the NRC, or of Federal law), also has good cause to be granted leave to intervene, I propose that this be made explicit by amending § 2.714 of 10 CFR 2 as follows; replacing section (a)(1)(i) with this wording:

(i) Good cause if any, for failure to file on time. Good cause shall include acquiring an interest in the proceeding, particularly by exercising Constitutional rights (e.g. free movement), after the deadline for filing, provided such acquisition of interest was not primarily intended to give cause for leave to intervene. Further, any organization formed after the deadline for intervention but without the express intent to circumvent the filing deadline by so organizing, and any corporate person moving into the vicinity of a nuclear power plant a significant office, factory or moveable property shall also be considered as having good cause for nontimely filing.

The petitioner states further that beyond the purpose stated above the purpose of the rule proposed by the petitioner is to protect the interests of those who by exercising their legal and/or Constitutional rights, become interested in a proceeding after a filing deadline that may well have been years in the past.

The petitioner states also that: I personally have an interest in this proceeding because I unwittingly moved close to a nuclear plant site in 1977 (12 August), and wish to be afforded the same opportunity to petition to intervene as anyone who was living in the area when the plant was proposed or its initial hearings held. I do not ask any suspension of any proceedings. I do request that should this proposed rule be adopted in whole or in part it be applied to my case retroactively to this date or to the date of filing of any petitions to intervene which makes a point of late intervention by exercise of Constitutional rights etc. as specified in my proposed rule, including the right to a rehearing based on this proposed rule if and when it is made part of 10 CFR 2.

A copy of the petition for rule making is available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of the petition may be obtained by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

All persons who desire to submit written comments or suggestions concerning the petition for rule making should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch by April 9, 1979.

FOR FURTHER INFORMATION CONTACT:

Gerald L. Hutton, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone 301-492-7086.

Dated at Washington, D.C. this 2nd day of February 1979.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 79-4296 Filed 2-7-79; 8:45 am]

[4910-58-M]

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 79-6]

ACCIDENT REPORT; SAFETY RECOMMENDATIONS AND RESPONSES

Availability

Aircraft Accident Report.—The formal investigation report on the midair collision which occurred last May 18 near the Memphis (Tenn.) International Airport has been made public by the National Transportation Safety Board. The report, No. NTSB-AAR-78-14, was released on January 30, and indicates that a Falcon Jet DA-20, on an instrument flight rules plan with an instructor pilot and three students on board, collided with a Cessna 150M 3.7 miles west of the airport. An instructor pilot and one passenger were aboard the Cessna. All six persons were killed.

Investigation showed that the Cessna was VFR and was receiving Stage III radar service. Both aircraft were under control of Memphis tower controllers and were in radar and radio contact with the tower. The weather in the Memphis area was: Scattered clouds at 4,500 feet and visibility—6 miles with haze.

The Safety Board determined that the probable cause of this accident was the failure of controller personnel to separate the aircraft as required by procedures established for a terminal radar service area (TRSA), to insure that proper coordination was effected, to issue appropriate traffic advisories, and the failure of each flightcrew to see and avoid the other aircraft.

Active flight training in a high density terminal area was seen by the Board as a significant issue in this accident. The Safety Board has repeatedly urged the Federal Aviation Administration to develop "reliever" airports to reduce the need for extensive flight training at larger airports. Further, the Board concluded that air traffic control procedures in use at Memphis lacked the redundant safeguards needed when controller coordination procedures were not followed. Such system redundancy could have been avoided by aircraft detection and collision avoidance systems now being developed or in use.

As a result of this accident, the Safety Board on October 26 recommended that FAA (1) consider revising Memphis ATC procedures to keep jet aircraft at or above 2,500 feet between repeated instrument training approaches; (2) create from existing TRSA's, such as Memphis, "TRSA I" locations where traffic is heaviest and ATC automation is available, and "TRSA II" elsewhere; and (3) require each aircraft operating in a TRSA I to be in radio contact with ATC, and in a TRSA I and the busier TCA II areas to be equipped with an altitude encoding transponder—a radar response device which enhances an aircraft's target on an ATC radarscope and also provides it with the aircraft's altitude. (Recommendations A-78-79 through 81; see 43 FR 51151, November 2, 1978.)

On January 9 FAA responded to these recommendations, indicating that procedures for handling consecutive approaches at Memphis have been formalized and instituted; also, FAA plans to issue in the near future rulemaking proposals to meet the intent of recommendations A-78-80 and 81. (See 44 FR 5215, January 25, 1979.)

SAFETY RECOMMENDATIONS

Aviation: A-79-1 and 2.—While in cruise flight at 800 feet over Vancouver, Wash., last May 25, a Hughes Model 269A helicopter experienced a loss of engine power. The pilot-in-command took control of the aircraft from a student pilot and implemented autorotation procedures. However, during the descending approach to the intended landing site, the aircraft struck powerlines and fell inverted to the ground. Although there was a large fuel spill, no fire ensued. The student pilot was killed, and the instructor pilot was seriously injured. This cockpit information was documented immediately after the accident: Battery and generator switches—on; mixture—rich; carburetor heat—cold; magneto—both; fuel shutoff—on; fuel boost pump—off.

Safety Board investigation of the accident disclosed that (1) the fuel

system for this helicopter requires an auxiliary fuel boost pump that incorporates an internal bypass system; (2) on May 18, 1978, an auxiliary fuel boost pump without a bypass feature had been installed on the aircraft; and (3) the electric fuel boost pump was turned off in flight, which caused the engine to lose power because of insufficient fuel flow.

In view of the potentially catastrophic consequences associated with such an installation, and to prevent human error in the maintenance of all aircraft that utilize these fuel pumps, the Safety Board on February 2 recommended that the Federal Aviation Administration:

Issue a General Aviation Airworthiness Alert to all aircraft owners, operators, manufacturers, and maintenance personnel apprising them of the circumstances of this accident and the approved flight manual operating procedures for checking fuel boost pump pressures. (A-79-1)

Advise overhaul facilities and manufacturers that permanent identification of parts is required by 14 CFR 45.15. (A-79-2)

Both recommendations are designated "Class II, Priority Action."

Highway: H-79-1 and 2.—An ambulance responding to an emergency call last August 22 and traveling at an estimated speed of 90 mph failed to negotiate a curve on New Hampshire State Route 116 North of Littleton, N.H., and rolled over. Two persons in the ambulance were killed and the driver was injured.

The Safety Board's continuing investigation of this accident has revealed that the driver did not understand the principles of high-speed driving techniques. The driver said she entered the curve too wide and turned the steering wheel to the left, turning the ambulance toward the inside of the curve, and lost control. In an attempt to regain control, the driver steered to the right. She overcorrected and subsequent steering efforts by the driver aggravated the loss of control until the vehicle rolled over.

Apparently, driver inexperience and lack of familiarity with the high-speed handling characteristics of this vehicle was a factor in the accident. The Board notes that many factors contribute to handling characteristics, including suspension design, tire design, tire pressures, weight, center of gravity location, speed, and acceleration. The Board believes that even with adverse handling characteristics, the vehicle was capable of negotiating the curve; but the inexperienced driver was unable to properly steer to maintain control of the vehicle.

Since ambulance drivers are authorized to exceed posted speed limits, they should be competent and qualified to operate such vehicles at high speeds. Accordingly, the Safety Board on February 1 recommended that the National Highway Traffic Safety Administration:

Modify Highway Safety Program Standard No. 11, "Emergency Medical Services," and the NHTSA "Training Program for Operation of Emergency Vehicles," to provide for behind-the-wheel training in the principles and techniques of high-speed driving, and to require that a student successfully complete both a written and a behind-the-wheel examination before he is licensed. (H-79-1)

Urge the States to maintain and make available, through the State driver licensing agency, the records of all licensed emergency vehicle operators so that employers can determine if an applicant for an emergency vehicle driver position is licensed for the operation of emergency vehicles. (H-79-2)

The first recommendation is designated "Class I, Urgent Action"; the second is a "Class II, Priority Action" recommendation.

Responses to Safety Recommendations

Highway: H-77-41.—Letter of January 19 from the Federal Highway Administration is in response to the Safety Board's November 2 comments of FHWA's initial response of last July 25 (43 FR 37777, August 24, 1978). The recommendation, asking FHWA to require local jurisdictions to obtain State approval before installing traffic control devices on State routes through their jurisdictions, resulted from investigation of the August 20, 1976, collision of a tractor-semitrailer with multiple vehicles in Valley View, Ohio.

The Safety Board agrees with FHWA's finding that an increase in local-level traffic management and control education would achieve proper application of traffic control devices by local jurisdictions, and the Board's November 2 letter indicates that a strong sense of urgency should be displayed in carrying out this education process. The Board expressed interest in implementing Highway Safety Program Standard (HSPS) 13, "Traffic Engineering," section I of which lists the minimum makeup of a State program and includes a comprehensive manpower development plan to provide the necessary traffic engineering capability, including (1) supplying traffic engineering assistance to those jurisdictions unable to justify a full-time traffic engineering staff, and (2) upgrading the skills of practicing traffic engineers and providing basic instruction in traffic engineering techniques to subprofessionals and technicians. The Board believes that each State must implement this program to insure that local jurisdictions will properly apply traffic control devices. FHWA has the responsibility of overseeing implementation of HSPS No. 13, and the Board asked to be advised as to how many States do have a manpower program prescribed by this standard, the effect the program has had on the level of traffic engineering services statewide, and the intentions of FHWA in providing for nationwide implementation of HSPS No. 13.

FHWA's January 19 letter refers to the initial response which indicated that the recommended regulation would mean a major change in responsibility, would require changes in State and local laws, and would not have much, if any, effect since local signs currently must satisfy State law. Further, FHWA states that it has neither the authority to require nor the sanctions to enforce such a requirement. As indicated in FHWA's July 25 letter, the DOT Order 2100.1A criteria has been satisfied. In answer to the new issues raised by the Board on November 2, FHWA offers to meet with the Board to discuss in detail various manpower programs responsive to Standard No. 13.

H-78-63.—FHWA's letter of January 22 is in response to one of the recommendations issued last September 26 following investigation of the Cates Trucking, Inc., tractor-semitrailer/multiple vehicle collision override near Atlanta, Ga., on June 20, 1977. The recommendation urged FHWA to direct its Bureau of Motor Carriers Safety (BMCS) to increase surveillance of motor carrier operations under its jurisdiction and assure that they are in compliance with existing regulations for driver qualifications and hours of service.

FHWA reports that BMCS has already increased inspection of carriers who are under the Federal Motor Carriers Safety Regulations. One way in which the increase is being implemented is through BMCS roadside safety inspection, which activity has a threefold purpose: (1) To detect motor carrier violations of the regulations and remove defective vehicles from the highway; (2) to obtain information about motor carriers, including the vehicle and driver, for the purpose of identifying carriers who need further attention; and (3) to identify carriers operating within FHWA's jurisdiction whose activity was previously unknown. Additional emphasis has been placed on high-impact roadside inspections, and several publications entitled "BMCS Roadside Safety Inspections" relating to this increased inspection program have been released to industry and the general public.

Further, FHWA reports that other inspection activities are performed by the BMCS field staff, such as inspection of carrier equipment and records at the carrier's facility. These inspections determine whether the carrier is complying with the Federal regulations. FHWA says that a 50 percent in-

crease in its overall inspection safety program is planned for FY 79 over FY 78.

FHWA notes that the increase in inspection activities have been accomplished only through reduction of other activities, such as participation in safety meetings and educational activities, and no overall increase in activity can be accomplished until the size of the motor carrier safety staff is increased. BMCS has asked that it be exempted from the current Executive order imposing a partial freeze on hiring, and also hopes to be permitted to fill the 26 additional positions authorized by Congress. FHWA says these decisions, however, are not within its scope.

Pipeline: P-78-1 through 8.—Consolidated Gas Supply Corporation of Clarksburg, W.Va., on January 23 replied to the Safety Board's inquiry of September 29 concerning recommendations issued following investigation of the propane pipeline rupture and fire near Ruff Creek, Pa., July 20, 1977. The Board's letter to Consolidated followed evaluation of the company's initial response of last July 17 (43 FR 37777, August 24, 1978), and indicated that recommendations P-78-2, 4, 6, and 8 had been closed with acceptable action on the company's part. The Board's inquiries addressed recommendations P-78-1, 3, 5, and 7 which were being held open pending further action by Consolidated.

With reference to P-78-1, which recommended that the sagbend at the accident site and other known locations of settlement be tested for signs of stress-corrosion cracking, the Board noted that Consolidated did not mention other areas of settlement and asked to be advised if there are such locations and if they have been scheduled for testing. Consolidated reports that the entire length of Line G-136 is being walked at least once a month and more frequently in certain areas (between freeways I-79 and I-70), and helicopters are also used to patrol the line on a regular basis; no ground settlement has been witnessed in the area of the pipeline. Consolidated says that elevation bench marks have been established in the area of the failure at Craynes Run to check for any movement of the pipe or surrounding ground. The bench marks are being monitored on a weekly basis, and since the failure no movement of pipe or ground in this area has been witnessed. Routine surveillance will be continued and should any settlement be discovered, the pipe in that area will be thoroughly investigated for stress-corrosion cracking.

The Safety Board asked, with reference to recommendations P-78-3, to receive a copy of Consolidated's operations and maintenance procedures. Consolidated states that a draft of the procedures has been prepared and is being reviewed by the company legal staff. Issuance is expected soon.

With reference to Consolidated's response to recommendations P-78-5, the Safety Board asked to be supplied with any information developed as a result of the company evaluation of the Bethany International acoustic monitoring system. Consolidated reports that its evaluation of the monitoring system is still in progress and the desired sensitivity settings of the system are now being determined. Sensitivity can be set so fine that false triggering of the monitor will occur, Consolidated states, and this degree of sensitivity cannot be tolerated. This installation is still considered experimental and surveillance of its performance will be continued to get it fine tuned to the extent that it will meet Consolidated's requirements as a position leak detection device.

Concerning recommendations P-78-7, the Safety Board asked to be notified of the testing schedule when completed—the segment of pipeline 10 miles downstream of former Preston Compressor Station plus an area between I-70 and I-79 to be inspected on a random sample basis for evidence of stress, corrosion cracking or increased depth and general corrosion pitting. In response, Consolidated cites seven instances where inspecions were made at the time repairs were being made to minor leaks (less than five barrels per day) in that area within a three-month period late last summer. The inspection procedures and results are provided in detail. No evidence of stress corrosion cracking was found.

Railroad: P-77-13.—Letter of January 19 from the Federal Railroad Administration is in response to a recommendation issued June 1, 1977, following Board investigation of the collision of two Consolidated Railroad Corporation commuter trains in New Canaan, Conn., July 13, 1976. The recommendation asked FRA to promulgate regulations for railroad commuter lines that will: Establish standards for the interior design of commuter cars to prevent and reduce injuries from accidents; insure that when the cars' power source fails, emergency lighting is adequate and doors can be operated easily from inside and outside; establish standards for evacuating passengers; and prevent a passenger train from entering an occupied block. (See 42 FR 29580, June 9, 1977.)

In response to the first three parts of this recommendation, FRA reports that on October 6, 1977, its Office of Safety convened a meeting of all parties interested in a passenger safety program, including representatives from FRA's Office of Research and Development, the Office of Safety, and the Urban Mass Transportation Administration. At this time, the Office of Research and Development agreed to prepare, with UMTA's support, a preliminary test plan incorporating the Safety Board's passenger safety recommendations. These then could be tested on passenger cars at the Department of Transportation's Test Center in Pueblo, Colo. This program has been scheduled for completion during the last quarter of 1980 or first quarter of 1981, and until the testing program has been completed, FRA says it cannot adequately and fully respond to specific passenger car safety recommendations.

FRA interprets the Board's recommendation for a regulation which would prevent a passenger train from entering an occupied block as pertaining to the area of operating rules, not to the mandatory installation of automatic train stop devices throughout the Nation's railroads. FRA states, "History has shown that trains can safety enter and operate in an occupied block under proper operating rule procedures. The predominant cause of collisions in occupied blocks is lack of compliance with carrier operating rules."

Based on an analysis of accident data for the 10-year period 1965-1974 which indicates that rear-end collisions accounted for less than 1 percent of reportable train accidents, FRA states that it is apparent that there is not a significant difference in the number of train collisions occurring under various operating rules procedures. "The element common to the vast majority of collisions is the failure of operating personnel to comply with the requirements of the operating rules," FRA stated. Believing that the underlying cause of these human failures is a lack of adequate training and testing programs, FRA intends to develop minimum training and testing programs for operating employees. FRA does not concur with the Board's recommendation to regulate preventing a passenger train from entering an occupied block.

NOTE.—Single copies of the Safety Board's recommendation letters and responses thereto are available free of charge. Single copies of accident reports are also available without charge, but stocks are limited. All requests for copies must be in writing, identified by report or recommendation number. Address inquiries to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Multiple copies of accident reports may be purchased by mail from the National Technical Information Service, Department of Commerce, Springfield, Va. 22151.

(Secs. 304(a)(2) and 307 of the Independent Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2169, 2172 (49 U.S.C. 1903, 1906)).

MARGARET L. FISHER,
Federal Register Liaison Officer.

FEBRUARY 2, 1979.

[FR Doc. 79-4360 Filed 2-6-79; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

PRIVACY ACT

New Systems

The purpose of this notice is to give members of the public an opportunity to comment on Federal agency proposals to establish or alter personal data systems subject to the Privacy Act of 1974.

The Act states that "each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals . . ."

OMB policies implementing this provision require agencies to submit reports on proposed new or altered systems to Congress and OMB 60 days prior to the issuance of any data collection forms or instructions, or 60 days prior to the issuance of any requests for proposals for computer and communications systems or services to support such systems—which is earlier.

The following reports on new or altered systems were received by OMB between January 1, 1979 and January 12, 1979. Inquiries or comments on the proposed new systems or changes to existing systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB. The 60 day advance notice period begins on the report date indicated.

DEPARTMENT OF JUSTICE

System Name: Essential Chemical Reporting System.

Report Date: January 10, 1979.

Point-of-Contact: Mr. William Snider, Administrative Counsel, Department of Justice, Washington, D.C. 20530.

Summary: This new system is proposed by the Drug Enforcement Administration as a means of carrying out its responsibilities under the Psychotropic Substances Act of 1978. That Act requires the DEA to maintain records about the sale, distribution, or importation of piperidine. DEA will also use the records in the system to provide statistical reports and "investigative leads concerning violations of the Comprehensive Drug Abuse Prevention and Control Act of 1970."

DEPARTMENT OF COMMERCE

System Names: (1) Department Mailing Lists; (2) Secretarial Correspondence Files.

Report Date: January 5, 1979.

Point-of-Contact: Mr. Donald S. Budowsky, Office of Organization and Management Systems, U.S. Department of Commerce, Washington, D.C. 20230.

Summary: The Department Mailing Lists are being amended by the addition of a list of National Bureau of Standards employees who are interested in forming or joining carpools. The second system, Secretarial Correspondence Files, is a new system, intended to track correspondence and pending responses. It will be an automated system, and will eventually operate through the Commerce Department.

Waiver Requests: OMB procedures permit a waiver of the advance notice requirement when the agency can show that the delay caused by the 60 day advance notice would not be in the public interest. It should be noted that a waiver of the 60 day advance notice period does not relieve the agency of the obligation to publish a notice describing the system and to allow 30 days for public comment on the proposed routine uses of the personal information to be collected. A waiver of the 60 day advance notice provision was requested by agencies for the following reports received between January 1, 1979 and January 12, 1979. Public inquiries or comments on the proposed new or altered systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB. Comments on the operation of the waiver procedures should be directed to OMB.

CANAL ZONE GOVERNMENT

System Name: Personnel Information System.

Report Date: January 12, 1979.

Point-of-Contact: Mrs. Hazel Murdock, Canal Zone Government, Washington, D.C. 20004.

Summary: This new system of records is proposed as a part of the implementation of the Panama Canal Treaties. It will be an automated system designed to combine with the existing automated payroll system in order to process the transfers, reductions-in-force, and retirement of some 20,000 Canal agency employees.

Status of Waiver Request: No action as of January 29, 1979.

CENTRAL INTELLIGENCE AGENCY

System Names: (1) Office of Data Processing Security Clearance Records;
(2) Security Access Records;
(3) Inquiries from Private Individual About the CIA and its Mission;
(4) Contact with the News Media and Index;
(5) Manuscript Review;
(6) Publishing and Speaking Engagement Clearance;
(7) CIA Personnel in Contact with the Press;
(8) Logistics Security Clearance Records;
(9) Publicity.

Report Date: January 12, 1979.

Point-of-Contact: Mr. John F. Blake, Central Intelligence Agency, Washington, D.C. 20505.

Summary: Systems (1)-(7) are newly reported systems of records; however (3)-(7) were previously reported as part of CIA's system or records "Publicity," (formerly identified as "Publications about CIA"), and are now the subject of new notices. The first two systems, "Office of Data Processing Security Clearance Records" and "Security Access Records," are still under development, and no waiver is requested for them. The former includes information about the security clearances of contractors and vendors associated with the Office of Data Processing; the latter is used to track the entry and departure of individuals with security badges to and from CIA buildings. Finally, the Logistics Security Clearance Records System, used in "conducting agency business with the commercial sector and for liaison purposes with other government agencies, is being automated; and the "publicity" system is being amended to reflect the separation of the new systems listed above. No waiver is requested for the changed systems.

Status of Waiver: No action as of 1/22/79.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc. 79-4275 Filed 2-7-79; 8:45 am]

[4710-09-M]

DEPARTMENT OF STATE

[Public Notice 647]

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Applications for Permits To Fish Off the Coasts of the United States

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) as amended (the "Act") provides that

no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to Section 204 of the Act.

The act also requires that a notice of receipt of all applications for such permits, a summary of the contents of such applications, and the names of the Regional Fishery Management Councils that receive copies of these applications, be published in the FEDERAL REGISTER.

Applications have been received from the Union of Soviet Socialist Republics for fishing during 1979 and are reproduced herewith. Individual vessel applications for fishing during 1978 and 1979 have been received from Japan, Korea and the Union of Soviet Socialist Republics and are summarized herein.

If additional information regarding any applications is desired, it may be obtained from: Permits and Regulations Division (F37), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, (Telephone: (202)634-7265).

Dated: January 30, 1979.

JAMES A. STORER,
Director,
Office of Fisheries Affairs.

FISHERY CODES AND DESIGNATION OF REGIONAL COUNCILS WHICH REVIEW APPLICATIONS FOR INDIVIDUAL FISHERIES ARE AS FOLLOWS:

Code	Fishery	Regional council
ABS	Atlantic Billfishes and Sharks	New England. Mid-Atlantic. South Atlantic. Gulf of Mexico. Caribbean.
BSA	Bering Seas and Aleutian Islands Trawl, Longline and Herring Gillnet.	North Pacific.
CRB	Crab (Bering Sea)	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic	New England. Mid-Atlantic.
SMT	Seamount Groundfish (Pacific Ocean)	Western Pacific.
SNL	Snails (Bering Sea)	North Pacific.
WOC	Washington, Oregon, California Trawl	Pacific.

ACTIVITY CODES SPECIFY CATEGORIES OF FISHING OPERATIONS APPLIED FOR AS FOLLOWS:

Activity code	Fishing operations
1	Catching, processing, and other support.
2	Processing and other support only.
3	Other support only.

Nation/Vessel Name/Vessel Type	Application No.	Fishery	Activity
Korea: *O Dae Yang 212*, Longliner	KS-79-0063	BSA, GOA	1
Japan:			
Yashima Maru, medium stern trawler.	JA-79-0381	NWA	1
Eikyu Maru No. 82, longliner	JA-79-0607	BSA, GOA	1
Fumizuki Maru, cargo/transport	JA-79-1145	NWA, BSA, GOA	1
Hirotsuki Maru, cargo/transport	JA-79-1146	NWA, BSA, GOA	1
Daigen Maru, cargo/transport	JA-79-1147	NWA, BSA, GOA	1
Hiyo Maru, cargo/transport	JA-79-2025	BSA, CRB, GOA, NWA, SMT, SNA.	3
USSR:			
**Nadezhdinsk*, large stern trawler	UR-79-0002	WOC	2
**Arkovo*, large stern trawler	UR-79-0012	WOC	2
**Nadezhda*, large stern trawler	UR-79-0061	WOC	2
**Kolyvan*, large stern trawler	UR-79-0095	WOC	2
**Taishet*, large stern trawler	UR-79-0102	WOC	2
**Kazatin*, large stern trawler	UR-79-0116	GOA	2
**Mys Grina*, large stern trawler	UR-79-0169	WOC	2
**Mys Groznyi*, large stern trawler	UR-79-0185	WOC	2
**Revolutsioner*, large stern trawler	UR-79-0187	WOC	2
**Ugolny*, large stern trawler	UR-79-0197	WOC	2
**Mys Belkina*, large stern trawler	UR-79-0214	WOC	2
**Mys Chaikovskogo*, large stern trawler.	UR-79-0229	WOC	2
**Kamyshin*, large stern trawler	UR-79-0231	GOA	2
Zvezda Rybaka, cargo/patrol vessel	UR-79-0370	BSA, GOA, WOC	3
Tikhookeansky, large stern trawler	UR-79-0556	BSA, GOA, WOC	1
**18 Syezd Vlksm*, large stern trawler	UR-79-0617	WOC	2
Akmolinsk, large stern trawler	UR-79-0700	BSA, GOA, WOC	1
Iuzhnomorsk, large stern trawler	UR-79-0701	BSA, GOA, WOC	1
**Akmolinsk*, large stern trawler	UR-79-0700	WOC	2
**Iuzhnomorsk*, large stern trawler	UR-79-0701	WOC	2
Zabajkalje, cargo/transport	UR-79-0702	BSA, GOA, WOC	3

*For more information regarding the activities being requested for these vessels see The Application for Vessel Permits to Receive United States Harvested Fish from vessels of the United States which is printed in this announcement.

APPLICATION FOR VESSEL PERMITS TO RECEIVE UNITED STATES HARVESTED FISH FROM VESSELS OF THE UNITED STATES

No.————

In accordance with the provisions of the Fishery Conservation and Management Act of 1976, as amended, the Government of USSR hereby submits this application for permits for vessels under its jurisdiction to receive United States harvested fish from vessels of the United States within the Fishery Conservation Zone of the United States during the year 1979.

Fishing Vessel Identification Forms will be submitted in support of this application. The fisheries, species, and amounts of United States harvested fish desired to be received by vessels of the USSR flag are as follows:

Fishery	Species	Total tonnage requested for each species (MT)
Washington, Oregon, California.	Pacific Hake	30,000
	Jack Mackerel	1,500
Gulf of Alaska	Pollock	2,000
	Pacific Cod	1,900
	Pacific Ocean Perch.	1,400
	Sablefish	400
	Other species	300

Detailed descriptions of the methods of operation proposed for each fishery requested are attached and form a part of this application. Submitted: January 18, 1979. Y. Zramenskiy, Counselor.

(A) *FISHERY—TRAWL FISHERIES OF WASHINGTON, OREGON AND CALIFORNIA*

SPECIES

PACIFIC HAKE ..... 30,000 mt
JACK MACKEREL ..... 1,500 mt

(1) *NUMBER AND TYPE OF FOREIGN VESSELS TO BE EMPLOYED*

14 Soviet processing vessels of the BMRT and RTM type equipped to produce frozen round, headed and gutted, and fillet fish and fish meal.

(2) *NUMBER AND TYPE OF VESSELS OF THE UNITED STATES FROM WHICH UNITED STATES HARVESTED FISH WILL BE RECEIVED*

8-10 midwater trawl vessels ranging in size from 70-110 feet and 350-1300 HP

(3) *NAME AND ADDRESS OF COMPANY WITHIN THE UNITED STATES WHO WILL BE PRINCIPAL CONTACT WITH OWNERS/OPERATORS OF VESSELS OF THE UNITED STATES*

MARINE RESOURCES CO. (MRC) 4215 21 ST AVENUE WEST, #206, SEATTLE WA 98199

(4) *GEOGRAPHICAL AREA IN WHICH VESSELS WILL OPERATE*

Fishery Conservation zone in Monterey, Eureka and Columbia areas

(5) *MONTHS DURING WHICH VESSELS EXPECT TO OPERATE*

May 1-October 31, 1979

(6) *BY SPECIES AND QUANTITY, THE PROCESSED PRODUCTS AND ULTIMATE EXPECTED MARKET OF UNITED STATES HARVESTED FISH, INCLUDING QUANTITIES WHICH ARE TO BE EXPORTED TO THE UNITED STATES*

Species will be processed into products given in (1) above. Quantities of each product type will be dependent upon market demand at time of fishery. Products will be sold by MRC in Orient, Eastern Europe, Western Europe and USSR. Small quantity of fillet blocks will be test marketed in U.S.

(7) *BY SPECIES, QUANTITY OF INCIDENTAL CATCH TO BE RECEIVED*

Incidental species not more than following amounts:

ROCKFISH ..... 240 mt
FLOUNDERS ..... 30 mt
SABLEFISH ..... 30 mt
OTHER SPECIES ..... 150 mt

(8) *PROCEDURES TO BE EMPLOYED TO MINIMIZE THE AMOUNT OF INCIDENTAL CATCH RECEIVED BY FOREIGN VESSELS AND THE DISPOSITION OF INCIDENTAL CATCH BY SPECIES*

All U.S. midwater trawlers fishing for MRC will have sufficient horsepower, winches, midwater trawls and electronics to enable them to avoid contact with the bottom and nontarget species.

If quantities of incidental species in received catches should be excessive, operation will move to new fishing ground. Incidental species will be disposed in foreign markets.

(9) *METHOD OF TRANSFER FROM VESSELS FOR THE UNITED STATES TO FOREIGN VESSELS*

Catches will be transferred from catching vessel to processing vessel by zippered cod ends.

(10) *RELATIONSHIP TO OTHER FISHING OPERATIONS*

Five processing vessels will work entirely with American vessels during May.

Ten processing vessels (including the above five vessels) will work majority of time with the American vessels from June 1-October 31, while four vessels will be in reserve during this period to replace any of the ten primary vessels that might have a breakdown or to work with American vessels when fishing is heavy.

After June 1 processing vessels will fish on Soviet quota when they are not receiving sufficient fish from American vessels.

(11) *BY SPECIES, APPROXIMATE PRICE (U.S. DOLLARS PER M.T.) TO BE PAID FOR UNITED STATES HARVESTED FISH*

Base price for delivered catches of food grade fish of USD $132.27/MT

(B) *FISHERY—GROUNDFISH OF THE GULF OF ALASKA*

SPECIES

ALASKA POLLOCK ..... 2,000 mt
PACIFIC COD ..... 1,900 mt
PACIFIC OCEAN PERCH ..... 1,400 mt
SABLEFISH ..... 400 mt
OTHER SPECIES ..... 300 mt

(1) *NUMBER AND TYPE OF FOREIGN VESSELS TO BE EMPLOYED*

Two Soviet processing vessels of BMRT type equipped to produce frozen round, headed and gutted fish, and fish meal.

(2) *NUMBER AND TYPE OF VESSELS OF THE UNITED STATES FROM WHICH UNITED STATES HARVESTED FISH WILL BE RECEIVED*

2-3 combination bottom/midwater trawl vessels ranging in size from 82-125 FT and 600-1450 HP.

(3) *NAME AND ADDRESS OF COMPANY WITHIN THE UNITED STATES WHO WILL BE PRINCIPAL CONTACT WITH OWNERS/OPERATORS OF VESSELS OF THE UNITED STATES*

MARINE RESOURCES CO. (MRC) 4215 21ST AVENUE WEST, #206, SEATTLE WA 98199

(4) *GEOGRAPHICAL AREA IN WHICH VESSELS WILL OPERATE*

Fishery Conservation Zone in Gulf of Alaska, primarily in Chirikof and Shumagin areas.

(5) *MONTHS DURING WHICH VESSELS EXPECT TO OPERATE*

May 1-November 30, 1979

(6) *BY SPECIES AND QUANTITY, THE PROCESSED PRODUCTS AND ULTIMATE EXPECTED MARKET OF UNITED STATES HARVESTED FISH, INCLUDING QUANTITIES WHICH ARE TO BE EXPORTED TO THE UNITED STATES*

Species will be processed into products given in (1) above. Quantities of each product type will be dependent upon market demand at time of fish-

ery. Products will be sold by MRC in Orient, Eastern Europe, Western Europe and USSR.

(7) *BY SPECIES, QUANTITY OF INCIDENTAL CATCH TO BE RECEIVED*

Incidental species not more than 300 mt. Species unknown.

(8) *PROCEDURES TO BE EMPLOYED TO MINIMIZE THE AMOUNT OF INCIDENTAL CATCH RECEIVED BY FOREIGN VESSELS AND THE DISPOSITION OF INCIDENTAL CATCH BY SPECIES*

All U.S. midwater trawlers fishing for MRC will have sufficient horsepower, winches, midwater trawls and electronics to enable them to avoid contact with the bottom and non-target species. If quantities of incidental species in received catches should be excessive, operation will move to new fishing ground. Incidental species will be disposed in foreign markets.

(9) *METHOD OF TRANSFER FROM VESSELS OF THE UNITED STATES TO FOREIGN VESSELS*

Catches will be transferred from catching vessels to processing vessel by zippered cod ends.

(10) *RELATIONSHIP TO OTHER FISHING OPERATIONS*

Both processing vessels will work primarily with American vessels but during periods of insufficient transfers they will catch fish for themselves under Soviet quota.

(11) *BY SPECIES, APPROXIMATE PRICE (U.S. DOLLARS PER M.T.) TO BE PAID FOR UNITED STATES HARVESTED FISH*

Prices for individual species will be negotiated with fishermen during first quarter of year.

[FR Doc. 79-4243 Filed 2-7-79; 8:45 am]

[4710-07-M]

[Public Notice CM-8/154]

SHIPPING COORDINATING COMMITTEE

Subcommittee on Safety of Life at Sea, Meeting

The panel on bulk cargoes of the Working Group on Subdivision and Stability—a component of the Shipping Coordinating Committee's Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 10:00 a.m. on Thursday, February 22, 1979, at the National Cargo Bureau, Inc., Suite 2757, One World Trade Center, New York, New York, 10048.

The purpose of the meeting will be to review any bulk cargo documents received in preparation for the Twentieth Session of the IMCO Subcommittee on Containers and Cargoes, March 5-9, 1979.

For further information contact Mr. Edward H. Middleton, U.S. Coast Guard (G-M/82), Washington, D.C. 20590, telephone (202) 426-2170 or Captain S. Fraser Sammis, National Cargo Bureau, Inc., Suite 2757, One World Trade Center, New York, New York, 10048, telephone (212) 432-1280.

The Chairman will entertain comments from the public as time permits.

RICHARD K. BANK,
Chairman, Shipping Coordinating Committee.

JANUARY 29, 1979.

[FR Doc. 79-4276 Filed 2-7-79; 8:45 am]

[4710-0-M]

[Public Notice CM-8/155]

STUDY GROUP 1 OF THE U.S. ORGANIZATION FOR THE INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE (CCITT)

Meeting

The Department of State announces that Study Group 1 of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on March 1, 1979 at 10:00 a.m. in room A-110 (Training Room) of the Federal Communications Commission, 1229 20th Street, N.W., Washington, D.C. This Study Group deals with U.S. Government regulatory aspects of international telegraph and telephone operations and tariffs.

The Study Group will discuss international telecommunications questions relating to telegraph, telex, data, maritime mobile and leased channel services in order to develop U.S. positions to be taken at international CCITT meetings to be held during 1979 in Geneva, Switzerland.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Requests for further information should be directed to Richard H. Howarth, State Department, Washington, D.C. 20520, telephone (202) 632-1007.

Dated: February 1, 1979.

RICHARD H. HOWARTH,
Chairman,
U.S. CCITT National Committee.

[FR Doc. 79-4277 Filed 2-7-79; 8:45 am]

[4710-02-M]

Agency for International Development

[Delegation of Authority No. 133]

Authorization of Project and Non-Project Assistance

Delegation of Authority

Pursuant to the authority delegated to me by Delegation of Authority No. 104, from the Secretary of State, dated November 3, 1961 (26 FR 10608, November 10, 1961), as amended, I hereby delegate as follows:

1. To the Assistant Administrator for Near East, the Assistant Administrator for Latin America and the Caribbean, the Assistant Administrator for Africa, the Assistant Administrator for Asia, the Assistant Administrator, Bureau for Development Support and the Assistant Administrator, Bureau for Private and Development Cooperation, the authority to authorize project and non-project assistance under the Foreign Assistant Act of 1961, as amended ("the Act"), within their respective areas of responsibility, where such project or non-project assistance does not, over the approved life of the project or non-project assistance, exceed $10 million.

2. There is also delegated to the above Assistant Administrators the authority to amend the authorization of project and non-project assistant for which authority is provided in Section 1 of this Delegation and the authority to make non-substantive amendments to authorizations of project or non-project assistance previously authorized by the Administrator.

3. References to project and non-project assistance in this Delegation of Authority shall not be deemed to include housing guaranty programs under the Act, which are the subject of Delegation of Authority No. 88.

4. Authorities hereby delegated may be redelegated.

5. This Delegation of Authority is effective immediately.

Dated: February 1, 1979.

JOHN J. GILLIGAN,
Administrator.

[FR Doc. 79-4313 Filed 2-7-79; 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 133.1]

ASIA BUREAU

Mission Directors

1. Pursuant to the authority delegated to me by A.I.D. Delegation of Authority No. 133, dated February 1, 1979, regarding authorization of project and non-project assistance, I hereby redelegate to the Directors of A.I.D. Missions in Bangladesh, India,

Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, and Thailand, and to any duly designated person performing the functions of any such Mission Director, authority to exercise any of the following functions with respect to assistance for the country to which he or she is assigned, retaining for myself concurrent authority to exercise such functions and the authority to reserve to myself the authorization of any particular project or projects:

A. The authority to authorize project and non-project assistance under the Foreign Assistance Act of 1961, as amended, where such project or non-project assistance does not, over the approved life of the project or non-project assistance, exceed $5 million; and

B. The authority to amend the authorization of project and non-project assistance authorized by a Mission Director in accordance with paragraph 1A above, or in accordance with any subsequent redelegation of authority, except that any such amendment may not increase by more than 10 percent the total assistance initially authorized by the Mission Director for the life of the project or non-project assistance.

2. The authorities redelegated by paragraph 1 shall be exercised in accordance with applicable statutes, regulations, policies, procedures, and directives, and only after appropriate consultation with A.I.D. technical and legal staff.

3. The authorities redelegated by paragraph 1 above may not be further redelegated.

4. References to project and non-project assistance in this redelegation of authority shall not be deemed to include housing guaranty programs under the Act.

5. This redelegation of authority is effective immediately.

Dated: February 1, 1979.

JOHN H. SULLIVAN,
Assistant Administrator, Bureau for Asia.

[FR Doc. 79-4314 Filed 2-7-79; 8:45 am]

[8120-01-M]

TENNESSEE VALLEY AUTHORITY

MALLARD-FOX CREEK AREA IN NORTH ALABAMA

Proposed Development and Use

The Tennessee Valley Authority (TVA) has decided to prepare an environmental impact statement (EIS) regarding a request for industrial development of a portion of the lands in the Mallard Creek and Fox Creek area on Wheeler Reservoir and the commitment of contiguous areas to long-term wildlife management. The site is in Lawrence and Morgan Counties about 5 miles west of Decatur, Alabama.

TVA has custody of approximately 1,950 acres of land in this vicinity, a portion of which was acquired in 1930 and the remainder in 1950 as a potential power plant site. It is situated on the south shore of Wheeler Reservoir and contains substantial amounts of shoreline and wetland areas. TVA has made a major portion of the property, designated as the Mallard-Fox Creek Wildlife Management Area, available to the State of Alabama under a 60-day revocable land-use permit for wildlife management since 1959. The area has been a popular hunting area while under state management.

TVA has been requested by two industrial concerns to make land in this area available for industrial development. One company would use approximately 44 acres for a barge loading facility to be used by its existing chemical plant which is located on an adjoining tract. The other company would use approximately 200 acres of land for the construction and operation of a plant to manufacture plastic pellets.

The request under consideration by TVA has three basic elements. Out of the total of approximately 1,950 acres in the Mallard-Fox Creek area, TVA would designate approximately 1,300 acres for wildlife management on a long-term basis, make the two areas available as requested for industrial development, and reserve the remaining approximately 400 acres for future industrial development. The EIS will address the environmental impacts of these three aspects including the effects of construction and operation of the chemical plant and the barge loading facility.

Possible future uses of the Mallard-Fox Creek area were discussed at a public meeting held by TVA in Decatur, Alabama, on December 7, 1978. Based upon the statements made by interested persons at the meeting and TVA's preliminary investigations, TVA has identified the following potentially significant issues:

1. Environmental and economic impacts associated with commitment of approximately 650 acres of land presently under wildlife management for industrial development, including impacts on wetlands from industrial development on two designated tracts;

2. Environmental and economic impacts associated with commitment of approximately 1,300 acres of land presently used under a 60-day revocable permit to long-term wildlife management;

3. The impacts on water quality and aquatic life from industrial development of two designated tracts, including those caused by dredging and possible spills of materials to be shipped by barge; and

4. Impact of industrial development on the local and regional economy.

TVA invites interested persons and agencies to comment on the above scope of the EIS and requests that comments and questions be sent to the Director of Environmental Planning, 268 401 Building, Chattanooga, Tennessee 37401, telephone number 755-3161, by February 16, 1979. It will be unnecessary for those choosing to comment on the scope of the EIS to submit supporting data or information. TVA hopes to release a draft EIS for public review and comment on March 15, 1979.

Dated: January 31, 1979.

LEON E. RING,
General Manager.

[FR Doc. 79-4315 Filed 2-7-79; 8:45 am]

[4910-14-M]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD-79-021]

NATIONAL BOATING SAFETY ADVISORY COUNCIL

Meeting

Pursuant to section (10)(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Monday, March 5, 1979 in Room 3201, Trans Point Building, 2100 Second Street, South West, Washington, D.C. beginning at 1:30 p.m. The agenda for this meeting will be as follows:

1. Review of action taken at the twentieth meeting of the Council
2. Executive Director's Report
3. Update on Fire Extinguisher Requirements for Thrill Craft
4. Rules of the Road Advisory Committee (RORAC) Report
5. Briefing on Canadian Coast Guard's Recreational Boating Safety Program
6. Office of Boating Safety Report
7. Members' Items
8. Chairman's Session

Attendance is open to the interested public. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Commander Neal Mahan, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard

(G-BA), Washington, D.C. 20590, or by calling 202-426-1080.

Issued in Washington, D.C. on January 29, 1979.

E. A. DELANEY,
Captain, U.S. Coast Guard, Acting Chief, Office of Boating Safety.

[FR Doc. 79-4371 Filed 2-7-79; 8:45 am]

[4910-14-M]

[CGD 79-015]

PORT ACCESS ROUTES

Amplification of Relationship to OCS Oil and Gas Leases

A notice "PORT ACCESS ROUTES, Relationship to OCS (Oil) and Gas Leases" was published by the Coast Guard in the FEDERAL REGISTER on January 29, 1979 (44 FR 5739). That notice contained information concerning the study of the potential vessel traffic density and the need for safe access routes for vessels in the North Atlantic Ocean off the Northeast and Mid-Atlantic coast. The study is being conducted by the Coast Guard in accordance with sub-section 4(c)(3)(A) of the Ports and Waterways Safety Act (PWSA) (Pub. L. 95-474, 92 Stat. 1473). As a result of that notice, the Coast Guard has received numerous questions on its policies and long range plans affecting the routing of ships on the Outer Continental Shelf (OCS). The action to be taken as a result of the study cannot be specified at this time. However, the Coast Guard has certain policies and broad intentions which are provided here to assist those who wish to submit comments to the study and those who are concerned with OCS Oil and Gas leases, including OCS Sale No. 49 which was announced in the FEDERAL REGISTER on January 29, 1979. These policies and intentions are based on Coast Guard experience in the areas of ships routing, navigation, shiphandling, the effects of weather, and prior analysis of the traffic density in certain regions of the area to be studied, as well as the mandates of the PWSA.

The PWSA directs that the Coast Guard "* * * provide safe access routes for the movement of vessel traffic proceeding to or from ports * * * and shall designate necessary fairways and traffic separation schemes * * *" The PWSA provides clear guidance as to the manner in which this is to be done. Among the concepts that stand out are: "Such a designation shall recognize, within the designated area, the paramount right of navigation over all other uses" and "to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved."

The PWSA also directs consultation with the Secretaries of State, Interior, Commerce, and the Army, and the Governors of the affected States. We are to "at the earliest possible time, consult with and receive and consider the views of representatives of the maritime community, ports and harbor authorities or associations, environmental groups, and other parties who may be affected by the proposed actions." In addition, the Act states that the Coast Guard "may, from time to time, as necessary, adjust the location or limits of designated fairways or traffic separation schemes, in order to accommodate the needs of other uses which cannot be reasonably accommodated otherwise: *Provided*, That such an adjustment will not, in the judgment of the Secretary, unacceptably adversely affect the purpose for which the existing designation was made and the need for which continues." Further details are contained in Sections 4(c) and Section 5 of the PWSA.

The use conflicts which are of current concern in the area to be studied are related to three factors, that of the volume of opposing traffic flowing along certain traditional routes, that of fishing in certain regions, and that of potential placement of oil exploration and production facilities in or near these routes. The factor of opposing traffic has been addressed by the establishment of Traffic Separation Schemes (TSSs) in various harbor approaches from the Chesapeake Bay to Boston. These are subject to modification as a result of the current study and with the adoption of recommended changes by the Inter-Govermental Maritime Consultative Organization.

Fisheries will be fully considered in the conduct of the study.

The factor of oil exploration and production has been considered by previous work of the Army Corps of Engineers (COE), particularly in relation to the approaches to New York an the apprpaches to the Delaware Bay. In these areas, it is anticipated that the following access will be found necessary: An eastern route, a southeastern route, and a southern route for the approaches to New York Harbor, and an eastern route and a southeastern route for the approaches to Delaware Bay. Optimum routing without considering the location of petroleum resources would be to have Traffic Separation Schemes with approximately 5 mile wide traffic lanes and approximately 3 mile wide separation zones in each of the five approach routes with shipping safety fairways overlaying the traffic lanes.

At this time the amount and location of petroleum resources in the areas which might be affected by these routes is known only to the extent of estimates based on geophysical information and on preliminary drilling in a portion of the area. Hence, the Coast Guard anticipates establishing temporary measures to provide safe routing, while allowing exploration of the entire area. Such measures might be provisional port access routes as proposed in the FEDERAL REGISTER by the COE on June 30, 1978 (43 FR 28523), or one of the several modifying proposals made by commenters to the COE notices. Another alternative, which appears less desirable in this area, would be to establish guidelines for the spacing of exploration equipment along the access routes. Similar guidelines are contained in "Authorization for Exploratory Drilling in the Gulf of Santa Catalina, California" published by the COE in the FEDERAL REGISTER on June 30, 1978 (43 FR 28475). Such regulatory guidelines, if adopted, would probably apply within the limits of the provisional port access routes mentioned above.

Once the location of petroleum is known, regular routes will be established, as necessary, to provide safe access. Such routes would be located, to the maximum extent practicable, in a manner to allow the placement of production facilities necessary to extract the oil. The following modifications to optimum permanent routing measures are among those being considered: Lane widths could be reduced to less than 5 miles in the eastern and southeastern approaches to New York since improved navigation equipment will be required on vessels entering U.S. ports. The lanes east of Nantucket Light Vessel might be directed to the south of the area of proposed Lease Sale #42. All other routes could be rotated on their focal points up to 10 or 20 degrees (depending on the approach) to reduce adverse effects on production. Lanes could not be rotated into the tracts of Lease Sale #40 unless such tracts had been abandoned. Single fairways might be used in the approaches to Delaware Bay and possibly in the southeastern route off New York. Where a pair of lanes are found necessary due to volume of traffic, they would not have to be parallel, but could diverge in order to accommodate production areas. Given these flexibilities in the establishment of safe access routes, and current estimates of the magnitude and location of oil and gas resources on the Atlantic OCS, it is not anticipated that conflicts between navigation and oil and gas operations will occur which would unduly hamper either activity.

As competition for the sea surface increases and conflicts result, all users must share in any inconvenience. The Coast Guard is carefully examining this problem in order to arrive at the most equitable solution, one which

seeks to minimize conflicts, but which has safety as the paramount consideration.

F. P. SCHUBERT,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

FEBRUARY 6, 1979.

[FR Doc. 79-4410 Filed 2-7-79; 8:45 am]

[4910-14-M]

[78-83]

SAFETY APPROVAL OF CARGO CONTAINERS

Delegation of Authority

Section 4(d) of the International Safe Container Act, (46 U.S.C. 1503(d)), requires publication in the FEDERAL REGISTER of the name and address of each organization that has been delegated authority to approve containers, together with the functions delegated and the period of designation.

The following organizations have been delegated authority to approve cargo containers in conformance with the International Convention for Safe Containers, 1972, and the applicable regulations in 49 CFR Parts 450-453:

American Bureau of Shipping, 65 Broadway, New York, N.Y. 10004.
International Cargo Gear Bureau, Inc., 17 Battery Place, New York, N.Y. 10004.
Marine Container Equipment Certification Corp., 358 St. Marks Place, Staten Island, N.Y. 10301.
ABS Worldwide Technical Services, Inc., 65 Broadway, New York, N.Y. 10004.
Hales Testing Laboratories, 646 Hegenberger Road, Oakland, Calif. 94621.
B. A. Bodenheimer & Co., Inc., 1435 Bedford Street, Stanford, Conn. 06905.
Line Fast Corp., 805 Grundy Avenue, Holbrook, N.Y. 11741.

These delegations remain in effect unless withdrawn by the Commandant or voluntarily terminated by the Approval Authority.

For further information contact: Mr. Charles H. Hochman, Project Manager, Cargo and Hazardous Materials Division (G-MHM-2/83) Room 8307, U.S. Coast Guard, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-1577.

HENRY H. BELL,
Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

FEBRUARY 2, 1979.

[FR Doc. 79-4370 Filed 2-7-79; 8:45 am]

[4910-60-M]

Materials Transportation Bureau

[Docket No. 77-9W]

TRANS-ALASKA CRUDE OIL PIPELINE

Petition for Waiver of Girth Weld Defects at the Valdez Terminal

On October 17, 1977, the Alyeska Pipeline Service Company (Alyeska) petitioned the Material Transportation Bureau (MTB) for a waiver of the Department of Transportation (DOT) regulations governing the acceptability of liquid pipeline girth welds (49 CFR 195.230, 195.232, 195.226, 195.228, and 195.234) for certain welds located at the Valdez Terminal of Alyeska. These welds were identified by DOT during a review of terminal weld radiographs as not being in compliance with the Department's welding standards.

After completing its initial technical review, the MTB, on December 9, 1977, requested additional information concerning fracture toughness and material properties of fittings and valves containing arc burns, physical and metallurgical properties and welding procedures of welds containing defects, information on pipe specifications of pipe installed at the terminal, and information concerning the terminal weld fatigue environment. This information was supplied by Alyeska by letter and enclosures dated March 31, 1978.

A comparison in June 1978 by MTB of deficient welds identified by DOT during the terminal review against the welds identified in Alyeska's petition revealed that the Alyeska petition did not include five welds identified by DOT and that 18 other welds included in the petition were not cited as deficient for the same reasons identified by DOT during the terminal review. Alyeska was notified of these findings, reviewed the radiographs of the welds and included these welds in a revision to the petition submitted by letter dated November 3, 1978.

At the time the girth welds at the terminal were made, Alyeska assumed that the terminal piping was not subject to the regulations. For that reason, the girth welds in these terminal lines were made to Alyeska's welding specifications but not necessarily to 49 CFR Part 195. Since that time, the Department determined that the part of the terminal piping through which crude oil flows under pump pressure is subject to the regulations in 49 CFR Part 195. Following that determination, DOT conducted a review of the radiographs of all terminal girth welds on pipe 36-inch and larger in diameter, the pipe sizes transporting crude oil throughout the terminal, to determine the extent of compliance with requirements of Part 195. This review conducted in Anchorage by radiographic specialists from the Department began on July 11, 1977, and ended on July 22, 1977.

A total of 1,431 welds were reviewed during that time. Radiographic experts determined that 1,209 were in compliance with the DOT welding standards. A review of the remaining 222 welds indicated noncompliance with welding standards addressing arc burns, acceptability of weld defects, and film quality. Seven of the 222 welds were also made without offsetting longitudinal seams on adjacent pipe lengths as required by 49 CFR 195.218. Although Alyeska was granted a waiver for those seven welds from the offsetting longitudinal seam requirements on August 17, 1977 (42 FR 42943, August 25, 1977), two of the seven girth welds also contained arc burns and for that reason are included in this petition. The balance of 217 welds is the subject of this waiver request.

Notwithstanding that noncompliance with DOT welding standards was discovered by the DOT review, it became obvious that corrective action by repair or a processed waiver request could not be taken prior to the oil from reaching Valdez without suspending filling operations (line fill from Prudhoe Bay started on June 20, 1977). To ascertain whether the welds found in noncompliance would adversely impact the oil containment ability of the terminal piping system, the Department retained two independent welding experts, Dr. Robert C. McMaster, Regents Professor of Welding and Electrical Engineering, Ohio State University, and member of the panel who had evaluated the two previous Alyeska waiver requests to DOT involving fracture mechanics, and Mr. Dan Polansky, Physical Scientist, Naval Surface Weapons Center, to review the appropriate radiographs. The experts found that although the welds were not in literal compliance with the DOT standards, it appeared there would be no adverse safety consequence on the structural integrity of the pipeline if oil were allowed to enter the terminal prior to corrective action taken on the welds. DOT concurred with this expert judgement and crude oil was allowed to flow into the terminal.

Aleyska's waiver request falls into four categories:

A. 135 welds which contain arc burns not allowed by 49 CFR 195.226.

B. 57 welds which contain weld defects not in compliance with the Standards of Acceptability in API Standard 1104 referenced in 49 CFR 195.228.

C. Radiographs of 48 welds rejected based on film quality in violation of 49 CFR 195.234.

D. Weld No. 1289 on Berth 3 at the terminal which contains a repaired crack not allowed by 49 CFR 195.230 and 49 CFR 195.232.

The total of the four categories is greater than the number of welds in the petition (217) because some welds were not acceptable for more than one reason.

In categories A and B, Alyeska proposed to use, as an alternate acceptance criteria to Part 195 standards, the fracture mechanics decision curves contained in DOT's November 26, 1976, waiver on a similar request (41 FR 52933, December 2, 1976) and in the waivers granted on June 17, 1977, for girth welds on the main line (42 FR 31512, June 21, 1977). Alyeska has further stated that to repair the defective welds now, with oil flowing through the pipe, would not be economically justified in light of the limited risk associated with the degree of noncompliance. In the November 26, 1976, waiver Decision cited by Alyeska in support of its current request, the DOT, after careful consideration of the issues and the technical advice provided by its experts and consultants, determined that—"Fracture mechanics analysis is acceptable as a basis for granting exemptions from existing standards in appropriate circumstances, if such analysis produces a convincing and conservative estimate of structural integrity."

The specific criteria for applying this determination to the task of accepting or rejecting individual girth welds were set forth in the form of four decision curves in an appendix to the Decision. Alyeska requested a waiver from the DOT welding standards for 612 of the approximately 30,000 field girth welds performed during the 1975 construction season. That number was reduced to 34 welds as repairs to the 1975 welds were completed during the construction season of 1976. In all, there are approximately 100,000 main line girth welds in the pipeline—30,000 field welds performed during each of the 1975 and 1976 construction seasons and 40,000 "double joint" shop welds performed at the pipe storage facilities in Fairbanks and Valdez joining two sections of pipe before transporting them to construction sites. Concerns about the quality of girth welds and the adequacy of the quality control system had prompted Alyeska to audit the radiographic records of the 1975 field girth welds during the winter of 1975-76. It was that audit which led to Alyeska's first girth weld waiver request.

With respect to the 34 unrepaired girth welds then known to exist, the DOT further determined that those having dimensions which fell below the Decision curve for the type of defect concerned "do not constitute a risk of failure at those connecting points during the expected lifetime of the pipeline." The DOT found that 21 of the 34 welds were acceptable on the basis of fracture mechanics analysis. A waiver was granted for only three welds located under the Middle Fork of the Koyukuk River inasmuch as repair efforts on the other 31 were then well on their way to completion.

The June 17, 1977, waiver Decision was made subsequent to a sampling of the radiographs of all main line girth welds. Because of concerns about the total girth weld population, the DOT took a statistical sample of the 1975 field welds, 1976 field welds, and double joint welds made in the Fairbanks and Valdez shops. A sample consisting of the radiographs for 500 randomly selected welds was chosen from each of the above three categories for a total sample size of 1500. Beginning in March 1977, the radiographs were interpreted by three DOT radiographic specialists. In order to minimize any dependent bias in the interpretation, each of the three radiographic specialists independently reviewed each of the randomly selected radiographs against the DOT regulatory standard of acceptability as specified in 49 CFR 195.226 and 195.228. In each case where at least two specialists interpreted a radiograph as indicating an arc burn or a defect, related narrative records and documentation were examined and two independent radiographic experts reviewed the specialists' findings. The two radiographic experts[1] are employees of Rockwell International Corporation then under contract to the Energy Research and Development Administration (ERDA), now part of the Department of Energy.

The ERDA experts, employing a technology used in dealing with the earlier waiver request, determined the depth and length of each defect they confirmed. (These two ERDA experts were again used to measure weld defect and arc burn size for this present waiver request.)

The fracture mechanics decision curves contained in the DOT's November 26, 1976, waiver Decision were applied to these measurements, and the results indicated that all but eight welds out of the 118 containing defects and arc burns confirmed by ERDA experts were acceptable by fracture mechanics. Although the question before the DOT on Alyeska's earlier waiver request concerned only a portion of the total main line girth welds, the conclusions reached and the accompanying decision curves developed for worst possible case situations are no less valid and applicable for the total pipeline. For this reason, DOT decided to extend the applicability of that earlier decision to cover the entire 800-mile main line of the trans-Alaska crude oil pipeline and thereby granted the requested waiver from compliance with DOT welding standards (49 CFR 195.226 and 195.228) for the reasons and under the conditions cited therein.

For the eight welds not acceptable on the basis of fracture mechanics analysis, DOT concluded, after extensive consultation with welding, metallurgical, nondestructive testing, and fracture mechanic experts within DOT and outside, that there was no more than an extremely remote risk of loss of pipeline integrity from these welds.

While the MTB was confident that fracture mechanics had been well established as an alternate acceptance criteria for weld defects and arc burns on the Alyeska main line 48-inch, it did not have that confidence with respect to defects in the Valdez Terminal piping. The piping at the terminal differs from the main line in three respects: (1) valves and fittings as well as pipe are involved; (2) there is 36-inch and 42-inch diameter pipe in addition to 48-inch pipe; and (3) the welds were made by welding procedures which differ from the welding procedures used on the main line.

Before the fracture mechanics curves developed for the main line could be validly applied to weld defects and arc burns at the terminal, it had to be established that the fracture toughness and material properties of the pipe, valves, and fittings and welding procedures for the terminal welds

[1]Wayne D. Stump, manager of nondestructive testing, at the Rocky Flats Plant of Rockwell International (Prime U.S. ERDA contractor), where he has been employed for the past 25 years, holds a BS in Physics from the University of Denver and is a registered professional engineer in Colorado. Mr. Stump is a 25-year member and fellow of the American Society for Nondestructive Testing and has held several section offices in the Society. He is a certified ASNDT Level III in several test methods including radiography, and serves on the National Certification Panel for Level III personnel. He also holds membership in the American Society of Metals and the National Management Association.

John L. Summers, nondestructive testing area manager, at the Rocky Flats Plant, Rockwell International (Prime U.S. ERDA contractor), where he has been employed for 25 years, holds an associate degree of Science from Mascatine Junior College and has completed additional studies at the University of Colorado. Mr. Summers is a 22-year member and fellow of the American Society for Nondestructive Testing, having held several section offices in the Society. He is a certified ASNDT Level III in several test methods including radiography, and has served on the select Ad Hoc committee for Level III certification and is currently on the National Certification Panel for Level III personnel. He is a National Director for ASNDT. Mr. Summers also holds membership in the American Society of Metals and the National Management Association and is a registered professional engineer in the State of California.

closely approaches or were identical to those used on the main line.

Arc burns cited in the Alyeska waiver petition are located on two valves and 14 fittings in addition to the ones located on pipe. Alyeska supplied information on the fracture toughness of the fittings and valves and the specifications for each, indicating material properties of the steel, particularly carbon content. The specifications for the valves and fittings used at the terminal prescribe as a test for fracture toughness a Charpy V-notch energy level of 12 ft.-lbs. minimum and 15 ft.-lbs. average at a test temperature of −20°F. Actual Charpy levels for three heats of steel used for valve bodies ranged from 23 ft.-lbs. to 39 ft.-lbs. and for five tests run on steel used for fittings from 37 ft.-lbs. to 99 ft.-lbs. These valves compare favorably with those for the 48-inch main line pipe which ranged from 55 ft.-lbs. to over 100 ft.-lbs. at a test temperature of 14°F. Another indication of fracture toughness is the carbon content of the steel. If the carbon content of the steel used in the terminal valves and fittings is equal to or lower than that for the 48-inch main line pipe, the fracture toughness of the valves and fittings should be higher. The specifications supplied by Alyeska indicate the maximum carbon content for the valves and fittings to be 0.18 and 0.20 weight percent respectively which compares favorably with the 0.20 weight percent for the 48-inch main line pipe.

The stress level on the terminal pipe, valves, and fittings produced by internal pressure is a contributing factor to arc burn crack growth. The pipeline safety regulations allow the operation of a pipe at a stress level as high as 72 percent of specified minimum yield strength (SMYS) of the pipe. The operating stress on the valves containing arc burns ranges from 1 to 9 percent of SMYS and the fittings from 4 to 17 percent of SMYS. The design of the terminal piping is such that one weld could be subjected to stresses up to 48 percent of SMYS during each of an estimated 10 surges over the life of the system.

The MTB believes from the fracture toughness data and chemical composition, particularly carbon content, that the valves and fittings have similar material characteristics to the 48-inch main line pipe and behave similarly with regard to resisting arc burn crack growth. Because the operating stress level produced by internal pressure on the valves and fittings is so much less than on the main line pipe, this further supports the unlikelihood of growth of arc burn cracks on the valves and fittings at the terminal as compared to main line pipe. The MTB, therefore, used the fracture mechanics curves developed for arc burns on the main line 48-inch pipe as standards of acceptability for arc burns contained on valves and fittings at the terminal.

Similarly, MTB evaluated the possible use of the decision curves to determine the acceptability of arc burns on the different diameter pipe used at the terminal. The three diameters on which weld radiographs were evaluated by DOT were 36-inch, 42-inch, and 48-inch. The 48-inch terminal pipe was made to the same pipe specification as the main line 48-inch pipe so arc burns on it could be evaluated identically to the arc burns on the main line. The 36-inch and 42-inch terminal pipe was made to a different specification than the main line 48-inch pipe, but the pipe quality requirements in the specification are identical with the exception of two minor differences involving inside diameter tolerance and test temperature for Charpy impact testing. The 48-inch main line pipe specification requires a test temperature for Charpy impact testing of +14°F and the 36-inch and 42-inch pipe specification requires −20°F. Charpy V-notch testing performed by Alyeska on 36-inch and 42-inch pipe showed excellent toughness properties; e.g., 36-inch pipe with Charpy V-notch energy of 103 ft.-lbs. at −50°F and crack opening displacement (COD) of 12.6 mils at −75°F and 42-inch pipe with Charpy V-notch energy of 86.5 ft.-lbs. at −50°F and COD of 13.6 mils at −75°F. This data substantiates that the 36-inch and 42-inch pipe used at the terminal is of identical quality in its resistance to arc burn growth as the 48-inch pipe used in the main line. The MTB, therefore, used the fracture mechanics acceptability curves developed for arc burns on the main line 48-inch pipe as standards of acceptability for arc burns on the 36-inch and 42-inch terminal pipe.

There were two welding procedures used at the terminal. All but five welds in the waiver request were welded with a "vertical-down" procedure, the same direction of welding as with the main line welding procedures. This welding procedure provided for the use of cellulosic coated electrodes, as with most of the main line welding procedures, except for the root pass which was welded with a low hydrogen electrode. The other five welds were welded with a "vertical-up" procedure which is a type of procedure used extensively in plant piping. Alyeska explained that the "vertical-up" procedure was used at the terminal at certain times since many of the terminal welders were more proficient welding "vertical-up" rather than "vertical-down." The electrodes used in the "vertical-up" welding procedure on all welding passes were of a low hydrogen type mineral coating rather than cellulosic coating which is usually used during pipeline welding.

Alyeska performed Charpy V-notch and COD testing on terminal welds made by these two procedures. The results of these tests and the procedures themselves were critically examined and compared with test results and procedures associated with main line 48-inch construction by both DOT experts and the National Bureau of Standards. These experts concluded that welds made to the terminal procedures would produce welds of comparable quality to the ones made by the main line welding procedures. The welding procedures for terminal piping were not significantly different from the main line welding procedures, and all test values were above the lower bound values previously established for fracture mechanics decision curves. Based on these findings, the MTB used the fracture mechanics curves developed for the acceptability of weld defects on the 48-inch main line as an alternate acceptance criteria to Part 195 standards for welds containing defects at the terminal.

The MTB's use of the 48-inch main line fracture mechanics curves as an alternate acceptance criteria to Part 195 standards for arc burns and girth weld defects on terminal valves and fittings and 36-inch and 42-inch terminal pipe is justified because the MTB would be assured, based upon the foregoing discussions, of the structural integrity of the welds since the arc burns and defects in question are shown to be acceptable under the same alternate criteria as used earlier for the main line welds.

In using the 48-inch main line fracture mechanics curves as an alternate acceptance criteria to Part 195 standards for arc burns on terminal valves and fittings and 36-inch and 42-inch terminal pipe and for terminal welds containing defects, the arc burn and defect measurements (length and depth) were plotted on the appropriate fracture mechanics curves. The measurements made part of Alyeska's waiver request, as confirmed by the ERDA experts, were plotted and all points representing the measurements of each defect or arc burn plot well below the decision curve indicating acceptance of each arc burn and defect.

MTB accepts Alyeska's arguments that the necessity of having to shut down and empty the terminal pipelines, excavate and remove corrosion protection from buried welds, and removal of insulation from aboveground welds in order to achieve literal compliance with Part 195 standards would be extremely burdensome and costly. Accordingly, effective immediately, the Alyeska Pipeline Service Company is hereby granted a waiver from compliance with requirements of 49 CFR

195.226 and 49 CFR 195.228 with respect to the 135 welds containing arc burns and the 57 welds containing defects identified in Alyeska's October 17, 1977, waiver request.

In category C, 28 of the 48 deficient weld radiographs were rejected because the density was either too dark or too light to satisfactorily interpret the film. The film in question either had a density less than 1.5 H & D [2] or a density greater than 3.5 H & D.

The DOT welding standards in 49 CFR 195.234(b) require in part that "Any nondestructive testing of welds must be performed in accordance with a written set of procedures for nondestructive testing. . . ." Although Alyeska established Specification 82.4 titled "Radiographic Examination of Welds for Pump Stations and Terminal" which set an acceptable lower and upper H & D limit on the density of radiographic film, Alyeska failed to comply with that specification on the 28 weld radiographs. Alyeska found, however, that the contrast, sharpness, and sensitivity of these radiographs were adequate even though the H & D density exceeded the requirements in Alyeska Specification 82.4. The H & D film density is within the lower limit of API 1104 (API 1104 has no upper limit) and film was accurately interpreted when using the high intensity views lights used on the project.

Fifteen of the 48 deficient weld radiographs in category C were rejected because the films were judged to have unacceptable contrast, unacceptable penetrameter sensitivity, or penetrameter not visible as established by Alyeska Specification 82.4. While the DOT radiographic specialists determined that contrast was not acceptable in portions of certain of these 15 radiographs and the 4T hole [3] was not visible on some penetrameters indicating unacceptable penetrameter sensitivity, Alyeska found that other film quality indicators, such as density limits, were adequate and that the films had sufficient contrast to interpret the defect.

The remaining five radiographs in category C were rejected because they were judged to have improper identification, incomplete film coverage, or penetrameter location. Alyeska indicated, with respect to these five radiographs, the film identification was accurately established and the procedural infractions did not affect the film quality. The five films were accurately interpreted in the area where the infractions occurred.

MTB believes that there is no compelling reason to reradiograph the welds in category C because of the burdensome expense to expose these welds, because of the low stress level to which these welds are subjected during operation, and because previous evaluation of other weld defects at the terminal using fracture mechanics has shown that those defects were acceptable. Accordingly, effective immediately, the Alyeska Pipeline Service Company is hereby granted a waiver from compliance with requirements of 49 CFR 195.234(b) with respect to the 48 deficient weld radiographs which did not comply with the film quality requirements of Alyeska Specification 82.4.

The weld in category D is a repair of a crack in weld No. 1289 similar to the six repaired cracks at the terminal on which waivers were granted previously (42 FR 25983, June 9, 1977). In performing the repairs to this weld as well as the previous six, Alyeska followed its company established repair welding procedures instead of following the regulations in 49 CFR 195 since it believed, at that time, that these welds were not subject to the DOT regulations.

Weld No. 1289 was produced by the union of two 48-inch by 24-inch side outlet welding tee fittings. A crack was detected by radiography, subsequently explored by grinding, and verified by dye penetrant examination. In support of its petition, Alyeska states that the weld should not be required to be removed in accordance with DOT standards for the following reasons:

1. The existing weld cannot be removed, the ends rebeveled, and a new weld produced since in each case the joint design would be altered precluding the production of a sound weld. Moreover, since the header piping is rigid, and cannot be shifted for a new lineup, the spacing remaining after removal and rebevel would be too great to produce a sound weld.

2. The time required to obtain replacement fittings would be prohibitive. Replacement fittings would take approximately six months to obtain since fittings of this size and specification are unique to the trans-Alaska pipeline.

3. If one fitting is replaced with another fitting, the range of dimensional tolerances of the fittings would make matching lineup extremely difficult and perhaps impossible without further disassembly of the header assembly. For example, the length dimension of the replacement tee could vary by as much as ¾ inch.

4. Alyeska repair procedure WRP-100AP used in repairing the weld was developed in accordance with the guidelines in the repair procedures in API 1104, Section 7.

5. The weld repair was conducted under closely controlled conditions. It was closely monitored and documented.

6. The repaired weld was pressure tested to 780 psig. Operating pressure while loading a tanker is approximately 100 psig. Static pressures are less than 200 psig.

7. Because spillage due to a failure from this weld would be within the confines of the Terminal, a leak could be quickly detected and repair crews quickly mobilized to contain and stop the spillage.

A representative of the MTB has inspected Weld No. 1289 and found that the circumstances described by Alyeska in support of its petition for waiver are accurately described. In addition, the ERDA experts have examined radiographs of the original cracked weld and radiographs after repair was completed. They have confirmed that Weld No. 1289 did contain a crack and that the crack is not visible in the radiograph after the repair.

After review and deliberation of all the information submitted by Alyeska, and other relevant information, MTB finds that a waiver from the applicable provisions of 49 CFR 195.230 and 195.232 for Weld No. 1289 is appropriate and consistent with pipeline safety for the following reasons:

1. The crack is not visible in the radiograph after the repair according to ERDA radiographic experts.

2. The weld has withstoof a hydrostatic test without leakage or failure at pressures far in excess of what it will be subjected during operation.

3. The repair to the weld was made under closely controlled conditions with various levels of inspection by the contractor, Alyeska, and the Federal government further assuring established procedures were followed during repair and that a sound weld exists.

4. If the weld was removed and a new weld made, the problems with proper lineup, excessive space to be filled with weld metal, and destruction of the original joint design by rebeveling probably would result in a weld not as safe as the existing one.

5. The excessive cost involved in replacing the valves or fittings is not justified.

Accordingly, effective immediately, the Alyeska Pipeline Service Company is hereby granted a waiver for compliance with requirements of 49 CFR 195.230(a) and 49 CFR 195.232(a) and (c) for Weld No. 1289.

(18 U.S.C. 834; 49 U.S.C. 1655; 49 CFR 1.53(b), App. A of Part I, and App. A of Part 106)

[2] H & D stands for Hurter-Driffield method of defining quantitative blackening of the film.

[3] 4T hole is a circular drilled hole in the penetrameter with diameter four times the thickness of the penetrameter.

Issued in Washington, D.C., on January 26, 1979.

CESAR DE LEON,
Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 79-3999 Filed 2-7-79; 8:45 am]

[4910-59-M]

National Highway Traffic Safety Administration

[Docket No. IP78-3; Notice 2]

INTERNATIONAL HARVESTER CO.

Denial of Petition for Inconsequential Noncompliance

This notice denies the petition by International Harvester Co., of Chicago, Illinois, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1581 et seq.) for an apparent noncompliance with 49 CFR 571.121, Motor Vehicle Safety Standard No. 121, *Air Brake Systems.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on April 24, 1978, and an opportunity afforded for comment (43 FR 17437).

Paragraph S5.3.3, Brake actuation time, requires that the air pressure in each brake chamber of a truck air brake system, with the initial service reservoir system air pressure at 100 psi, shall reach 60 psi in not more than 0.45 second. Petitioner's normal surveillance testing has shown a noncompliance with this requirement that exists on approximately 750 trucks manufactured from September 1977 through November 1977. The vehicles are S-Series Trucks Model Series 2500, 2600 4 x 2 and 6 x 4 vehicles equipped with FA-231 (16,000 lb.) and FA-232 (18,000 lb.) front axles and antilock air brake code 04081. The noncompliance was found in the right front brake where the front chamber application time was 0.47 second, and the rear chamber 0.475 second. The company argued that for several reasons this was inconsequential as it relates to motor vehicle safety. The maximum possible effect on stopping distances from 60 mph under the worst road conditions has been computed to be 18 inches. The condition causes no other compliance problems with the standard and the trucks continue to meet stopping distance and controllability requirements. Under normal stopping procedures, there will be no effect on stopping distance. Other factors such as brake burnishing, and tire tread design, to name two, have a greater effect upon stopping distance than the 0.020-0.025 second variation observed. In summary, the company argued that "no effects will exist in real world conditions in which these vehicles operate day to day."

One comment was received on the petition, from Freightliner Corporation, which supported it. The support is consistent with Freightliner's long standing view that there should be no actuation or release timing requirements.

The agency has decided to deny Harvester's petition. While a deviation of 0.020 and 0.025 second may appear inconsequential, the regulatory scheme of the National Traffic and Motor Vehicle Safety Act requires the establishment of "minimum standards for motor vehicle performance". A manufacturer who establishes his tolerances at or near the minimum levels risks, in the event of failure, a determination of noncompliance, the obligation to notify and remedy, the threat of civil penalties and injunctive relief, and the probability that he will be unable to establish that he exercised due care in designing and manufacturing his product to conform. The use of a precise figure like 0.45 second—or any other time period for that matter—is necessary to meet the objectivity requirement of the Act and to make the standard enforceable. Such values are necessary and desirable in a regulatory context for both the regulated party and the regulator. Harvester, for example, would find it difficult to establish compliance with a brake actuation time specification which stated only a subjective requirement that "the air pressure shall reach an acceptable level quickly". Finally, to decide that a deviation of 0.020 second is "inconsequential" could encourage manufacturers to be less careful in design and production, and possibly lead to further deviations and erosion of the standard. The agency has concluded that, generally, values once established must be retained until modified by public rulemaking procedures. The agency believes that Congress did not intend that an inconsequentiality grant be made simply because a manufacturer came close to meeting a minimum performance level but for one reason or another did not reach it. The agency notes, but does not rely on the fact in its decision, that no explanation or excuse has been given by the petitioner for the failure.

International Harvester has failed to meet its burden of persuasion, and its petition that its failure to comply with Standard No. 121 be deemed inconsequential as it relates to motor vehicle safety is hereby denied.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on January 31, 1979.

MICHAEL M. FINKELSTEIN,
Associate Administrator for Rulemaking.

[FR Doc. 79-4116 Filed 2-7-79; 8:45 am]

[4810-22-M]

DEPARTMENT OF THE TREASURY

Office of the Secretary

ELEMENTAL SULPHUR FROM CANADA

Antidumping; Tentative Determination To Modify or Revoke Dumping Finding

AGENCY: U.S. Treasury Department.

ACTION: Tentative Modification of Finding of Dumping.

SUMMARY: This notice is to advise the public that it appears that elemental sulphur from Canada is no longer being sold to the United States at less than fair value within the meaning of the Antidumping Act of 1921 by the following manufacturers: Canadian Superior Oil Ltd., Shell Canada, Ltd., Hudson's Bay Oil & Gas Company, Ltd., Chevron Standard Ltd., and Gulf Oil Canada Ltd. In addition, these manufacturers have given assurances that they will not make future sales to the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*). If this action is made final, the finding of dumping covering the subject merchandise from Canada will be modified to exclude sales by the above manufacturers entered on or after the effective date of this notice. Interested persons are invited to comment on this action.

EFFECTIVE DATE: February 8, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Frank Crowe, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, telephone (202) 566-5492.

SUPPLEMENTARY INFORMATION: A Finding of Dumping with respect to elemental sulphur from Canada was published as Treasury Decision 74-1 in the FEDERAL REGISTER of December 17, 1973 (38 FR 34655). After due investigation, it has been determined tentatively that elemental sulphur from Canada, manufactured by Canadian Superior Oil, Ltd.; Shell Canada, Ltd.; Hudson's Bay Oil & Gas Co, Ltd.; Chevron Standard Ltd.; and Gulf Oil Canada, Ltd. is no longer being, nor likely to be, sold to the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*).

STATEMENT OF REASONS ON WHICH THIS TENTATIVE DETERMINATION IS BASED: The investigation indicated that there have been no sales to the United States by the above-named producers at less than fair value for more than a two-year period. The above-named manufacturers have given formal assurances that nor future sales to the United States will be made at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*).

In concluding that each of these five firms have not made sales to the United States at less than fair value for at least a two-year period since the Finding of Dumping, Treasury has investigated prices of and the cost of producing this merchandise within the meaning of section 205(b) of the Act during the period January 1, 1975, through December 31, 1976, and on the basis of this investigation has concluded that sales below home market prices have not been made, and that such home market prices are in no instance less than the cost of producing the sulphur in question.

The primary issue considered in calculating cost of production was whether the sulphur sold by the named companies should be considered a "by-product" or "co-product" of crude oil and natural gas production. It was determined that sulphur was properly considered a co-product in those instances in which sulphur revenues constituted a significant portion of a facility's total sales revenues. In those circumstances, allocation of all actual costs, from the point of initial exploration through the processing of the entire "product line," was deemed appropriate and was used to calculate the cost of producing sulphur. However, whenever the revenues from sales of sulphur, including attribution of an appropriate value to current inventory, fell below 10 percent of total revenues from individual plants or facilities, sulphur was considered a by-product. In those circumstances, expenses such as oil or gas exploration costs, could not be, and were not, allocated to the cost of producing sulphur. In no case was sulphur regarded as a "waste product," having no actual costs attributed to its production. In all cases, the cost of production of sulphur was less than home market prices of such sulphur for each producer concerned.

Accordingly, notice is hereby given that the Department of the Treasury intends to modify the Finding of Dumping with respect to elemental sulphur from Canada to exclude sales by the above-named producers.

In accordance with section 153.40, Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any requests that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, NW., Washington, D.C. 20229, in time to be received by his office not later than 15 days from the date of publication of this notice in the FEDERAL REGISTER. Requests must be accompanied by a statement outlining the issues wished to be discussed, which issues may be discussed in greater detail in a written brief.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in ten copies in time to be received by his office not later than March 12, 1979. All persons submitting views or arguments should avoid repetitious and merely cumulative material, and they are reminded of the requirement to include nonconfidential summaries or approximated presentations of all confidential information.

This notice is published pursuant to § 153.44(c) of the Customs Regulations (19 CFR 153.44(c)).

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

JANUARY 8, 1979.

[FR Doc. 79-4362 Filed 2-7-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Revised Exemption No. 143]

ALL RAILROADS

Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

It appearing, That because of slow return of empty boxcars to the Union Pacific Railroad Company (UP) the supply of cars on that line has been seriously hampered; that there is a substantial need for boxcars for off-line loading in terminal switching service in the Fairfax Industrial District, located in Kansas City, Missouri; that the aforementioned delays in the return of boxcars owned by the UP has resulted in a shortage of UP cars in the Fairfax Industrial District; that the shippers in this district are unable to furnish adequate advance routing information for the UP and its connections to select suitable cars owned by other railroads for loading in compliance with Car Service Rules 1 and 2; that the preponderance of the loading in this district is eastward; that the UP has an ample supply of boxcars owned by lines operating in States east of the Fairfax Industrial District; and that although the shippers are unable to furnish specific advance routing data for specific shipments, the majority of the foreign cars loaded in the district will be destined to or in the direction of the car owners and in compliance with Car Service Rules 1 and 2.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 410, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM" may be loaded by shippers served by the UP in its Fairfax Industrial District in Kansas City, Missouri, without regard to the requirements of Car Service Rules 1 and 2 subject to exceptions 1 to 5 inclusive, shown below.

It is further ordered, That other railroads receiving cars from the UP in terminal switching service, loaded by shippers in the aforementioned Fairfax Industrial District for line-haul movement via their lines, may accept forwarding instructions from such shippers without regard to the requirements of Car Service Rules 1 and 2.

EXCEPTIONS

1. Cars of Canadian or Mexican ownership.
2. Cars subject to a car relocation or cars assistance directive issued by the Car Service Division, Association of American Railroads.
3. Cars with inside length of 59-ft. 8-in. or greater.
4. Cars subject to an Interstate Commerce Commission Order requiring the return of cars to owners.
5. Cars owned by the following western railroads; The Denver and Rio Grande Western Railroad Company, Southern Pacific Transportation Company, The Western Pacific Railroad Company.

Effective January 31, 1979.

Expires April 30, 1979.

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

INTERSTATE COMMERCE COMMISSION.
JOEL E. BURNS,
Agent.

[FR Doc. 79-4383 Filed 2-7-79; 8:45 am]

[7035-01-M]

Office of Hearings

[Notice No. 23]

ASSIGNMENT OF HEARINGS

FEBRUARY 5, 1979.

Cases assigned for hearing, postponement, cancellation or oral argu-

ment 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.

No. FD 28910F, Denver & Rio Grande Western Railroad Company Discontinuance of Passenger Trains Nos. 17 and 18 (The Rio Grande Zephyr) Between Grand Junction, Co. and Salt Lake City, Utah, now assigned for hearing on February 26, 1979, at Salt Lake City, Utah and will be held in Room 3421, Federal Building.

MC 127042 (Sub-206F), Hagen, Inc., now assigned for hearing February 6, 1979 is canceled and application dismissed, at Billings, Montana.

MC 116254 (Sub-205F), Chem-Haulers, Inc., now assigned for hearing at Kansas City, Missouri February 26, 1979 is canceled and application dismissed.

MC 106873 (Sub-3F), Heavy Hauling Co., Inc., now assigned for hearing on April 25, 1979, (3 days), at Portland, Oregon in a hearing room to be later designated.

MC 123819 (Sub-68F), Ace Freight Line, Inc., now assigned February 12, 1979, at New Orleans, La., is canceled.

MC 130482F, Central Travel & Ticket, Inc., now assigned for hearing on March 21, 1979, (3 days), at Toledo, Ohio in a hearing room to be later designated.

MC 119656 (Sub-44F), North Express, Inc., now assigned for hearing on March 26, 1979, (1 day), at Columbus, Ohio in a hearing room to be later designated.

MC 124078 (Sub-845F), Schwerman Trucking Co., now assigned for hearing on March 27, 1979, (1 day), at Columbus, Ohio in a hearing room to be later designated.

MC 144437 (Sub-4F), Walters Enterprises, Inc., now assigned for hearing on March 28, 1979, (3 days), at Columbus, Ohio in a hearing room to be later designated.

MC 140511 (Sub-7F), Autolog Corporation, a Delaware Corp. now assigned for hearing on April 23, 1979, (1 week), at New York, New York in a hearing room to be later designated.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-4377 Filed 2-7-79; 8:45 am]

[7035-01-M]

[Notice No. 24]

ASSIGNMENT OF HEARINGS

FEBRUARY 5, 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.

CORRECTION

MC 144288 F, Evans Reliable Messenger, Inc., now assigned for hearing on February 7, 1979, in Room 314A, P.O. Box Bldg., 141 Church Street, New Haven, Connecticut, instead of The New Court House.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-4378 Filed 2-7-79; 8:45 am]

[7035-01-M]

[Ex Parte No. 359]

WATER CARRIER REGULATION

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time for filing public comments in this proceeding.

SUMMARY: This proceeding was instituted by a notice published in the FEDERAL REGISTER on December 18, 1978, at 43 FR 59608. All interested parties were initially invited to file comments on or before February 16, 1979.

We believe that a further extension of time is necessary for interested parties to evaluate their positions and prepare comments.

DATES: Comments regarding the proceeding must be submitted to the Commission on or before April 2, 1979. No further extensions are contemplated.

FOR FURTHER INFORMATION CONTACT:

Hanford O'Hara, 202-275-7793, or Ann C. Pongracz, 202-275-1851.

By the Commission, George M. Chandler, Acting Director, Office of Proceedings.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-4404 Filed 2-7-79; 8:45 am]

[7035-01-M]

[I.C.C. Order No. 22 Under Service Order No. 1344]

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

Rerouting Traffic

In the opinion of Joel E. Burns, Agent, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company is unable to transport promptly all traffic offered for movement to, from or via stations on its lines in the States of Iowa and Minnesota, because of adverse weather conditions.

It is ordered,

(a) *Rerouting traffic.* The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, being unable to transport promptly all traffic offered for movement to, from or via stations on its lines in the States of Iowa and Minnesota, because of adverse weather conditions, is authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 1:00 p.m., January 26, 1979.

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 2, 1979, unless otherwise modified, changed or suspended.

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. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 26, 1979.

INTERSTATE COMMERCE COMMISSION.
JOEL E. BURNS,
Agent.

[FR Doc. 79-4381 Filed 2-7-79; 8:45 am]

[7035-01-M]

[ICC Order No. 21, Under Service Order No. 1344]

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD CO.

Rerouting Traffic

In the opinion of Joel E. Burns, Agent, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company is unable to transport promptly all traffic offered for movement to, from or via stations on its lines in the States of Illinois and Wisconsin, because of snow drifts.

It is ordered,

(a) *Rerouting traffic.* The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, being unable to transport promptly all traffic offered for movement to, from or via stations on its lines in the States of Illinois and Wisconsin, because of snow drifts, is authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 4:00 p.m., January 25, 1979.

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 2, 1979, unless otherwise modified, changed or suspended.

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. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 25, 1979.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 79-4384 Filed 2-7-79; 8:45 am]

[7035-01-M]

[ICC Order No. 19, Under Service Order No. 1344]

CHICAGO AND NORTH WESTERN TRANSPORTATION CO.

Rerouting Traffic

In the opinion of Joel E. Burns, Agent, the Chicago and North Western Transportation Company is unable to transport promptly all traffic offered for movement over its lines between Albert Lea, Minnesota, and Austin, Minnesota, because of adverse weather conditions.

It is ordered,

(a) *Rerouting traffic.* The Chicago and North Western Transportation Company, being unable to transport promptly all traffic offered for movement over its lines between Albert Lea, Minnesota, and Austin, Minnesota, because of adverse weather conditions, is authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 3:00 p.m., January 24, 1979.

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 15, 1979, unless otherwise modified, changed or suspended.

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. A copy of this order shall be filed with the Director, Office of the Federal Register.

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

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 79-4379 Filed 2-7-79; 8:45 am]

[7035-01-M]

[I.C.C. Order No. 20 Under Service Order No. 1344]

CHICAGO AND NORTH WESTERN TRANSPORTATION CO.

Rerouting Traffic

In the opinion of Joel E. Burns, Agent, the Chicago and North Western Transportation Company is unable to transport promptly all traffic offered for movement to and from Dyersville, Iowa, because of adverse weather conditions.

It is ordered,

(a) *Rerouting traffic.* The Chicago and North Western Transportation Company being unable to transport promptly all traffic offered for movement to and from Dyersville, Iowa, because of adverse weather conditions, that line is authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to the order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 3:00 p.m., January 24, 1979.

Expiration date. This order shall expire at 11:59 p.m., March 1, 1979, unless otherwise modified, changed or suspended.

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. A copy of this order shall be filed with the Director, Office of the Federal Register.

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

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 79-4380 Filed 2-7-79; 8:45 am]

[7035-01-M]

[Twenty-Fourth Revised Exemption No. 129]

CHICAGO, WEST PULLMAN & SOUTHERN RAILROAD CO., ET AL.

Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

It appearing, That the railroads named herein own numerous forty-foot plain boxcars; that under present conditons, there is virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plain boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 410, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", with inside length 44-ft. 6-in. or less, regardless of door width and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1(a), 2(a) and 2(b).

Chicago, West Pullman & Southern Railroad Company
Reporting Marks: CWP
XXX

XXX Detroit and Mackinac Railway Company deleted.

Illinois Terminal Railroad Company
Reporting Marks: ITC
Louisville, New Albany & Corydon Railroad Company
Reporting Marks: LNAC
Richmond, Fredericksburg and Potomac Railroad Company
Reporting Marks: RFP

Effective 12:01 a.m., February 1, 1979, and continuing in effect until further order of this Commission.

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

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 79-4382 Filed 2-7-79; 8:45 am]

[7035-01-M]

[Notice No. 156]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under Sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include request for oral hearing, must be filed with the Commission on or before March 12, 1979. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

MC-FC-77844. Transferee: SANDHILLS GRAIN, INC., 524 Augusta Street, Bassett, NE 68714. Transferor:

Grand Island Contract Carriers, Inc., Box 2078, West Old Highway 30, Grand Island, NE 68801. Representatives: George L. Hirschbach, Hirschbach & Wichser, 5000 South Lewis Blvd., P.O. Box 417, Sioux City, IA 51102. Jack Schulz, Box 82028, 13th and N Streets, Lincoln, NE 68501. By order entered February 2, 1979, the Commission, Motor Carrier Board, approved the transfer from transferor to transferee of the operating rights set forth in Permit No. MC-129808 (Sub. No. 29) issued January 19, 1979 as follows: Battery acids, brake fluids, gasoline antifreeze, windshield washer solutions, and lacquer (except commodities in bulk), from the facilities of Scholle Corp., at or near Garland, TX, to points in Colorado, New Mexico, Oklahoma, Arkansas, and Louisiana. From the facilities of Scholle Corp., at or near Raytown, MO, to points in Colorado, Kansas (except the facilities of General Battery Corp., at Salina), Nebraska and Iowa. RESTRICTION: The authority granted herein is limited to a transportation service to be performed under a continuing contract(s) with Scholle Corp.

MC-FC-77848, filed September 13, 1978. Transferee: GENE CURTIS TRUCKING CO., INC., 7404 West 205th Avenue, Lowell, IN 46356. Transferor: Harold C. Dahl, P.O. Box 211, Lowell, IN 46356. Representative: Edwin J. Simcox, Suite 800, Circle Tower Bldg., Indianapolis, IN 46204. Authority sought for purchase of the operating rights set forth in Certificate No. MC-140438, issued September 3, 1976 as follows: *Wood pallets,* from Tefft, IN to Oregon, OH. Transferee presently holds no authority from this Commission, and application has not been filed for Section 210a(b) au>thority.

MC-FC-77939, filed November 27, 1978. Transferee: PENN-ILLINOIS TRUCKING CO., INC., 5100 5th Avenue, Pittsburgh, PA 15232. Transferor: Pittsburgh-Chicago Transport, Inc. (Samuel and Miriam Alice Schreiber, Successors-In-Interest), 5100 Fifth Avenue, Pittsburgh, PA 15232. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate No. MC-135305 on November 8, 1971, as follows: General commodities between Chicago, IL and Pittsburgh, PA over specified routes. Transferee presently holds no authority from this Commission. Application for temporary authority under Section 210a(b) has not been filed.

MC-FC-77959, filed December 13, 1978. Transferee: FALCON MOTOR TRANSPORT, INC., 1250 Kelly Avenue, Akron, OH 44306. Transferor: Rubber City Express, Inc., 1805 Market Street, Akron, OH 44305. Representative: Michael L. Moushey, 275 East State Street, Columbus, OH 43215. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit No. MC 136470 Sub 1, issued May 30, 1973, as follows: Such commodities as are dealt in by rubber manufacturers and steel product manufacturers, and equipment, materials and supplies used in the conduct of such business, from Akron, OH to points in RI, MA, CT, and parts of NY and NJ; Tire fabric, from Fall River and New Bedford, MA to Akron, OH; Chemicals, form Naugatuck, CT to Akron, OH; scrap tires and tubes, from specified points in MA, CT, NJ and NY to Akron, OH, under contract with persons operating rubber manufactruing plants. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under Section 210a(b).

MC-FC-77989, filed January 4, 1979. Transferee: CAINES TRUCKING, INC., P.O. Box 236, Riegelwood, NC 28456. Transferor: R. H. Trucking, Inc., Route 2, Nichlos, SC 29581. Representative: Edward L. Williamson, 136 Washington Street, Whiteville, NC 28472. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in certificate No. MC 139608 Sub 1, issued October 2, 1975, as follows: *Wood chips,* between points in NC and SC, restricted to traffic originating at or destined to the plant site of Georgia-Pacific Corp, of Augusta, GA. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-4376 Filed 2-7-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Volume No. 6]

PETITIONS FOR MODIFICATION, INTERPRETATION OR REINSTATEMENT OF OPERATING RIGHTS AUTHORITY

The following petitions seek modification or interpretation of existing operating rights authority, or reinstatement of terminated operating rights authority.

All pleadings and documents must clearly specify the suffix (e.g. M1 F, M2 F) numbers where the docket is so identified in this notice.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission within 30 days after the date of this notice. Such protests shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247)* and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon petitioner's representative, or petitioner if no representative is named.

MC 6415 Subs 5 and 6 (M1F) (NOTICE OF FILING OF PETITION TO MODIFY CERTIFICATES) filed November 17, 1978. Petitioner: FEUER TRANSPORTATION INC., Federal and Knowles Streets, Yonkers, NY 10702. Representative: Edward L. Nehez, P.O. Box 1409, Fairfield, NJ 07006. Petitioner holds motor *common carrier* certificates in MC 6415 Subs 5 and 6 issued December 24, 1959 and January 16, 1967, respectively. MC 6415 Sub 5 authorizes transportation, over irregular routes, of *General commodities,* (except those of unusual value, class A and B explosives, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment), between New York, NY, on the one hand, and, on the other, points in Hudson, Essex, Bergen, Union, Passaic, Middlesex, Monmouth, Somerset and Morris Counties, NJ. MC 6415 Sub 6 authorizes transportation, over irregular routes, of *General commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between points in the New York, NY, Commercial Zone, as defined by the Commission, in 1 M.C.C. 665, on the one hand, and, on the other, points in Nassau and Suffolk Counties, NY, and those in that part of Fairfield County, CT, on and west of a line beginning at the NY-CT State line and extending along CT Hwy 29 to Long Island Sound.

By the instant petition, petitioner seeks to modify the above territorial descriptions to read as follows: Sub 5—Between New York, NY, on the one hand, and, on the other, points in Hudson, Essex, Bergen, Union, Passaic, Middlesex, Monmouth, Somerset, Morris, Warren, Hunterdon, Mercer, Burlington, and Ocean Counties, NJ, and points in Westchester, Nassau, and Rockland Counties, NY; Sub 6—Between points in Hudson, Essex, Bergen, Union, Passaic, Middlesex, Monmouth, Somerset, Morris, Warren, Sussex, Hunterdon, Mercer, Burlington, and Ocean Counties, NJ, on the one hand, and, on the other, points in

*Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

Nassau and Suffolk Counties, NY, and those in Fairfield County, CT, on and west of a line beginning at the NY-CT State line and extending along CT Hwy 29 to Long Island Sound.

MC 12983 (M1F) (NOTICE OF FILING OF PETITION TO MODIFY LICENSE) filed October 18, 1978. Petitioner: RALPH A. JOHANSEN ASSOCIATES, INC., d.b.a. JOHANSEN ROYAL TOURS, 1410 Vance Bldg., Seattle, WA 98101. Representative: James H. Glavin, P.O. Box 40, Waterford, NY 12188. Petitioner holds a license issued July 11, 1974 and served September 26, 1974, to engage in operations as a *broker* in transporting: (1) Passengers and their baggage, in sightseeing or pleasure tours, in special and charter operations, in round trip tours, beginning and ending at Seattle, WA, and extending to points in the United States (including AK, but excluding HI). (2) Passengers and their baggage, in sightseeing and pleasure tours, in one-way special and charter operations, (a) from points in WA (except Vancouver, WA), to points in OR and CA, and (b) from San Francisco, Los Angeles, and San Diego, CA, to points in OR and WA. Applicant is authorized to engage in the above-specified operations as a broker at Seattle, WA.

By the instant petition, petitioner seeks to modify the territorial description to authorize operations between points in the United States (including AK and HI).

MC 76065 (Sub-21) (M1F) (Notice of Filing Petition to delete restriction), filed October 4, 1978. Petitioner: EHRLICH-NEWMARK TRUCKING CO., INC., 505-509 West 37th Street, New York, NY 10018. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Petitioner holds a motor *common carrier* certificate in MC 76065 (Sub-21), issued December 2, 1974, authorizing transportation, over irregular routes of: (1) *Wearing apparel*, (2) *materials, supplies and equipment* used in the manufacture of wearing apparel (except commodities in bulk), and (3) *department store merchandise* when moving in the same vehicle with wearing apparel on hangers. Between Washington, DC, Philadelphia, PA, and points in that part of PA and MD on and east of US Hwy 11, on the one hand, and, on the other, points in VA (except Crewe). RESTRICTION: The authority granted herein is restricted against the tacking of such authority with other authority held by carrier.

By the instant Petition, Petitioner seeks to modify the above authority by deleting the restriction. NOTE: By deletion of the tacking restriction, the following tacking possibilities exist. (1) Tack MC 76065 Sub-21 with MC 76065 at points in PA on and east of US Hwy 11 to provide a through service between points in VA (except Crewe) on the one hand, and, on the other, points in Hudson, Essex, Union, Passaic, and Middlesex Counties, NJ, and New York, NY and (2) Tack MC 76065 Sub-21 with MC 76065 Sub-20 at Philadelphia, PA to provide a through service between points in VA (except Crewe), on the one hand, and, on the other, points in that part of DE on and north of DE Hwy 310, and points in that part of NJ on and south of US Hwy 22, and on and west of NJ Hwy 18 and US Hwy 9 (except points in Atlantic, Salem, Gloucester, Cumberland and Camden Counties).

MC 97699 (Sub-5) (M1F) (NOTICE OF FILING OF PETITION TO MODIFY CERTIFICATE), filed October 5, 1978. Petitioner: BARBER TRANSPORTATION CO., a corporation, 1970 Deadwood Ave., Rapid City, SD 57701. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln Street, Denver, CO 80264. Petitioner holds a motor *common carrier* certificate in MC 97699 Sub-5 issued July 16, 1957, authorizing transportation, over regular routes, as pertinent, of: *General commodities*, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), Between Lemmon, SD, and St. Paul, MN, serving the intermediate point of Minneapolis, MN. From Lemmon over US Hwy 12 to St. Paul, and return over the same route.

By the instant petition, petitioner seeks to modify the above authority by adding Mobridge, SD as an additional intermediate point.

MC 108962 (M1F) (NOTICE OF FILING OF PETITION TO MODIFY CERTIFICATE), filed November 14, 1978. Petitioner: MIDWEST SPECIALIZED HAULERS, INC., P.O. Box 753, Dubuque, IA 52001. Representative: A. Charles Tell, Columbus Center, Suite 1800, 100 East Broad Street, Columbus, OH 43215. Petitioner holds a motor *common carrier* certificate in MC 108962 issued May 4, 1978, authorizing transportation, over irregular routes, as pertinent, of *Heavy machinery and contractor's machinery, equipment, materials* and *supplies*, between Dubuque, IA, and points in IA within 25 miles of Dubuque, on the one hand, and, on the other, points in WI and MN.

By the instant petition, petitioner seeks to add "Such commodities as by reason of their size or weight require special handling or the use of special equipment" to the commodity description.

MC 111473 (Sub-1) (M1F) (NOTICE OF FILING OF PETITION TO MODIFY CERTIFICATE), filed November 15, 1978. Petitioner: INTER-STATE TRUCK LINES, INC., 555 S. 16th St., Columbia, PA 17512. Representative: S. Harrison Kahn, Suite 733 Investment Building, 1511 K Street, NW, Washington, DC 20005. Petitioner holds a motor *common carrier* certificate in MC 111473 Sub-1, issued January 12, 1950, authorizing transportation, over irregular routes, as pertinent, of *Wearing apparel*, in boxes and cases, from New York, NY, to points and places in that part of PA on, east, and south of a line beginning at the PA-MD State line and extending along US Hwy 11 to Harrisburg, PA, then along US Hwy 22 to the PA-NJ State line.

By the instant petition, petitioner seeks to modify the above authority by substituting the language "on hangers" for "in boxes and cases."

MC 113434 (Sub-44) (M1F) (NOTICE OF FILING OF PETITION TO MODIFY CERTIFICATE), filed November 14, 1978. Petitioner: GRABELL TRUCK LINE, INC., P.O. Box 1001, Holland, MI 49423. Representative: Wilhelmina Boersma, 1600 First Federal Building, 1001 Woodward Avenue, Detroit, MI 48226. Petitioner holds a motor *common carrier* certificate in MC 113434 Sub-44, issued January 27, 1977, authorizing transportation, over irregular routes, of *Canned and preserved foodstuffs*, from Edmore and Croswell, MI, to points in IL and IN (except points in the Chicago, IL, commercial zone, as defined by the Commission), KY, OH, MO, WI, the Upper Peninsula of MI, and points in that part of PA east of US Hwy 220, restricted to the transportation of shipments originating at the facilities of Nu-Foods at Edmore, MI and Aunt Jane Foods, Inc., at Croswell, MI, and destined to the above-named destinations.

By the instant petition, petitioner seeks to modify the above authority by deleting the exception against service to the Chicago, IL, commercial zone, as defined by the Commission, from Croswell, MI. The exception will still remain effective from Edmore, MI.

MC 113666 (Sub-81) (M1F) (NOTICE OF FILING OF PETITION TO MODIFY CERTIFICATE), filed October 13, 1978. Petitioner: FREEPORT TRANSPORT, INC., 1200 Butler Rd., Freeport, PA 16229. Representative: William H. Shawn, Suite 501, 1730 M Street, NW, Washington, DC 20036. Petitioner holds a motor *common carrier* certificate in MC 113666 Sub-81, issued November 14, 1975, authorizing transportation, in foreign commerce, over irregular routes, of *Refractory products*, and *materials* and *supplies* used in the production and installation of refractory products (except liquid commodities,

in bulk, in tank vehicles), and brick, from points in WV, KY, PA, OH, and MO, to ports of entry on the United States-Canada Boundary line, located in MN, MI, NY, ME, NH, and VT. RESTRICTION: The authority granted herein is restricted against the transportation (1) of refractory products from Clearfield, PA, and points within 25 miles thereof, and from Clymer, Mt. Union, and Womelsdorf, PA.; (2) of materials and supplies used in the installation of refractory products when transported in mixed shipments with refractory products from Clearfield, PA, and points within 25 miles thereof, and from Mt. Union and Womelsdorf, PA, and (3) of brick, structural tile, and crude clay (in bulk), from Clearfield, PA, and points within 25 miles thereof.

By the instant petition, petitioner seeks to modify the above certificate by deleting the foreign commerce restriction.

MC 124004 (Sub-19) (M1F) (NOTICE OF FILING OF PETITION TO MODIFY CERTIFICATE), filed October 11, 1978. Petitioner: RICHARD DAHN, INC., 620 W. Mountain Rd., Sparta, NJ 07871. Representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Petitioner holds a motor *common carrier* certificate in MC 124004 Sub-19, issued April 19, 1973 authorizing transportation, over irregular routes, of *Scrap brick and scrap metal*, from points in MA, CT, RI, PA, OH, and NY, to Kearny, NJ.

By the instant petition, petitioner seeks to modify the above authority by seeking a two-way radial movement, so it will read: Between points in MA, CT, RI, PA, OH, NY, on the one hand, and, on the other, Kearny, NJ.

MC 128698 (Sub-1) (M1F) (NOTICE OF PETITION TO MODIFY CERTIFICATE), filed October 19, 1978. Petitioner: ERDNER BROS., INC., P.O. Box 68-Davidson Rd., Swedesboro, NJ 08085. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street, NW, Washington, DC 20005.

Petitioner holds a motor *common carrier* certificate in MC 128698 Sub 1 issued December 23, 1975, authorizing transportation, over irregular routes, of *Foodstuff, and ingredients, materials, supplies, and equipment* used in the processing and manufacture of foodstuffs, between Milford, Bridgeville, Clayton, Georgetown, Wilmington, Milton, and Houston, DE, Whiteford, Snow Hill, Hurlock, Cambridge, Salisbury, Pocomoke City, Chestertown, Ridgely, Baltimore, Goldsboro, and Trappe, MD, Parksley and Exmore, VA, Centre Hall, Bloomsburg, York, Hanover, Lancaster, and Downingtown, PA., Bridgeton, Swedesboro, Woodstown, Camden, Moorestown, and Glassboro, NJ, Sumter, SC, Napoleon, OH, and DC, restricted against the transportation of commodities in bulk, and further restricted to the transportation of shipments originating at and destined to the facilities utilized by Campbell Soup Company, its affiliates and its subsidiaries, at the above-described points.

By the instant petition, petitioner seeks to modify the above authority by adding Chicago, IL to the territorial description.

MC 135231 (Sub-22) (M1F) (NOTICE OF FILING OF PETITION TO MODIFY CERTIFICATE), filed November 21, 1978. Petitioner: NORTH STAR TRANSPORT, INC., Route 1, Hwy. 1 and 59 West Thief River Falls, MN 56701. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Petitioner holds a motor *common carrier* certificate in MC 135231 Sub 22 issued July 14, 1978, authorizing transportation, over irregular routes, as pertinent, of (1) *Snowmobiles, motorbikes, boats, parts and accessories*, and *sound reproducing equipment*, from Roseau, Thief River Falls, Karlstad, Rochester and Minneapolis, MN and Omaha, NE, to points in the United States including Anchorage, AK (excepting service to unnamed AK points and HI), restricted to traffic originating at the plant sites or facilities of Polaris E-Z-Co Division of Textron Inc., Arctic Enterprises, Inc., and Telex Communications, Inc., at the origin points specified, and (2) *Materials, supplies, parts, and equipment* used in the manufacture or sale of snowmobiles, motor bikes, sound reproducing equipment, and boats, from points in the United States (except AK and HI), to plant sites and facilities of Polaris E-Z-Co. Division of Textron, Inc., Arctic Enterprises, Inc., and Telex Communications, Inc., at Thief River Falls, Roseau, Karlstad, Moorhead, Clearbrook, Rochester and Minneapolis, MN, and Omaha, NE.

By the instant petition, petitioner seeks to modify the above authority by adding Scorpion Industries, Inc. of Crosby, MN, as an origin in part (1) above, and as a destination in (2) above.

MC 135928 (Sub-2) (M1F) (NOTICE OF FILING OF PETITION TO MODIFY PERMIT), filed November 1, 1978. Petitioner: KRS TRUCKING CORPORATION, P.O. Box 789, plainfield, NJ 07061. Representative: Robert B. Pepper, The Forrest Park Building, 168 Woodbridge Avenue, Highland Park, NJ 08904. Petitioner holds a motor *common carrier* certificate in MC 135928 Sub 2 issued August 21, 1972, authorizing transportation, over irregular routes, of *leaders, gutters, elbows, corner ends, downspouts*, and *material*, and *supplies* used in connection therewith, from the plant site of Royal-Apex Manufacturing Co., Inc., at Plainfield, NJ, to points in that part of the United States on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the United States-Canada Boundary line, reunder a countinuing contract(s) with Royal-Apex Manufacturing Co., Inc.

By the instant petition, petitioner seeks to add a second commodity and territorial description which will read: *Materials, equipment* and *supplies* used in the manufacturing and sale of leaders, gutters, elbows, corner ends, and downspouts, (except in bulk), from points in that part of the United States on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, NM, then northward along the western boundaries of Itasca and Koochiching Counties, MN to the United States-Canada Boundary line to the plant site of Royal-Apex Manufacturing Co., Inc. Plainfield, NJ, under a continuing contract(s) with Royal-Apex Manufacturing Co., Inc.

MC 138880 (Sub-2) (M1F) (NOTICE OF FILING OF PETITION TO MODIFY CERTIFICATE) filed October 18, 1978. Petitioner: RED RIVER TRANSPORT & DEVELOPING CO., INC., d/b/a AIR FREIGHT EXPRESS, P.O. Box 5021, Fargo, ND 58102. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58102. Petitioner holds a motor *common carrier* certificate in MC 138880 Sub 2 issued August 15, 1975, authorizing transportation, over irregular routes, of *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those that require special equipment), between Minneapolis- St. Paul International Airport in or near Minneapolis, MN, on the one hand, and, on the other, Superior, WI, and points in St. Louis and Carlton Counties, MN. RESTRICTION: The operations authorized herein are restricted to the transportation of shipments having an immediately prior or subsequent movement by air.

By the instant petition, petitioner seeks to modify the above authority by deleting the restriction.

MC 140252 (Sub-1) (M1F) (NOTICE OF FILING OF PETITION TO MODIFY CERTIFICATE) filed November 8, 1978. Petitioner: M. K. M. ASSOCIATED TRUCKING CORP.,

117 Dutch Road, East Brunswick, NJ 08816. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Petitioner holds a motor *common carrier* certificate in MC 140252 Sub 1 issued August 24, 1976, authorizing transportation, over irregular routes, of *Scrap metals* (except in dump vehicles, from the plantsites of National Can Corp., at or near Edison and Piscataway, NJ, Long Island City and Maspeth, NY, and Hamburg, Fogelsville and Morrisville, PA, to Sparrows Point, MD and Wilmington, DE, under a continuing contract(s) with National Can Corp., of Piscataway, NJ.

By the instant petition, petitioner seeks to modify the above authority by adding Elizabeth, NJ as a destination point in the territorial description.

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

NOTICE

The following applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the FEDERAL REGISTER. Failure to reasonably file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with Section 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use a such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. All pleadings and documents must clearly specify the "F" suffix where the docket is so identified in this notice. If the protest includes a request for oral hearing, such request shall meet the requirements of Section 247(e)(4) of the special rules, and shall include the certification required therein.

Section 247(f) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request dismissal thereof, and that failure to prosecute an application under procedures ordered by the Commission will result in dismissal of the application.

Further processing steps will be by Commission decision which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.*

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC 29910 (Sub-174) (Republication), filed January 21, 1977, previously noticed in the FEDERAL REGISTER issues of March 10, 1977 and January 11, 1978. Applicant: ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 South 11th Street, Fort Smith, AR 72901. Representative: Don A. Smith, P.O. Box 43, 510 N. Greenwood Avenue, Fort Smith, AR 72902. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prefabricated buildings, equipment, supplies and building materials* (except limestone, limestone products, and commodities in bulk), between the plantsite of Arkansas Log Homes, Inc., located in Polk County, AR, on the one hand, and, on the other, those points in the United States in and east of MT, WY, CO, and NM. Note: The purpose of this republication is to indicate the applicant's intention to tack with its existing regular route authority and will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition seeking leave to intervene in this proceeding, setting forth in detail the manner in which it has been prejudiced by lack of proper notice.

MC 115495 (Sub-37F) (Partial Correction), filed July 21, 1978, previously noticed in the FEDERAL REGISTER issue of September 7, 1978. Applicant: UNITED PARCEL SERVICE, INC., 300 North 2nd Street, St. Charles, IL 60174. Representative: Everett Hutchinson, Suite 400, 1150 Connecticut Avenue NW., Washington, DC 20036. NOTE: The purpose of this partial correction is to add the following: (7), between ND, SD, NE, KS, OK, TX, AR, LA, and MS, restricted in (7) above to the transportation of traffic having a prior or subsequent movement by air, water, or rail (except trailer-on-flatcar service); and further restricted in (7) above that no service shall be rendered in the transportation of any package or article weighing more than 50 pounds, or exceeding 108 inches in length and girth combined, and each package or article shall be considered as a separate and distinct shipment. (Hearing: February 27, 1979 (14 days) at 9:30 a.m., local time at the Dallas Marriott Hotel, Market Center, 2101 Stemmons Freeway, Dallas, TX and continued to April 3, 1979 (9 days), at 9:30 a.m. local time at the Dallas Marriott Hotel, Market Center, 2101 Stemmons Freeway, Dallas, TX).

MC 115495 (Sub-40F), filed January 19, 1979. Applicant: UNITED PARCEL SERVICE, INC., 300 North 2nd Street, St. Charles, IL 60174. Representative: Everett Hutchinson, Suite 400, 1150 Connecticut Avenue NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of *General commodities* (except those of unusual value, commodities in bulk, Classes A and B explosives, commodities requiring special equipment and household goods as defined by the Commission), between points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, SC, SD, TN, TX, UT, WA, WI, and WY and points in PA, WV, and VA, within ten miles of the PA-OH, the WV-OH, the WV-KY, the VA-KY, the VA-TN and the VA-NC State boundary lines, subject to all the restrictions in applicant's certificates, listed below: (1) No service shall be rendered in the transportation of any package or article weighing more than 50 pounds or exceeding 108 inches in length and girth combined and each package or article shall be considered as a separate and distinct shipment; and (2) no service shall be provided in the transportation of package or articles weighing in the aggregate more than 100 pounds from one consignor at one location to one consignee at one location on any one day. Note: Applicant specifically requests that its certificates in Nos. MC 115495 Subs 4, 14, 16, 20, and 22 be modified to expressly authorize tacking. Additional certificated operating rights are not sought by this request. (Hearing site: Chicago, IL).

MC 117416 Sub. No. 58F (correction), filed April 14, 1978, previously noticed in the FEDERAL REGISTER issue of July 27, 1978. Applicant: NEWMAN & PEMBERTON, CORP., a corporation, 2007 University Avenue NW., Knoxville, TN 37921. Representative:

Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise as is dealt in by wholesale, retail, and chain grocery stores*, and in connection therewith, *materials, equipment, and supplies* used in the conduct of such business (except commodities in bulk, and frozen foods), between Cincinnati, OH, and Atlanta, Augusta, and Macon, GA, on the one hand, and, on the other, points in AL, FL, GA, LA, S, NC, SC, and TN, restricted to the transportation of shipments which either, (1) originate at Cincinnati, OH, and Atlanta, Augusta and Macon, GA and are destined to points in AL, FL, GA, LA, MS, NC, SC, and TN, or (2) originate at points in AL, FL, GA, LA, MS, NC, SC, and TN, and are destined to Cincinnati, OH, and Atlanta, Augusta, and Macon, GA. Note: The purpose of this republication is to broaden the restriction and modify the territorial description. (Hearing site: Cincinnati, OH, or Washington, D.C.)

FINANCE APPLICATIONS

NOTICE

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to Sections 11343 (formerly Section 5(2)) or 11349 (formerly Section 210a(b)) of the Interstate Commerce Act.

An original and one copy of protests against the granting of the requested authority must be filed with the Commission on or before March 12, 1979. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC-F-13647. By initial decision served January 15, 1979, DALKE TRANSPORT, INC., was authorized to purchase the described portion of the operating authority of JERRY LIPPS, INC., subject to republication in the FEDERAL REGISTER. The Administrative Law Judge required republication. The FEDERAL REGISTER publication was incomplete in that it did not include a portion of the authority to be transferred, *from Waco, TX, to points in AZ, CA, CO, NV, OK, and KS*. This portion of MC-118959 (Sub-No. 47) was inadvertently omitted. The original FEDERAL REGISTER Notice was published July 27, 1978.

The Administrative Law Judge authorized DALKE TRANSPORT INC. to acquire the followng portion of JERRY LIPPS, INC.'s operating authority: Plastic conduit, plastic siding and plastic molding, as a common carrier over irregular routes from McPherson, KS, to points in MN, IA, ND, SD, NE, KS, OK, NM, CO, WY, MT, ID, UT, TX, AZ, NV, WA, OR, and CA; and *from Waco, TX to points in AZ, CA, CO, NV, OK, and KS*. Plastic pipe, plastic tubing, plastic molding, plastic valves, plastic fittings, plastic siding, plastic compounds, plastic joint sealer, plastic bonding cement, and plastic accessories and materials used in the installation of such products: from Waco, TX to points in NM. Plastic conduit, plastic siding and plastic molding: From Waco, TX to points in OR, WA, ID, MT, WY, ND, SD, NE, MN, IA, that part of UT on and north of a line beginning at the NV-UT State line, then along UT Hwy 56 to junction US Hwy 91, then along US Hwy 91 to junction UT Hwy 20, then along UT Hwy 20 to its Junction US Hwy 89, then along US Hwy 89 to junction UT Hwy 4, then along UT Hwy 4 to junction Interstate Hwy 70, then along Interstate Hwy 70 to the CO-UT State Line.

If any person has any interest in or would be prejudiced by grant of the authority it may file an original and six copies of the petition (or any other pleading) within 30 days from the date of publication with appropriate service on applicant. The petition in each case must set forth the position and interest of the petitioner in the proceeding, including a showing of good cause for not filing objections at the time of or prior to the oral hearing, and specifically why the transaction would not be in the public interest. Applicant shall file its reply within 50 days from the date of publication. Applicant's attorney: John E. Jandera, 641 Harrison Street, Topeka, KS and Robert M. Pearce, P.O. Box 1899, Bowling Green, KY., 42101.

MC-F-13876F. Authority sought by BROWNING FREIGHT LINES, INC., 650 South Redwood Road, Salt Lake City, UT 84104, to purchase a portion of the operating rights of ABC Truck Lines, Inc., 728 West Idaho Street, P.O. Box 1824, Elko, NV 89801, and for acquisition by George A. Browning and Clifton M. Browning and Lowell D. Browning of control of such rights through purchase. Applicant's Representative: Ben D. Browning and Ronald D. Browning, Attorneys, 1321 SE Water Avenue, Portland, OR 97214. Operating rights to be purchased: General Commodities with the usual exceptions, over regular routes between Elko, NV and Owyhee, NV via State Route 11 to four miles beyond Dinner Station; via State Route 43 to Mountain City Ranger Station; and via State Route 11A to Owyhee, serving all intermidiate points.

Vendee is authorized to operate as a common carrier in the States of UT, ID and OR pursuant to certificates issued in Docket MC-41932.

Application has been filed for temporary authority under Section 210a(b). In Docket MC-41932 (Sub No. 12F) application has been made to convert the above described authority to be purchased from a registered certificate to a certificate of public convenience and necessity. (Hearing sites: Boise, ID or Salt Lake City, UT.)

NOTE.—MC-41932 (Sub 12F) is a directly related matter.

MC-F-13877F. Authority sought to purchase by Ace Doran Hauling & Rigging Co., 1601 Blue Rock Street, Cincinnati, OH 45223, of a portion of the operating rights of Burgmeyer Bros., Inc., 1342 North Howard Street, Philadelphia, PA 19601, and for acquisition by Richard E. Doran, Robert J. Doran and C. M. Doran of 1601 Blue Rock Street, Cincinnati, OH 45223, of control of such rights through the purchase. Applicant's attorney is John P. McMahon, 100 East Broad Street, Columbus, OH 43215, and A. David Millner, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Operating rights sought to be purchased: *General commodities*, except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other ladings, as a common carrier, over irregular routes, between Chicago, IL and Chicago Heights, IL. Vendee is authorized to operate as a common carrier of general commodities, size and weight commodities and specified commodities between various points in the contiguous forty-eight States. Application has been filed for temporary authority under 49 U.S.C. § 11349. (Hearing Site: Columbus, OH.)

NOTE: MC-112304 (Sub 167F) is a directly related matter.

MC-F-13892F. Applicant (transferee): ALL FLORIDA FREIGHTWAYS, INC., 909 South State Road 7, Suite 410, Hollywood Federal Building, Hollywood, FL 33023. Applicant (transferor): OVERSEAS TRANSPORTATION CO., INC., 3355 N.W. 41st Street, Miami, FL 33142, and SOUTH FLORIDA FREIGHTWAYS, INC., 3355 41st Street, Miami, FL 33142. Applicants' attorney: PETER J. NICKLES, Covington & Burling, 888 16th Street, N.W., Washington, D.C. 20006. Authority sought for purchase by ALL

FLORIDA FREIGHWAYS of (A) the authority of OVERSEAS TRANSPORTATION CO., INC., under (1) a Certificate of Public Convenience and Necessity issued in docket No. MC-1388, decided July 14, 1958, to operate and transport over regular routes *explosives, articles of unusual value,* and *general commodities,* except household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Miami, FL, and Key West, FL, serving all intermediate points, and the off-route points of Opa Locka, FL., and points within ten miles of U.S. Hwy 1 between Miami and Key West, FL.: From Miami over U.S. Hwy 1 to Key West, and return over the same route, and *Automobiles, trucks,* and *buses,* in secondary movements, in truckaway and driveaway service, between Miami, FL, and Key West, FL, serving no intermediate points: From Miami over U.S. Hwy 1 to Key West, and return over the same route; and (2) a Certificate of Public Convenience and Necessity issued in Docket No. MC-1388 (Sub 7) decided January 22, 1960, to operate and transport over regular routes *General commodities,* except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between Miami, FL, and Homestead, FL, serving all intermediate points, and the off-route point of the plant site of Lehigh Portland Cement Company, near Sweetwater, FL: From Miami over U.S. Hwy 41 to junction FL Hwy 27, and thence south over FL Hwy 27 to Homestead, and return over the same route; and (B) the authority of SOUTH FLORIDA FREIGHTWAYS, INC., under (1) a Certificate of Registration issued in docket No. MC-97850 (Sub 1) issued on April 25, 1965, to operate and transport *freight* in common carriage: To, from and between Ft. Lauderdale and Miami, FL, and intermediate points over State Road No. 5 and, as an alternate route, over State Road No. 84, from Ft. Lauderdale to State Road No. 7, thence over State Road No. 7 to Miami, FL, serving Coconut Grove, Dania Beach, Davie, Deerfield Beach, Golden Beach, Gulfstream, Hialeah, Hollywood Beach, Miami Beach, Miami Springs, North Miami Beach, Opa-Locka, Pompano Beach, Port Everglades, and Wilton Manor, as off-route points, and between Ft. Lauderdale and Riviera Beach, FL, serving all intermediate points, over the following routes: From Ft. Lauderdale, FL, north over U.S. Hwy No. 1 (State Road No. 5) and/or State Road No. A1A to Riviera Beach, FL, and return over the same routes, with authority to use the Sunshine State Parkway for operating conveniences only, and including all lateral east-west highways and/or streets connecting the three routes above named; and (2) a Certificate of Registration issued in Docket No. MC-97850 (Sub 2) issued on June 26, 1968, to operate and transport general commodities over regular and alternate routes as follows: (a) Between Riviera Beach and Orlando, FL, serving all intermediate points: From Riviera Beach over U.S. Hwy 1 to Titusville, thence over State Road 405 to its junction with State Road 50, thence over State Road 50 to Orlando, and return over the same route, (b) Between Miami and Orlando, FL, serving all intermediate points: From Miami over U.S. Hwy 27 to South Bay, thence over State Road 80 to Belle Glade, thence over U.S. Hwy 441 to Orlando, and return over the same route, (c) Between South Bay and Orlando, FL, serving all intermediate points: From South Bay over U.S. Hwy 27 and 27A to Haines City, thence over U.S. Hwy 17 to Orlando and return over the same route, (d) Between Miami and Tampa, FL, serving all intermediate points: From Miami over U.S. Hwy 41 to Punta Gorda, thence over U.S. Hwy 17 to Bartow, thence over U.S. Hwy 98 to Lakeland, thence over U.S. Hwy 92 to Tampa and return over the same route, (e) Between Punta Gorda and Tampa, FL, over U.S. Hwy 41 serving all intermediate points, (f) Between the junction of U. S. Hwy 41 and State Road 29 near Everglades, FL, and Fort Myers, FL, serving all intermediate points: From said junction of U.S. Hwy 41 with State Road 29 over State Road 29 to its junction with State Road 82, thence over State Road 82 to Fort Myers and return over the same route, (g) Between Orlando and Tampa, FL, over Interstate Hwy 4 serving no intermediate points, (h) Between the West Palm Beach interchange on the Sunshine State Parkway and the junction of said parkway with U.S. Hwy 17, over the Sunshine State Parkway, as an alternate route for operating convenience only. Subject to the restriction that no authority is granted hereby to engage in heavy hauling, as construed by orders of the Commission, or to transport commodities in bulk, liquid or dry, and over the following off-route areas: (i) All other points in FL on or south of a line beginning at the western terminus of FL Hwy 60, thence easterly along FL Hwy 60 to its junction with Interstate Hwy 4, thence easterly along Interstate Hwy 4 to its junction with FL Hwy 50, thence easterly along FL Hwy 50 to its junction with FL Hwy 405, thence northeasterly along FL Hwy 405 to its junction with FL Hwy 402, thence easterly along FL Hwy 402 to its eastern terminus (except those points in Dade and Monroe Counties on U.S. Hwy 1 and FL Hwy 27, south of Miami will be served as off-route points). Approval of the transfer of related States operating authority was recommended by the Chief Hearing Examiner of the Florida Public Service Commission in that Commission's Docket Nos. 780614-CCT and 780615-CCT on Dec. 12, 1978. ALL FLORIDA FREIGHTWAYS, INC. holds no authority from this Commission. However BERNARD A BROWN owns all shares of ALL FLORIDA FREIGHTWAYS, INC. and a majority of the shares of NATIONAL FREIGHT INC. NATIONAL FREIGHT is authorized to operate as a common carrier in all States in the United States (except WA, OR, ID, MT, ND, SD, NV, CA, AK, and HI). Application has been filed for temporary authority under section 210a(b).

MC-F-13893F. Authority sought for purchase by A & D EXPRESS, INC., George's Road, South Brunswick, NJ 08902, of a portion of the operating rights of SHANAHAN MOTOR LINES, INC., 1001 Fairview Street, Camden NJ, 08104, of control of such rights through the transaction. Applicants' representatives: W. J. Augello, 120 Main Street, Huntington, NY 11743, and Alan Kahn, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. Operating rights sought to be purchased: General commodities, except those of unusual value, livestock, Classes A and B explosives, household goods as defined by the commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Philadelphia, PA and New York, NY, serving the intermediate and off-route points of Newark, Jersey City, New Brunswick, Elizabeth, Linden, Weehawken, Hoboken, Rahway, Paterson, Passaic, Maurer, Somerville, Freehold, Belleville, North Bergen, and Kearny, NJ. Vendee presently holds authority as a contract carrier limited to the transportation of malt beverages between specified points in MD, PA, NH, NJ, NY, and RI. Application has been filed for temporary authority under section 210a(b).

MC-F-13896F. Authority sought for purchase by BUESING BROS. TRUCKING, INC., 2285 Daniels Street, Long Lake, MN 55356, of the operating rights of KATUIN BROS. INC., Highway 61 South, P.O. Box 311, Fort Madison, IA 52627, and for acquisition by GERALD J. BUESING, Route 2, Box 240C, Maple Plain, MN 55359, of control of such rights through the transaction. Applicants' attorneys: Val M. Higgins, 1000 First National Bank Bldg., Minneapolis, MN 55402 and Carl E. Munson, 469 Fischer

Bldg., Dubuque, IA 52001. Operating rights sought to be purchased: Sand and gravel, in bulk, as a common carrier over irregular routes, from East Dubuque, IL, to points in IA; Ice, from Dubuque, IA to points in IL, MN, and WI; Washed stone chips and sand, in bulk, from Joilet and Lemont, IL, to Clinton, IA; Texture faced brick concrete, from Clinton, IA to points in that part of IL on and west of U.S. Hwy 51, and on and north of U.S. Hwy 136, and points in Grant and LaFayette Counties, WI; Silica sand, from the facilities of Martin Marietta Aggregates, at or near Clayton, IA to points in MN. Transferee is authorized to operate as a common carrier in MN, SD, ND, IA, WI, and MI. No tacking is sought. Application has been filed for temporary authority under Section 210a(b). If a hearing is deemed necessary, applicant's request it be held at Minneapolis, MN.

MC-F-13898F. Authority is sought by PACIFIC INTERMOUNTAIN EXPRESS CO., 25 North Via Monte, Walnut Creek, CA 94598 of a portion of the operating rights of Sundance Freight Lines, Inc. d/b/a Sundance Transportation, and for acquisition by IU Transportation Services, Inc. and IU International Corporation, 1500 Walnut Street, Philadelphia, PA 19102 of control of such rights through the purchase. Applicants' representatives: Roland Rice, Suite 501 Perpetual Building, 1111 E Street, N.W., Washington, DC 20004, William S. Richards, 48 Post Office Place, P.O. Box 2465, Salt Lake City, UT 84110, and H. Beatty Chadwick, 1500 Walnut Street, Philadelphia, PA 19102. Operating rights sought to be transferred: General commodities, with exceptions, as a common carrier over regular routes: (1) Between Albuquerque, NM and El Paso, TX, serving all intermediate points: From Albuquerque over U.S. Hwy 85 to Las Cruces, NM, then over U.S. Hwy 80 to El Paso, and return over the same route, service at Belen, NM, and points north thereof, shall be restricted to traffic moving to or from points south of Belen, and service at Hatch, NM, and points south thereof shall be restricted to traffic moving to or from points north of Hatch; (2) Between Ogden, UT, and Abuquerque, NM, serving the intermediate points of Salt Lake City, Provo and Ogden Arsenal, UT, and the off-route points of Hill Field, Naval Supply Depot near Ogden, UT, and the Geneva Steel Mills near Provo and those within 5 miles of Salt Lake City: From Ogden over U.S. Hwy 89 to junction U.S. Hwy 50, then over U.S. Hwy 50 to junction U.S. Hwy 63 (formerly U.S. Hwy 160), then over U.S. Hwy 163 to junction U.S. Hwy 666, then over U.S. Hwy 666 to junction U.S. Hwy 66, then over U.S. Hwy 66 to Abuquerque, and return over the same route, restricted against transportation between points in Utah and subject to the further restriction that shipments moving to or from points on the route granted herein north of but not including Salt Lake City, shall be restricted to traffic moving on Government bills of Lading; (3) Between Ogden, UT and Salt Lake City, UT, as an alternate route for operating convenience only, serving no intermediate points: From Ogden over U.S. Hwy 91 to Salt Lake City, and return over the same route, restricted to traffic moving on Government bills of lading; (4) Serving points in the El Paso, TX, and Albuquerque, NM, Commercial Zones, as defined by the Commission, as intermediate and off-route points; (5) Between Dallas, TX, and Albuquerque, MN, serving no intermediate points: From Dallas over the Dallas-Ft. Worth Turnpike to Ft. Worth, TX, then over U.S. Hwy 180 to Snyder, TX, then over U.S. Hwy 84 via Post, TX, to Ft. Sumner, TX, then over U.S. Hwy 60 to Encino, NM, then over U.S. Hwy 285 to Clines Corners, MN, then over U.S. Hwy 66 to Albuquerque, and return over the same route; (6) Serving Clovis, NM, as an intermediate point in connection with carrier's presently authorized regular route between Dallas, TX, and Albuquerque, NM, in Docket MC 108461, Sub-99.

Transferee is authorized to operate as a motor common carrier in all States in the United States (except AK and HI). Common control may be involved. Application has been made for temporary authority under Section 210a(b) of the Act. (Hearing site: Washington, DC or Phoenix, AZ.)

Operating Rights Application(s) Directly Related to Finance Proceedings

NOTICE

The following operating rights application(s) are filed in connection with pending finance applications under Section 11343 (formerly Section 5(2)) of the Interstate Commerce Act, or seek tacking and/or gateway elimination in connection with transfer applications under Section 10926 (formerly Section 212(b)) of the Interstate Commerce Act.

An original and one copy of protests to the granting of the authorities must be filed with the Commission on or before March 12, 1979. Such protests shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon applicant's representative or applicant if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC 41932 (Sub-12F) filed January 3, 1979. Applicant: BROWNING FREIGHT LINES, INC., 650 South Redwood Road, Salt Lake City, UT 84104. Representative: Ben D. Browning, 1321 SE Water Avenue, Portland, OR 97214. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except commodities in bulk, in tank vehicles commodities which by reason of size or weight require special equipment, household goods as defined by the Commission, and commodities of unusual value), (1) Between Elko, NV and Owyhee, NV, serving all intermediate points, over NV Hwy 51, (2) Between Mountain Home, ID and Owyhee, NV, over ID Hwy 51, to junction NV Hwy 51, then over NV Hwy 51 to Owyhee serving no intermediate points and serving Owyhee, NV for purpose of joinder only with the requested authority in (1) above, (3) Between Twin Falls, ID and Elko, NV, serving all intermediate points, from Twin Falls, over US Hwy 93 to Wells, NV, then over Interstate Hwy 80 to Elko, NV, and return over the same route. (4) Between Wells, NV and Salt Lake City, UT over Interstate Hwy 80, as an alternate route for operating convenience only between authority requested in (3) above and with applicant's existing regular route operations; and (5) Serving Duck Valley Indian Reservation located at points in ID and NV as an off-route point in connection with applicant's existing regular routes operations in MC 41932, which authorizes service between Salt Lake City, UT and Boise, ID over described Highways.

NOTE.—The purpose of this application is to convert a certificate of registration to a certificate of public convenience and necessity in (1) above. Parts (2), (3), (4), and (5) above are authority extension requests. This application if directly related to MC-F-13876F and published in a previous section of this FR issue. (Hearing site: Boise, ID or Salt Lake City, UT.)

MC 98327 (Sub-33F) filed January 5, 1979. Applicant: SYSTEM 99, 8201 Edgewater Drive, Oakland, CA 94621. Representative: Michael A. Bernstein, 1441 E. Thomas Road, Phoenix, AZ 95014. 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 Commisison, commodities in bulk and those requiring special equipment): Between points in the following described area as off-route points in conjunction with carrier's regular route operations: Beginning at a line running easterly from Picacho, AZ to Mammoth, AZ, then in a southerly direction to St. David, AZ, then in a westerly direction to Sasabe, AZ and then in a northerly direction to Picacho, AZ. (Hearing site: Tucson or Phoenix, AZ.)

NOTE.—The purpose of this application is to convert a certificate of registration to a certificate of public convenience and necessity, and is a directly related matter to MC-F-1388F, published in a previous section of the FR issue of January 25, 1979.

MC 112304 (Sub-167F), filed: January 3, 1979. Applicant: ACE DORAN HAULING & RIGGING CO., a corporation, 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: John P. McMahon, George, Greek, King, McMahon & McConnaughey, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate *common carrier* by motor vehicle, over irregular routes, transporting: 1. Commodities requiring special equipment, restricted so that, or provided that, the loading or unloading which necessitates the special equipment is performed by the consignee or the consignor or both: A. Between Chicago and Chicago Heights, IL, on the one hand, and, on the other, points in IN, the Upper Peninsula of MI, NJ, NY, VT, NH, MA, CT, RI, and those points in TX north and west of a line beginning at the TX-LA State line, then over Interstate Hwy 10 to junction U.S. Hwy 90, at Beaumont, TX, then over U.S. Hwy 90 to junction Interstate Hwy 610, then over Interstate Hwy 610 to junction U.S. Hwy 290, then over U.S. Hwy 290 to junction U.S. Hwy 67, then over U.S. Hwy 67 to the United States-Mexican boundary line. (Gateway to be eliminated: The IN portion of the Chicago and Chicago Heights, IL Commercial Zones.) B. From Chicago and Chicago Heights, IL to points in CA. (Gateway to be eliminated: The IN portion of the Chicago, and Chicago Heights, IL Commercial Zones.) 2. Commodities requiring special equipment, restricted so that, or provided that, the loading or unloading which necessitates the special equipment is performed by the consignee or the consignor, or both, and restricted against the transportation of commodities used in or in connection with the construction, maintenance, repair, operations, servicing or dismantling of pipe lines from Chicago and Chicago Heights, IL, to points in UT and NV. (Gateway to be eliminated: The IN portion of the Chicago, and Chicago Heights, IL Commercial Zones.) 3. Self-propelled articles, each weighing 15,000 pounds or more and related machinery, tools, parts and supplies moving in connection therewith; between Chicago and Chicago Heights, IL, on the one hand, and, on the other, points in IN, NJ, NY, points in that part of KY west of U.S. Hwy 127, points in the Upper Peninsula of MI and points in that part of Lower Peninsula of MI west of a line beginning at Lake Michigan and extending along Interstate Hwy 75 to junction U.S. Hwy 27, thence along U.S. Hwy 27 to the MI-IN State line, points in that part of PA east of U.S. Hwy 15 and points in that part of TX north and west of a line beginning at the TX-LA State line, thence over Interstate Hwy 10 to junction U.S. Hwy 90, at Beaumont, TX, thence over U.S. Hwy 90 to junction Interstate Hwy 610, thence over Interstate Hwy 610 to junction U.S. Hwy 290, thence over U.S. Hwy 290 to junction U.S. Hwy 67, thence over U.S. Hwy 67 to the United States-Mexican boundary line. (Gateway to be eliminated: The IN portion of the Chicago, and Chicago Heights, IL Commercial Zones). 4. Self-propelled articles, each weighing 15,000 pounds or more and related machinery, tools, parts and supplies moving in connection therewith (restricted to self-propelled articles which are transported on trailers) from Chicago and Chicago Heights, IL to points in CA, NV, and UT. (Gateway to be eliminated: The IN portion of the Chicago, and Chicago Heights, IL Commercial Zones). 5. Aluminum and aluminum articles requiring special equipment, restricted so that, or provided that, loading or unloading which necessitates the special equipment is performed by the consignee or the consignor or both. A. From the IN portion of the Chicago and Chicago Heights Commercial Zones to points in NC, SC, GA, FL, AL, and those in VA west of U.S. Hwy 220. (Gateway to be eliminated: The IL portions of the Chicago and Chicago Heights Commercial Zones.) B. From the IL portion of the Chicago and Chicago Heights Commercial Zones to points in ME. (Gateway to be eliminated: The IN portions of the Chicago and Chicago Heights Commercial Zones.) 6. Structural steel, and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing, and wire in coils, restricted so that, or provided that, the loading or unloading which necessitates the special equipment is performed by the consignee or the consignor or both: A. Between Chicago and Chicago Heights, IL, on the one hand, and, on the other, points in IN, NJ, NY and the Upper Peninsula of MI. (Gateway to be eliminated: The IN portion of the Chicago and Chicago Heights, IL Commercial Zones.) B. From Chicago and Chicago Heights, IL to points in TX. (Gateway to be eliminated: The IN portion of the Chicago and Chicago Heights, IL Commercial Zones.) (Hearing site: Columbus, OH.)

NOTE.—This Gateway Elimination Application is related to applicant's purchase of a portion of the operating rights of Burgmeyer Bros., Inc. at Docket No. MC-F-13877F, published in a previous section of this FR issue.

MOTOR CARRIER ALTERNATE ROUTE DEVIATIONS

NOTICE

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before March 12, 1979.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

MOTOR CARRIERS OF PROPERTY

MC 2229 (Deviation 31) RED BALL MOTOR FREIGHT, INC., 3177 Irving Blvd., Dallas, TX 75247, filed *January 22, 1979.* Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over a deviation route as follows: From Gulfport, MS over U.S. Hwy 49 to Jackson, MS, then over Interstate Hwy 55 to Memphis, TN and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Gulfport, MS, over U.S. Hwy 90 to junction U.S. Hwy 190, then over U.S. Hwy 190 to junction U.S. Hwy 61, then over U.S. Hwy 61 to Natchez, MS, then over U.S. Hwy 65 to Ferriday, LA, then over LA Hwy 15 to Monroe, LA, then over U.S. Hwy 165 to Bastrop, LA, then over LA Hwy 139 to junction LA Hwy 142, then over LA Hwy 142 to LA-AR State Line, then over AR Hwy 133 to Crossett, AR, then over U.S. Hwy 82 to Hamburg, AR, then over AR Hwy 81 to Pine Bluff, AR, then over U.S. Hwy 65 to Little Rock, AR, then over U.S. Hwy 70 to Memphis, TN, and return over the same route.

MC 33641 (Deviation 122), IML FREIGHT, INC., P.O. Box 30277; Salt Lake City, UT 84125, filed January 22, 1979. Carrier proposes to operate as a *common carrier,* by motor vehicle, of

general commodities, with certain exceptions, over a deviation route as follows: From junction Interstate Hwy 5 and CA Hwy 14, over CA Hwy 14 to junction U.S. Hwy 395, then over U.S. Hwy 395 to Reno, NV and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From junction CA Hwy 14 and Interstate Hwy 5, over Interstate Hwy 5 to junction U.S. Hwy 99, then over U.S. Hwy 99 to Sacramento, CA, then over U.S. Hwy 40 to Reno, NV, and return over the same route.

MC 33641 (Deviation 123), IML FREIGHT, INC., P.O. Box 30277, Salt Lake City, UT 84125, filed January 23, 1979. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over a deviation route as follows: From junction U.S. Hwy 99 and Interstate Hwy 5 near Wheeler Ridge, CA over Interstate Hwy 5 to Stockton, CA, then over U.S. Hwy 99 to Sacramento, CA, then over Interstate Hwy 5 to Portland, OR, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From junction Interstate Hwy 5 and U.S. Hwy 99 near Wheeler Ridge, CA, over U.S. Hwy 99 to Sacramento, CA, then over U.S. Hwy 40 to Winnemucca, NV, then over U.S. Hwy 95 to junction ID Hwy 55, then over ID Hwy 55 to Nampa, ID, then over U.S. Hwy 30 to Portland, OR, and return over the same route.

MC 33641 (Deviation 124), IML FREIGHT, INC., P.O. 30277, Salt Lake City, UT 84125, filed January 26, 1979. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over a deviation route as follows: From junction US Hwy 30 and Interstate Hwy 75, over Interstate Hwy 75, to Toledo, OH, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From junction Interstate Hwy 75 and US Hwy 30 over US Hwy 30 to junction US Hwy 250 near Wooster, OH, then over US Hwy 250 to Norwalk, OH, then over US Hwy 20 to junction OH Hwy 51, then over OH Hwy 51 to Toledo, OH, and return over the same route.

MC 59583 (Deviation 57), THE MASON AND DIXON LINES, INC., P.O. Box 969, Kingsport, TN 37662, filed January 17, 1979. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over deviation routes as follows: (1) From Asheville, NC over Interstate Hwy 26 to junction US Hwy 176, then over US Hwy 176 to Spartanburg, SC, (2) From Asheville, NC over Interstate Hwy 26 to junction US Hwy 25 near East Flat Rock, NC, then over US Hwy 25 to Greenville, SC, and (3) From Asheville, NC over Interstate Hwy 26 to Columbia, SC and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: (1) From Asheville, NC, over US Hwy 74 to Kings Mountain, NC, then over US Hwy 29 to Charlotte, NC, then over US Hwy 21 to Rock Hill, SC, then over (a) US Hwy 21 to Columbia, SC, and (b) SC Hwy 5 to Blacksburg, SC, then over US Hwy 29 to Greenville, SC, and Spartanburg, SC, and return over the same routes.

MC 69901 (Deviation 8), COURIER-NEWSOM EXPRESS, INC., 2830 National Rd., Columbus, IN 47201, filed January 24, 1979. Carrier's representative: Edward G. Bazelon, 39 S. LaSalle St., Chicago, IL 60603. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over a deviation route as follows: From Indianapolis, IN, over US Hwy 31 to Kokomo, IN, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Indianapolis, IN, over US Hwy 421 to junction IN Hwy 29, then over IN Hwy 29 to junction US Hwy 35, then over US Hwy 35 to Kokomo, IN, and return over the same route.

MC 69901 (Deviation 9), COURIER-NEWSOM EXPRESS, INC., 2830 National Rd., Columbus, IN 47201, filed January 24, 1979. Carrier's representative: Edward G. Bazelon, 39 S. LaSalle St., Chicago, IL 60603. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over a deviation route as follows: From Nashville, TN, over Interstate Hwy 65 to Indianapolis, IN, then over US Hwy 31 to Kokomo, IN, then over US Hwy 35 to Logansport, IN, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Nashville, TN over US Hwy 70N to junction US Hwy 70S, then over US Hwy 70S to junction US Hwy 70, then over US Hwy 70 to junction US Hwy 25W, then over US Hwy 25W to junction TN Hwy 61, then over TN Hwy 61 to junction TN Hwy 62, then over TN Hwy 62 to junction US Hwy 27, then over US Hwy 27 to junction US Hwy 150, then over US Hwy 150 to junction KY Hwy 35, then over KY Hwy 35 to junction KY Hwy 151, then over KY Hwy 151 to junction US Hwy 60, then over US Hwy 60 to junction US Hwy 31E, then over US Hwy 31E to junction US Hwy 31, then over US Hwy 31 to junction IN Hwy 9, then over IN Hwy 9 to junction IN Hwy 7, then over IN Hwy 7 to junction Alt. US Hwy 31, then over Alt. US Hwy 31 to junction US Hwy 31, then over US Hwy 31 to junction US Hwy 421, then over US Hwy 421 to junction IN Hwy 29, then over IN Hwy 29 to Logansport, IN, and return over the same route.

MC 69901 (Deviation No. 10), COURIER-NEWSOM EXPRESS, INC., 2830 National Rd., Columbus, IN 47201, filed January 24, 1979. Carrier's representative: Edward G. Bazelon, 39 S. LaSalle St., Chicago, IL 60603. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over a deviation route as follows: From Louisville, KY, over Interstate Hwy 64 to junction Interstate Hwy 75, then over Interstate Hwy 75 to Jellico, TN, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Louisville, KY over US Hwy 60 to junction KY Hwy 151, then over KY Hwy 151 to junction KY Hwy 35, then over KY Hwy 35 to junction US Hwy 150, then over US Hwy 150 to junction US Hwy 27, then over US Hwy 27 to junction TN Hwy 62, then over TN Hwy 62 to junction TN Hw 61, then over TN Hwy 61 to junction US Hwy 25W, then over US Hwy 25W to Jellico, TN and return over the same route.

MC 134477 (Deviation No. 1), SCHANNO TRANSPORTATION, INC., P.O. Box 43496, St. Paul, MN 55164, filed January 11, 1979. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over a deviation route as follows: From Chicago, IL over Interstate Hwy 90 to junction Interstate Hwy 94 near Tomah, WI, then over Interstate Hwy 94 to Minneapolis, MN, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Chicago, IL over US Hwy 330 to junction US Hwy 30, then over HS Hwy 30 to Cedar Rapids, IA, then over US Hwy 218 to Owatonna, MN, then over US Hwy 65 to Farming-

ton, MN, then over MN Hwy 218 to Minneapolis, MN and return over the same route. NOTE: This deviation is premised on a grant of temporary authority under section 210(a)(b). If applicant's right to operate all or part of the leased authority expires, this deviation, if authorized, will likewise expire.

MOTOR CARRIER INTRESTATE APPLICATION(S)

NOTICE

The following application(s) for motor common carrier authority to operate in intrastate commerce seeks concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 10931 (formerly Section 206(a) (6)) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's *General Rules of Practice* (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

New York Docket No. T-4048, filed January 18, 1979. Applicant: MONK'S EXPRESS, INC., Phelps Street/Port Dickinson, Binghamton, NY 13901. Representative: Herbert M. Canter, 305 Montgomery Street, Syracuse, NY 13202. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: *General commodities*, as defined in Section 800.1 of title 17 of the Official Compilation of Codes, Rules and regulations of the State of New York, between all points in Broome, Cayuga, Chemung, Chenango, Cortland, Delaware, Madison, Oneida, Onondago, Oswego, Schuyler, Seneca, Tioga, Tompkins, and Wayne Counties, NY. Intrastate, interstate and foreign commerce authority sought. HEARING: Date, Time and place not yet fixed. Requests for procedural information should be addressed to New York State Department of Transportation, 1220 Washington Avenue, State Campus, Bldg. #4, Room G-21, Albany, NY 12232, and should not be directed to the Interstate Commerce Commission.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-4189 Filed 2-7-79; 8:45 am]

[7035-01-M]

[Decisions Volume No. 7]

PERMANENT AUTHORITY APPLICATIONS

Decision-Notice

Decided: January 25, 1979.

The following applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission on or before March 12, 1979. Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We Find: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the national transportation policy. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930 [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a noncomplying applicant shall stand denied.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

H. G. HOMME, Jr.,
Secretary.

MC 409 (Sub-72F), filed December 29, 1978. Applicant: SCHROETLIN TANK LINE, INC., P.O. Box 511, Sutton, NE 68979. Representative:

Steven K. Kuhlmann, P.O. Box 82028, Lincoln, NE 68501. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *propane,* in bulk, in tank vehicles, from the Mid America Pipe Line Terminal, at or near Greenwood, NE, to points in SD. Condition: Any certificate issued in this proceeding shall be limited in point of time to a period expiring 5 years from the date of issuance of the certificate. (Hearing site: Kansas City, MO, or Omaha, NE.)

MC 2202 (Sub-574F), filed November 29, 1978. Applicant: ROADWAY EXPRESS, INC., P.O. Box 471, 1077 Gorge Boulevard, Akron, OH 44309. Representative: William O. Turney, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Wolfe City, TX, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing Site: Dallas, TX, or Washington, DC.)

MC 8535 (Sub-65F), filed December 19, 1978. Applicant: GEORGE TRANSFER & RIGGING CO., INC., P.O. Box 500, Parkton, MD 21120. Representative: John Guandolo, 1000 Sixteenth Street, NW., Washington, DC 20036. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles,* from the facilities of Wheeling-Pittsburgh Steel Corporation, at Canfield, Mingo Junction, Martins Ferry, Steubenville, and Yorkville, OH, Beech Bottom, Benwood, Follansbee, and Wheeling, WV, and Allenport and Monessen, PA, to points in IL and IN. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 10345 (Sub-98F), filed December 26, 1978. Applicant: C & J COMMERCIAL DRIVEAWAY, INC., 2400 West St. Joseph Street, P.O. Box 13006, Lansing, MI 48901. Representative: Albert F. Beasley, 311 Investment Building, 1511 K Street, NW., Washington, DC 20005. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *automobiles,* in secondary movements, in truckaway service, and *accessories* for automobiles, when transported in mixed loads with automobiles, from Lansing, MI, Newark, NJ, and Chesapeake, VA, to points in MN. NOTE: Tacking is authorized at Lansing, MI, Newark, NJ, and Chesapeake, VA, with carrier's authority in MC-10345 and Subs, to provide a through service transporting automobiles, in secondary movements, in truckaway service, between points in AR, CT, IL, IN, IA, KS, KY, MD, MA, MI, MO, MN, NE, NH, NJ, NY, ND, OH, OK, PA, RI, SD, TN, VA, VT, WV, WI, and DC, those points in TX on and north of U.S. Hwy 80 and on and east of U.S Hwy 81. (Hearing site: Washington. DC.)

MC 16903 (Sub-10F), filed December 6, 1978. Applicant: MOON FREIGHT LINES, INC., P.O. Box 1275, Bloomington, IN. Representative: Donald W. Smith, P.O. Box 40659, Indianapolis, IN 46240. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *roof insulation,* from the facilities of The Celotex Corporation, at Elizabethtown, KY, to points in MN, WI, IA, IL, MO, AR, LA, MS, AL, GA, FL, SC, NC, TN, KY, VA, WV, IN, MI, OH, PA, DE, MD, NJ, NY, and DC. (Hearing site: Miami, FL, or Washington, DC.)

MC 25798 (Sub-352F), filed December 28, 1978. Applicant: CLAY HIDER TRUCKING LINES, INC., a North Carolina corporation, P.O. Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *canned goods,* from Queen Anne, MD, and Cheriton, VA, to points in KY, ME, MA, MO, NH, NY, TN, and VT; and (2) *beverages and beverage preparations,* (except alcoholic beverages), from Hightstown, Florence, and Vincentown, NJ, to points in ME, NH, and VA. (Hearing site: Washington, DC.)

MC 25798 (Sub-353F), filed January 2, 1979. Applicant: CLAY HIDER TRUCKING LINES, INC., a North Carolina corporation, P.O. Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs,* (1) from points in Aroostook County, ME, to Harrington, DE, Orlando, FL, Atlanta, GA, Louisville, KY, New Orleans, LA, Andover and Southborough, MA, Edison and Secauscus, NJ, Albany and Syracuse, NY, Raleigh and Charlotte, NC, Altoona and Philadelphia, PA, Richmond, VA, and points in AR, CO, IL, IN, IA, KS, MI, MO, NE, NM, OH, OK, and WI, and (2) from Portland, ME, to points in AR, IL, IN, MI, MO, OH, and WI. (Hearing site: Washington, DC.)

MC 27817 (Sub-148F), filed November 6, 1978. Applicant: H. C. GABLER, INC., R.D. No. 3, P.O. Box 220, Chambersburg, PA 17201. Representative: Christian V. Graf, 407 North Front Street, Harrisonburg, PA 17101. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by grocery and food business houses, (except frozen foods and commodities in bulk), (1) from the facilities of Ralston Purina Company, in Hampden Township, Cumberland County, PA, to points in NJ, and those in NY south of Interstate Hwy 84, and (2) from the facilities of Ralston Purina Company, at Cincinnati and Lancaster, OH, to the facilities of Ralston Purina Company, in Hampden Township, Cumberland County, PA, restricted in (1) and (2) above to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Washington, DC, or Harrisburg, PA.)

MC 29555 (Sub-95F), filed December 21, 1978. Applicant: BRIGGS TRANSPORTATION CO., a corporation, North 400 Griggs Midway Building, St. Paul, MN 55104. Representative: Stephen F. Grinnell (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the plant-site of Midwest Manufacturing Company, at or near Kellogg, IA, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Des Moines, IA, or St. Paul, MN.)

MC 30114 (Sub-7F), filed September 21, 1978. Applicant: MOLA TRUCKING, INC., d.b.a. MITCHKO TRUCKING, 650 Myrtle Avenue, Boonton, NJ 07005. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic articles and materials, equipment, and supplies* used in the manufacture and distribution of plastic articles (except commodities in bulk), between the facilities of Imco Container Co., at Belvidere, Rockaway, and Plainfield, NJ, Lewistown, PA, Harrisonburg, VA, and Pittsfield, MA, on the one hand, and, on the other, points in NJ, NY, PA, CT, DE, MD, MA, VA, and DC, restricted to the transportation of traffic originating at or destined to the facilities of Imco Container Co. (Hearing site: New York, NY, or Washington, DC.)

MC 30237 (Sub-38F), filed October 23, 1978. Applicant: YEATTS TRANSFER CO., a corporation, P.O. Box 666,

Altavista, VA 24517. Representative: Eston H. Alt (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *new furniture*, from Athens, TN, to points in CT, DE, GA, KY, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, SC, VA, VT, WV, and DC. (Hearing site: Washington, DC, or Nashville, TN.)

MC 40898 (Sub-25F), filed December 13, 1978. Applicant: S & W MOTOR LINES, INC., P.O. Box 11439, Greensboro, NC 27409. Representative: A. W. Flynn, Jr., 314 South Eugene Street, P.O. Box 180, Greensboro, NC 27402. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *salt*, in packages, from Akron, OH, to points in NC, SC, and VA. (Hearing site: Greensboro, NC.)

MC 40978 (Sub-51F), filed December 29, 1978. Applicant: CHAIR CITY MOTOR EXPRESS CO., a corporation, 3321 Business 141 South, Sheboygan, WI 53081. Representative: William C. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic sheeting*, in rolls, from St. Louis, MO, to Oshkosh, WI. (Hearing site: Milwaukee, WI.)

MC 42487 (Sub-886F), filed November 3, 1978. Applicant: CONSOLIDATED FREIGHTWAYS CORP. OF DELAWARE, a Delaware corporation, 175 Linfield Drive, Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Ace Electric Co., at or near Columbus, KS, as an off-route point in connection with applicant's otherwise authorized regular-route operations. (Hearing site: Kansas City, MO.)

MC 42487 (Sub-887F), filed November 3, 1978. Applicant: CONSOLIDATED FREIGHTWAYS CORP. OF DELAWARE, a Delaware corporation, 175 Linfield Drive, Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Soundesign Indiana Corporation, at or near Santa Claus, IN, as an off-route point in connection with applicant's otherwise authorized regular-route operations. (Hearing site: Indianapolis, IN.)

MC 61231 (Sub-132F), filed November 14, 1978. Applicant: EASTER ENTERPRISES INC., d.b.a. ACE LINES, INC., P.O. Box 1351, Des Moines, IA 50305. Representative: W. Randall Tye, 1400 Candler Bldg., Atlanta, GA 30303. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, by motor vehicle, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk in tank vehicles), between points in AZ, AR, CO, IL, IN, IA, KS, KY, LA, MI, MN, MO, MT, NE, NM, ND, OH, OK, SD, TX, WI, and WY, restricted to the transportation of traffic originating at or destined to the facilities of Owens-Corning Fiberglas Corporation. (Hearing site: Washington, DC.)

MC 65475 (Sub-21F), filed December 18, 1978. Applicant: JETCO, INC., A District of Columbia Corporation, 4701 Eisenhower Avenue, Alexandria, VA 22304. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from the facilities of Georgetown Steel Corp., at or near Georgetown and Andrews, SC, to points in IL, IN, IA, MI, MO, and OH. (Hearing site: Washington, DC).

MC 78228 (Sub-102F), filed December 11, 1978. Applicant: J. MILLER EXPRESS, INC., An Ohio Corporation, 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *scrap metal and metal oxides*, between Transfer, PA, on the one hand, and, on the other, points in AR, CT, DE, IL, IN, KY, ME, MA, MI, NH, NJ, NY, RI, TN, VT, VA, WV, and DC. (Hearing site: Washington, DC or Pittsburgh, PA).

MC 82492 (Sub-210F), filed December 1, 1978. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., 2109 Olmstead Road, P.O. Box 2853, Kalamazoo, MI 49003. Representative: William C. Harris (Same as above). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, 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), and (2) *foodstuffs* (except those commodities described in (1), above) from the facilities of Kent Provision Co., at or near Grand Rapids, MI, to those points in NY in and west of Broome, Cortland, Onondaga, and Oswego Counties, those points in PA on and west of U.S. Hwy 219, and points in IN, KY, TN, and OH. (Hearing site: Chicago, IL, or Columbus, OH).

MC 94350 (Sub-417F), filed October 23, 1978. Applicant: TRANSIT HOMES, INC., P.O. Box 1628, Greenville, SC 29602. Representative: Mitchell King, Jr. (Same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *trailers*, designed to be drawn by passenger automobiles, in initial movements, and (2) *buildings*, in sections, mounted on wheeled undercarriages, from points in Cooper County, MO, to points in AR, IL, IA, KS, NE, OK, and WI. CONDITION: The certificate to be issued shall be limited to a period expiring 3 years from its date of issue, unless, prior to the expiration (but not less than 6 months prior), applicant files a petition for permanent extension of the certificate. (Hearing site: Kansas City, MO).

MC 94548 (Sub-3F), filed December 18, 1978. Applicant FRANK CHAMPER, INC., 120 Eastern Avenue, Chelsea, MA 02150. Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *new furniture*, (1) from Vernon, VT, to points in CT, ME, MA, NH, RI, and VT, under contract with Pine Tree Table Co., of Vernon, VT, and (2) from South Paris, ME, to points in CT, ME, MA, NH, RI, and VT, under contract with Stanley H. Cornwall Traditions, of South Paris, ME. (Hearing site: Boston, MA).

MC 96992 (Sub-13F), filed December 1, 1978. Applicant: HIGHWAY PIPELINE TRUCKING CO., a Corporation, P.O. Box 1517, Edinburg, TX 78539. Representative: Kenneth R. Hoffman, 1102 Perry-Brooks Building, Austin TX 78701. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *liquefied petroleum gases*, in bulk, between points in AL, AR, GA, FL, LA, MS, OK, and TX. (Hearing site: Houston, TX, or New Orleans, LA).

NOTE.—The certificate to be issued here shall be limited in point of time to a period expiring 5 years from the effective date thereof.

MC 103798 (Sub-26F), filed December 14, 1978. Applicant: MARTEN TRANSPORT, LTD., Route 3, Mondovi, WI 54755. Representative: Robert S. Lee, 1000 First National Bank, Minneapolis, MN 55402. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meat, meat products, and meat byproducts,* and *articles distributed by meat-packing houses,* as described in sections A and C 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 John Morrell & Co., at Estherville and Sioux City, IA, and St. Paul and Worthington, MN, to points in CA, restricted to the transportation of traffic originating at the named origin. (Hearing site: Chicago, IL).

NOTE.—Dual operations may be involved in this proceeding.

MC 103798 (Sub-27F), filed December 14, 1978. Applicant: MARTEN TRANSPORT, LTD., Route 3, Mondovi, WI 54755. Representative: Robert S. Lee, 1000 First National Bank, Minneapolis, MN 55402. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *cheese,* from Paynesville, MN, to Clinton, MO. (Hearing site: St. Paul, MN).

NOTE.—Dual operations may be involved in this proceeding.

MC 105045 (Sub-91F), filed December 21, 1978. Applicant: R. L. JEFFRIES TRUCKING CO., INC., P.O. Box 3277, Evansville, IN 47701. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles,* from the facilities of Worthington Steel Co., at Baltimore, MD, to points in PA, VA, NJ, NY, KY, NC, SC, CT, OH, MI, and DE. (Hearing site: Washington, DC)

MC 106398 (Sub-854F), filed December 6, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Fred Rahal, Jr., (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *hardboard, insulation board, plywood, and particleboard,* and (2) *materials and accessories* used in the installation of the commodities in (1) above, from the facilities of Abitibi Corporation, at Roaring River, NC, to points in AZ and those points in the United States in and east of ND, SD, NE, CO, and NM. (Hearing site: Raleigh, NC).

MC 106401 (Sub-59F), filed November 15, 1978. Applicant: JOHNSON MOTOR LINES, INC., 2426 North Graham St., Charlotte, NC 28231. Representative: W. Randall Tye, 1400 Candler Bldg., Atlanta, GA 30303. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission and commodities in bulk, in tank vehicles), between points in AL, AR, CT, DE, FL, GA, LA, MD, MA, MS, NH, NJ, NY, NC, PA, RI, SC, TN, TX, VT, VA, WV, and DC, restricted to the transportation of traffic originating at or destined to the facilities of Owens-Corning Fiberglas Corporation. (Hearing site: Washington, DC).

MC 107012 (Sub-325F), filed December 6, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Forth Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *new furniture,* from the facilities of Yorktowne Cabinet Division of Wickes Corporation, at or near Red Lion, Mifflinburg, and Stewartstown, PA, to points in NC and SC. (Hearing site: Philadelphia, PA, or Washington, DC).

MC 107295 (Sub-899F), filed December 11, 1978. Applicant: PRE-FAB TRANSIT CO., a corporation, P.O. Box 146, Farmer City, IL 61842. Representative: Mack Stephenson, 42 Fox Mill Lane, Springfield, IL 62707. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles,* from Norfolk, NE, to points in the United States (except AK and HI). (Hearing site: Denver, CO).

MC 109265 (Sub-26F), filed December 22, 1978. Applicant: W. L. MEAD, INC., P.O. Box 301, Cleveland Road, Norwalk, OH 44857. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving points in CT as off-route points in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Hartford, CT, or Boston, MA).

NOTE: Applicant is already authorized to serve between points in CT and applicant's authorized regular route points via the gateway of Providence, RI. The purpose of this application is to obtain alternate gateways on service to and from points in CT.

MC 109449 (Sub-21F), filed December 21, 1978. Applicant: KUJAK TRANSPORT, INC., P.O. Box 677, Winona, MN 55987. Representative: John P. Rhodes, P.O. Box 5000, Waterloo, IA 50704. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *meats, meat products and meat byproducts, and articles distributed by meat-packing houses,* as defined in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* (except hides and commodities in bulk), and (2) *foodstuffs,* (except the commodities described in (1) above), from the facilities of Geo. A. Hormel & Co., (a) at Huron, SD, to points in OH, PA, and WV, and (b) at Austin, MN, to points in IL, IN, KS, KY, MO, OH, OK, PA, and WV, and (3) *meats, meat products and meat byproducts and articles distributed by meat-packing houses* as defined 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 Wilson Foods Corporation, at Albert Lea, MN, to points in IL, restricted in (1), (2), and (3) above, to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: St. Paul, MN.)

MC 109818 (Sub-39F), filed December 28, 1978. Applicant: WENGER TRUCK LINE, INC., P.O. Box 3427, Davenport, IA 52808. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk), between the facilities of Continental Freezers of Illinois, at or near Chicago, IL, on the one hand, and, on the other, points in CO and NE, restricted to the transportation of traffic originating at or destined to the facilities of Continental Freezers of Illinois. (Hearing site: Chicago, IL.)

MC 109818 (Sub-40F), filed January 3, 1979. Applicant: WENGER TRUCK LINE, INC., P.O. Box 3427, Davenport, IA 52808. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *aluminum and aluminum products,* from the facili-

ties of Aluminum Company of America, at or near Bettendorf, IA, to points in CO and NE. (Hearing site: Chicago, IL.)

MC 110420 (Sub-790F), filed October 25, 1978. Applicant: QUALITY CARRIERS, INC., P.O. Box 168, Pleasant Prairie, WI 53158. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425—13th Street, Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic materials, liquid latex, and styrene monomer*, in bulk, in tank vehicles, from Monaca, PA, to points in CT, DE, IL, IN, IA, KY, ME, MD, MA, MI, MN, MO, NH, NJ, NY, ND, OH, RI, SD, VT, VA, WV, and WI. (Hearing site: Washington, DC, or Philadelphia, PA.)

MC 111545 (Sub-269F), filed December 20, 1978. Applicant: HOME TRANSPORTATION COMPANY, INC., P.O. Box 6426, Station A, Marietta, GA 30065. Representative: Robert E. Born (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1)(a) *plastic pipe and fittings*, and (b) *equipment and materials* used in the installation of the commodities in (1)(a) above, from Corsicana, Dallas, and Frisco, TX, to points in CA and those in the United States in and east of MN, IA, NE, KS, OK, and TX, and (2) *materials* used in the manufacture of plastic pipe and fittings, in the reverse direction. (Hearing site: Dallas, TX, or Atlanta, GA.)

MC 111545 (Sub-270F), filed January 2, 1979. Applicant: HOME TRANSPORTATION CO., INC., 1425 Franklin Road, SE., Marietta, GA 30067. Representative: Robert E. Born, P.O. Box 6426, Station A, Marietta, GA 30065. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *trailers*, designed to be drawn by passenger automobiles (except recreational vehicles), in initial movements, and (2) *buildings*, complete or in sections, mounted on wheeled undercarriages, from points in TX, to points in AZ, CO, and NM. (Hearing site: Dallas or Houston, TX.)

MC 111812 (Sub-604F), filed December 1, 1978. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: Ralph H. Jinks (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum and petroleum products* (except commodities in bulk), *oil filters, vehicle body sealer, and sound deadener compound*, from Emlenton, Farmers Valley, Kimberton, North Warren, Bradford, and Oil City, PA, Buffalo, NY, and St. Marys and Congo, WV, to points in FL, GA, AL, MS, NC, and SC. (Hearing site: Pittsburgh, PA.)

MC 112123 (Sub-14F), filed December 6, 1978. Applicant: BEST-WAY TRANSPORTATION, a corporation, 5150 North 16th Street, Phoenix, AZ 85106. Representative: Donald E. Fernaays, 4040 East McDowell Road, Suite 320, Phoenix, AZ 85008. To operate as a *common carrier*, by motor vehicle, in interstate and foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between junction Interstate Hwy 10 and AZ Hwy 90, at or near Benson, AZ, and junction AZ Hwy 90 and U.S. Hwy 80, over AZ Hwy 90, serving all intermediate points. (Hearing site: Los Angeles, CA, or Phoenix, AZ.)

MC 112123 (Sub-15F), filed December 7, 1978. Applicant: BEST-WAY TRANSPORTATION, a corporation, 5150 North 16th Street, Phoenix, AZ 85106. Representative: Donald E. Fernaays, 4040 East McDowell Road, Suite 320, Phoenix, AZ 85008. To operate as a *common carrier*, by motor vehicle, in interstate and foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Green Valley, AZ, and Nogales, AZ, over U.S. Hwy 89 and Interstate Hwy 19, serving all intermediate points, and the off-route points of the Twin Buttes Mine Sites, Pima Mine Site, and Esperanza Mine, in Pima County, AZ. (Hearing site: Los Angeles, CA, or Phoenix, AZ.)

MC 112822 (Sub-468F), filed December 6, 1978. Applicant: BRAY LINES INCORPORATED, 1401 N. Little St., P.O. Box 1191, Cushing, OK 74023. Representative: Dudley G. Sherrill (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *frozen foods*, from the facilities of The Pillsbury Company and Fox DeLuxe Pizza Company, at or near Joplin and Cartage, MO, to points in CA, CO, IA, IN, IL, ID, KS, MN, OK, OR, TX, UT, WA, and WI, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: St. Paul, MN, or Chicago, IL.)

MC 113463 (Sub-11F), filed December 4, 1978. Applicant: CONTRACT CARRIERS, INC., 830 Broadway NE., Albuquerque, NM 87102. Representative: Edwin E. Piper, Jr., 1115 Sandia Savings Building, Albuquerque, NM 87102. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *doors and component parts for doors*, from the facilities of Dependable Door Co., Inc., at or near Belen, NM, to points in Denver, Adams, Arapahoe, Jefferson, Douglas, Boulder, Weld, Larimer, El Paso, and Pueblo Counties, CO, under contract with Dependable Door Co., Inc., of Belen, NM. (Hearing site: Albuquerque, NM.)

MC 114045 (Sub-523F), filed December 11, 1978. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, Dallas, TX 75261. Representative: J. B. Stuart (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *Ball bearings and pillow blocks*, (except those commodities which because of size or weight require the use of special equipment), from Philadelphia, Kulpsville, Hanover, and Altoona, PA, Massillon, OH, and Hornell, NY, to points in CA, NV, OR, and TX. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 114045 (Sub-524F), filed January 2, 1979. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, Dallas, TX 75261. Representative: J. B. Stuart (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals and petroleum products*, (except commodities in bulk), from Houston, TX, to points in IN, IL, MI, OH, MO, KS, IA, WI, and MN. (Hearing site: Philadelphia, PA, or Dallas, TX.)

MC 114569 (Sub-267F), filed December 27, 1978. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by grocery and food business houses, (except commodities in bulk in tank vehicles), from Inwood, WV, and points in PA, to points in AL, FL, and GA. (Hearing site: Harrisburg, PA, or Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 116628 (Sub-24F), filed December 18, 1978. Applicant: SUBURBAN TRANSFER SERVICE, INC., P.O. Box 168, Rutherford, NJ 07070. Repre-

sentative: Thomas F. X. Foley, State Hwy 34, Colts Neck, NJ 07722. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such merchandise* as is dealt in or used by retail department stores, between points in NY, NJ, PA, MI, MD, and VA, under contract with Arnold Constable Corporation of New York, NY. (Hearing site: New York, NY, or Neward, NJ.)

MC 116763 (Sub-461F), filed December 5, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: H.M. Richters (Same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by manufacturers and converters of paper and paper products, (except commodities in bulk), from the facilities of The Mead Corporation, at Chillicothe and Schooleys, OH, and Kingsport and Gray, TN, to points in FL. (Hearing site: Columbus, OH.)

MC 116982 (Sub-16F), filed December 6, 1978. Applicant: FUCHS, INC., R.R. 1, Box 576, Sauk City, WI 53583. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are manufactured, processed, distributed, or used by farmers, farm suppliers, farm dealers, and agricultural cooperatives, between points in ND, SD, NE, KS, MN, IA, MO, WI, IL, IN, and MI, under contract with Sauk Prairie Oil Co., Inc., of Sauk City, WI. (Hearing Site: Madison or Sauk City, WI.)

MC 117589 (Sub-58F), filed December 21, 1978. Applicant: PROVISIONERS FROZEN EXPRESS, INC., 3801 7th Ave. S., Seattle, WA 98108. Representative: Michael D. Duppenthaler, 211 S. Washington St., Seattle, WA 98104. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *fresh and frozen inedible packinghouse products*, in vehicles equipped with mechanical refrigeration, (except commodities in bulk, in tank vehicles), (1) from Ft. Morgan and Sterling, CO, to Forest Grove and Tualatin, OR, and (2) from Sterling, CO, to Midvale, UT. (Hearing site: Seattle, WA.)

MC 117815 (Sub-303F), filed December 14, 1978. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. Twentieth Street, Des Moines, IA 50317. Representative: Michael L. Carter, (Same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *frozen foods*, from the facilities of the Pillsbury Company and Fox Deluxe Pizza Company, at or near Joplin and Carthage, MO, to points in NE, KS, MN, IA, WI, IL, MI, IN, KY, and TN, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Minneapolis, MN, or Chicago, IL.)

MC 117815 (Sub-304F), filed December 14, 1978. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. Twentieth Street, Des Moines, IA 50317. Representative: Michael L. Carter (Same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except in bulk), from the facilities of The Pillsbury Company, at or near Terre Haute and Seelyville, IN, to points in IL, IA, KS, MI, MN, MO, NE, and WI. (Hearing site: Minneapolis, MN, or Chicago, IL.)

MC 118089 (Sub-29F), filed December 26, 1978. Applicant: ROBERT HEATH TRUCKING, INC., P.O. Box 2501, Lubbock, TX 79408. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper and paper articles* (except in bulk, in tank vehicles), from Monroe, LA, to points in OK, NM, and those in TX on and east of a line beginning at the TX-OK State line and extending along U.S. Hwy 281 to junction U.S. Hwy 87, then along U.S. Hwy 87 to Port Lavaca, TX. (Hearing site: Lubbock, TX.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 118142 (Sub-196F), filed December 4, 1978. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Brad T. Murphree, 814 Century Plaza Building, Wichita, KS 67202. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *canned apple juice* from the facilities of Speas Company, at or near Fremont, MI, to Kansas City, KS, Oklahoma City, OK, and Denver, CO. (Hearing Site: Kansas City, MO, or Chicago, IL.)

MC 118142 (Sub-197F), filed December 5, 1978. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Brad T. Murphree, 814 Century Plaza Building, Wichita, KS 67202. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *frozen foods*, from the facilities of The Pillsbury Company and Fox Deluxe Pizza Company, at or near Joplin and Carthage, MO, to points in AR, CO, KS, LA, MS, NE, OK, and TX, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing Site: Kansas City, MO, or Wichita, KS.)

NOTE.—Dual operations are at issue in this proceeding.

MC 118142 (Sub-200F), filed December 7, 1978. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts*, and *articles distributed by meat-packing houses*, 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 York Packing Company, at York, NE, to Fresno, Los Angeles, and Lodi, CA. (Hearing Site: Omaha, NE, or Kansas City, MO.)

NOTE.—Dual operations are at issue in this proceeding.

MC 118959 Sub-190F, filed December 20, 1978. Applicant: JERRY LIPPS, INC., A Florida Corporation, 130 S. Frederick St., Cape Girardeau, MO 63701. Representative: Donald B. Levine, 39 S. La Salle St., Chicago, IL 60603. To operate as a *common carrier*, by motor vechicle, in interstate or foreign commerce, over irregular routes, transporting (1) *paper and paper products*, from the facilities of Nicolet Paper Company, at or near De Pere, WI, to points in CA, GA, MS, TN, and TX, and (2) *materials, equipment and supplies* used in the manufacture and distribution of paper and paper products, in the reverse direction. (Hearing site: Chicago, IL.)

MC 118978 (Sub-11F), filed December 11, 1978. Applicant: MERCURY EXPRESS, LTD., 100 Leeder Avenue, Coquitlam, B.C., Canada V3K 3V4. Representative: Jack R. Davis, 100 IBM Bldg., Seattle, WA 98101. To operate as a *common carrier*, by motor vehicle, in foreign commerce only over irregular routes, transporting *cement* and *plaster*, in bags, and *insulation materials*, from the ports of entry on the International Boundary line between the United States and Canada at or near Blaine, Lynden, and Sumas, WA, to points in AZ, CA, ID, NV, OR, UT, and WA. (Hearing site: Seattle, WA.)

MC 119399 (Sub-90F), filed December 26, 1978. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, Joplin, MO 64801. Representative: Wilburn L. Williamson, 280 National Foundation Life Bldg., Oklahoma City, OK 73112. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce only over irregular routes, transporting *automotive parts,* between points in the United States (except AK and HI). (Hearing site: Detroit, MI, or Kansas City, MO.)

MC 119489 (Sub-55F), filed December 26, 1978. Applicant: PAUL ABLER, doing business as CENTRAL TRANSPORT COMPANY, P.O. Box 249, Norfolk, NE 68701. Representative: Steven K. Kuhlmann, P.O. Box 82028, Lincoln, NE 68501. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *propane,* in bulk, in tank vehicles, from the Mid America Pipe Line Terminal, at or near Greenwood, NE, to points in SD. CONDITION: Any certificate issued in this proceeding shall be limited in point of time to a period expiring 5 years from the date of issuance of the certificate. (Hearing site: Kansas City, MO, or Omaha, NE.)

MC 119789 (Sub-537F), filed December 28, 1978. Applicant: CARAVAN REFRIGERATED CARGO, INC., a Louisiana Corporation, P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *cleaning compounds, polishing compounds, and waxing compounds,* (2), *starch,* (3) *disinfectants, and air fresheners,* (4) *mops, dusters, waxers, and brooms,* (5) *Plastic bags,* and (6) *diet and nutritional foods* (except frozen), from the facilities of The Drackett Company, at Dayton, OH, to Dallas and Lubbock, TX, Denver, CO, Salt Lake City, UT, Los Angeles, CA, Milwaukie, OR, Kansas City and St. Louis, MO, Atlanta, GA, and Jacksonville, FL. (Hearing site: Cincinnati, OH.)

MC 119789 (Sub-538F), filed December 28, 1978. Applicant: CARAVAN REFRIGERATED CARGO, INC., a Louisiana Corporation, P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic materials* (except in bulk), from the facilities of Cosden Oil & Chemical Company, at or near Big Spring, TX, to points in the United States (except AK, CA, and HI). (Hearing site: Dallas, TX.)

MC 119988 (Sub-181F), filed January 2, 1979. Applicant: GREAT WESTERN TRUCKING CO., INC., Highway 103 East, P.O. Box 1384, Lufkin, TX 75901. Representative: Paul D. Angenend, P.O. Box 2207, Austin, TX 78768. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum, petroleum products, vehicle body sealer, sound deadener compounds,* (except commodities in bulk, in tank vehicles), and *filters,* from points in Warren County, MS, to points in AR, CA, LA, TX, and WI, restricted to the transportation of traffic originating at the facilities of Quaker State Oil Refining Corporation, in Warren County, MS. (Hearing site: Dallas, TX, or Washington, DC.)

NOTE.—Dual operations may be involved in this proceeding.

MC 121489 (Sub-14F), filed December 22, 1978. Applicant: NEBRASKA-IOWA XPRESS, INC., a Nebraska corporation, 3219 Nebraska Avenue, Council Bluffs, IA 51501. Representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. To operate as a *common carrier,* by motor vehicle, in interstate and foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts and articles distributed by meat-packing houses,* 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 Scottsbluff, NE, to points in IL, IA, MN, MO, and SD. Condition: The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. § 11343(a), formerly Section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Omaha, NE.)

MC 123263 (Sub-13F), filed December 7, 1978. Applicant: FLOYD R. WANGERIN AND LORRAINE C. WANGERIN, a partnership, d.b.a. WANGERIN TRUCKING CO., Rural Route 2, Stephenson, MI 49887. Representative: Michael S. Varda, 121 South Pinckney Street, Madison, WI 53703. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *feed ingredients,* from the facilities of Bullard Feed Co., at Chicago, IL, to Minneapolis, MN, Lansing, MI, and points in WI and the Upper Peninsula of MI, and (2) *lumber and millwork,* from the facilities of Dufferin Bros., Inc., at or near Wallace, MI, to those points in the United States in and east of MN, IA, MO, AR, and TX, restricted in (2) above to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 123685 (Sub-24F), filed December 27, 1978. Applicant: PEOPLES CARTAGE, INC., 8045 Navarre Road, S.W., Massillon, OH 44646. Representative: Boyd B. Ferris, 50 West Broad Street, Columbus, OH 43215. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by, processors and distributors of salt and salt products, between Rittman, Fairport Harbor, and Cleveland, OH, on the one hand, and, on the other, points in WV, PA, NY, MI, IL, IN, KY, TN, VA, MD, NJ, and DC. (Hearing site: Cleveland or Columbus, OH.)

MC 124078 (Sub-916F), filed January 2, 1979. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *bentonite clay, foundry sand additives, foundry sand ingredients, foundry facings, foundry sand, graphite ore, coke breeze, calcined petroleum coke, and carbon scrap,* and (2) *mixtures* of the commodities in (1) above, from Green Bay, WI, to points in IL, IN, IA, MI, and MN. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 124078 (Sub-917F), filed January 2, 1979. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *cement,* from Hagerstown, MD., to points in OH. (Hearing site: Nashville, TN.)

MC 124078 (Sub-918F), filed December 14, 1978. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum and petroleum products,* in bulk, in tank vehicles, from Memphis, TN, to points in AL, AR, MS, MO, and TN. (Hearing site: Memphis, TN.)

MC 124078 (Sub-922F), filed January 2, 1979. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611

South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *fly ash*, in bulk, from Gentry, AR, to points in IL, KS, LA, MS, MO, OK, TN, and TX. (Hearing site: Dallas, TX.)

MC 125433 (Sub-178F), filed December 4, 1978. Applicant: F-B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *agricultural pesticides*, (except in bulk), from Los Angeles, CA, to points in the United States (except AK and HI), and (2) *ingredients* for agricultural pesticides (except in bulk), from Henderson, NV, Kingsport, TN, Niagara Falls, NY, and North Charleston, SC, to Los Angeles, CA. (Hearing site: Los Angeles, CA, or Salt Lake City, UT.)

MC 125433 (Sub-179F), filed December 4, 1978. Applicant: F-B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *water beds and accessories* for water beds, from the facilities of Morning Surf Corporation, at or near Salt Lake City, UT, to points in the United States (except AK and HI). (Hearing site: Sale Lake City, UT.)

MC 126118 (Sub-112F), filed December 15, 1978. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *synthetic rubber*, from Beaumont, TX, to Hot Springs, AR. (Hearing site: Houston, TX.)

NOTE.—Dual operations may be involved.

MC 126118 (Sub-113F), filed December 18, 1978. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie, P.O. Box 81228, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *smoke detectors* and *such commodities* as are dealt in or used by manufacturers of electrical products, (except commodities in bulk and commodities which by reason of size or weight require the use of special equipment), between (a) Seattle, WA, Los Angeles, CA, and (b) the facilities of General Electric Company, at Allentown, PA, Asheboro, NC, Brockport, NY, Ontario, CA, Seattle, WA, and Laurel, MD, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the named points. (Hearing site: Hartford, CT, or Washington, DC.)

NOTE.—Dual operations may be involved in this proceeding.

MC 126118 (Sub-114F), filed December 27, 1978. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by manufacturers and retailers of carpet, between points in Orange and Los Angeles Counties, CA, on the one hand, and, on the other, those points in the United States on and east of U.S. Hwy 85. (Hearing site: Los Angeles, CA.)

NOTE.—Dual operations may be involved in this proceeding.

MC 126118 (Sub-115F), filed December 27, 1978. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *malt beverages*, from Baltimore, MD, Latrobe, PA, and points in Lehigh County, PA, to points in GA. (Hearing site: Philadelphia, PA.)

NOTE.—Dual operations may be involved in this proceeding.

MC 126118 (Sub-116F), filed December 27, 1978. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers of van and recreational vehicles (except self-propelled vehicles and commodities in bulk), from the facilities of Gladney Bros., Inc., and The Light Works, at Costa Mesa, CA, to points in the United States on and east of U.S. Hwy 85. (Hearing site: Los Angeles, CA.)

NOTE.—Dual operations may be involved in this proceeding.

MC 126118 (Sub-117F), filed December 27, 1978. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *lawn mowers, gas tanks, grass trimmers, and snow throwers*, and (2) *parts and accessories* for the commodities in (1) above, from Galesburg, IL, to points in the United States (except AK, AZ, HI, ID, NH, NV, NM, RI, SC, UT, and VT). (Hearing site: Chicago, IL, or Lincoln, NE.)

NOTE.—Dual operations may be involved in this proceeding.

MC 126555 (Sub-63F), filed December 21, 1978. Applicant: UNIVERSAL TRANSPORT, INC., Box 3000, Rapid City, SD 57709. Representative: Truman A. Stockton, Jr., The 1650 Grant Street Building, Denver, CO 80203. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *dry fertilizer*, in bulk, from the facilities of Cominco American, Incorporated at or near Sidney, NE, to points in CO, WY, KS, and SD. (Hearing site: Denver, CO, or Rapid City, SD.)

NOTE.—Dual operations may be involved.

MC 128543 (Sub-14F), filed December 4, 1978. Applicant: CRESCO LINES, INC., 13900 South Keeler Avenue, Crestwood, IL 60445. Representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *zinc, zinc alloys, and zinc products*, from the facilities of New Jersey Zinc Mineral Co., at or near Clarksville, TN, to points in AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NC, OH, OK, PA, SC, TX, VA, WV, and WI, under contract with Gulf & Western Natural Resources Group, of Nashville, TN. (Hearing site: Chicago, IL.)

MC 128648 (Sub-15F), filed December 18, 1978. Applicant: TRANS-UNITED, INC., a Texas corporation, 425 West 152nd Street, P.O. Box 2081, East Chicago, IN 46312. Representative: Joseph Winter, 29 South LaSalle Street, Chicago, IL 60603. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are used in the manufacture of insulated glass (except commodities in bulk), (a) from the facilities of Lorin Industries, at or near Muskegon, MI, to Sparks, NV, and (b) from the facilities of Allmetal Weatherstrip Company, at Sparks, NV, to points in King County, WA, under contract with Allmetal Weatherstrip Company, of Bensenville, IL. (Hearing site: Chicago, IL.)

MC 129387 (Sub-70F), filed July 5, 1978. Applicant: PAYNE TRANSPOR-

TATION, INC., P.O. Box 1271, Huron, SD 57350. Representative: Scott E. Daniel, P.O. Box 82028, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *frozen prepared foods*, in vehicles equipped with mechanical refregeration, and (2) fish and agricultural commodities, which are otherwise exempt from economic regulation under 49 U.S.C. § 10526(a)(6) (formerly Section 203(b)(6) of the Interstate Commerce Act), in mixed loads with the commodities in (1) above, (a) from the facilities of Van de Kamp's, at Santa Fe Springs, CA, to Erie, PA, Syracuse, NY, and points in IL, KS, MI, MO, and OH, and (b) from the facilities of Van de Kamp's, at Erie, PA, to Atlanta, GA, and points in IL, KS, MI, MN, MO, OH, and WI. (Hearing site: Los Angeles, CA.)

MC 133119 (Sub-155F), filed December 26, 1978. Applicant: HEYL TRUCK LINES, INC., P.O. Box 206, Akron, IA 51001. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *bakery goods*, from the facilities of Interbake Foods, Inc., at or near North Sioux City, SD, to points in the United States (except AK and HI). (Hearing site: Richmond, VA.)

MC 133219 (Sub-26F), filed December 15, 1978. Applicant: NEBRASKA BULK TRANSPORTS, INC., P.O. Box 215, Bennet, NE 68317. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *soybean oil*, in bulk, in tank vehicles, from Wichita, KS, to Port of Catoosa, OK. (Hearing site: Wichita, KS.)

MC 133689 (Sub-236F), filed November 2, 1978, previously published in the FEDERAL REGISTER issue of December 7, 1978. Applicant: OVERLAND EXPRESS, INC., 719 First Street SW, New Brighton, MN 55112. Representative: Anthony E. Young, 29 S. LaSalle Street, suite 350, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *such commodities* as are dealt in or used by drugstores, between points in AL, CT, DE, FL, GA, IN, KY, ME, MD, MA, MI, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, and DC, on the one hand, and, on the other, points in IL, IN, IA, KY, MN, MO, NE, OH, TN, and WI, restricted to the transportation of traffic moving from, to, or between the facilities of Walgreens. (Hearing site: Chicago, IL, or St. Paul, MN.)

NOTE.—This republication shows the restriction.

MC 133735 (Sub-8F) filed December 13, 1978. Applicant: AUDUBON TRANSPORT, INC., Wever, IA 52658. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *fertilizers*, from the facilities of Chevron Chemical Co., at or near Fort Madison, IA, to points in MN, WI, IL, IN, and MO. (Hearing site: Des Moines, IA, or Kansas City, MO.)

NOTE.— The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. § 11343 formerly Section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 134105 (Sub-40F), filed December 21, 1978. Applicant: CELERYVALE TRANSPORT, INC., 1318 East 23rd Street, Chattanooga, TN 37404. Representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1240, Arlington, VA22210. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by grocery houses, (except commodities in bulk), between the facilities of Hudson Industries, Inc., at or near Troy and Brundidge, AL, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Birmingham, AL.)

MC 134387 (Sub-60F), filed November 6, 1978. Applicant: BLACKBURN TRUCK LINES, INC., 4998 Branyon Avenue, South Gate, CA 90280. Representative: Warren N. Grossman, Suite 1800, 707 Wilshire Boulevard, Los Angles, CA 90017. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper and paper products*, from the facilities of Crown Zellerbach Corporation, at Portland, Wauna, and West Linn, OR, and Camas, Port Townsend, and Port Angeles, WA, to points in CA. (Hearing site: Los Angles, CA, or Portland, OR.)

MC 135797 (Sub-159F), filed November 6, 1978. Applicant: J. B. HUNT TRANSPORT, INC., a Georgia corporation, P.O. Box 200, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *baking flour*, from points in KS and MN, to points in Benton County, AR. (Hearing site: Kansas City, MO.)

MC 135797 (Sub-160F), filed November 6, 1978. Applicant: J. B. HUNT TRANSPORT, INC., a Georgia corporation, P.O. Box 200, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *canned goods*, from the facilities of the Green Giant Company, at Denton, TX, to points in AR, LA, MS, and OK, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Dallas, TX.)

MC 135895 (Sub-31F), filed December 14, 1978. Applicant: B&R DRAYAGE, INC., P.O. Box 8534 Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *paper and paper articles*, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities of St. Regis Paper Company, Ferguson, MS, on the one hand, and, on the other, points in AR, LA, OK, TN, and TX. (Hearing site: Jackson or Ferguson, MS.)

MC 136315 (Sub-49F), filed December 18, 1978. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 22-A, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *steel trusses and bar joists*, and (2) *accessories* used in the installation of the commodities in (1) above, from the facilities of Vulcraft, a Division of Nucor Corporation, at or near Grapeland, TX, to points in AR, LA, MS, and OK. (Hearing site: Jackson, MS, or Dallas, TX.)

NOTE.—Dual operations may be involved.

MC 136332 (Sub-8F), filed December 4, 1978. Applicant: A. & M. TRANSPORT LTD., P.O. Box 11, Havelock New Brunswick, Canada EOA 1WO. Representative: Frederick T. McGonagle, 36 Main Street, Gorham, ME 04038. To operate as a *contract carrier*, by motor vehicle, in foreign commerce, only over irregular routes, transporting *lime, lime products, and fertilizer*, between points on the International Boundary line between the United States and Canada in ME, and points in ME, under contract with Havelock Lime Works, Ltd., of Havelock, New Brunswick, Canada. (Hear-

ing site: Portland, ME, or Boston, MA.)

MC 136343 (Sub-154F), filed December 5, 1978. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers and distributors of printed matter, (except commodities in bulk), between the facilities of Arcata Book Group, at or near Fairfield, PA, Kingsport and New Canton, TN, and West Hanover and Plympton, MA, on the one hand, and on the other, those points in the United States in and east of MS, TN, KY, IL, and WI, restricted to the transportation of traffic originating at or destined to the named points. (Hearing site: Boston, MA, or Washington, DC.)

MC 136848 (Sub-23F), filed December 18, 1978. Applicant: JAMES BRUCE LEE & STANLEY LEE, A partnership, d.b.a. LEE CONTRACT CARRIERS, Old Route 66, P.O. Box 48, Pontiac, IL 68764. Representative: Edward F. Stanula, 837 East 162nd Street, South Holland, IL 60473. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *wrought steel pipe and tubing,* from the facilities of Pittsburgh-International, Division of Pittsburgh Tube Co., at or near Fairbury, IL, to Athens and Winfield, AL, Denver and Boulder, CO, Ashburn and Dacula, GA, McPherson and Newton, KS, Minneapolis and Winona, MN, Greenwood, Indianola, Tupelo, and Vicksburg, MS, Cedar Grove and Newark, NJ, Walden, NY, Claremore, OK, Bala Cynwyd, Camp Hill, Pine Grove, Tarentum, and York, PA, Slatersville, RI, Belton, Lyman, and Pawleys, SC, Jasper, TX, Bridgewater and Richmond, VA, and points in KY and TN, under contract with Pittsburgh-International, Division of Pittsburgh Tube Co., of Fairbury, IL. (Hearing site: Chicago, IL.)

MC 138157 (Sub-100F), filed November 3, 1978. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, a California corporation, 2931 South Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *medical equipment, medical materials, and medical supplies,* (except commodities in bulk), from Johnson City, TN, to points in AZ and CA; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), from points in the United States (except AK and HI), to El Paso, TX, restricted in (1) and (2) above to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Los angeles, CA.)

NOTE.—Dual operations are involved.

MC 138438 (Sub-38F), filed December 18, 1978. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *building materials* from Frederick, MD, to points in PA, VA, WV, and DC. (Hearing site: Baltimore, MD.)

NOTE.—Dual operations may be involved in this proceeding.

MC 138469 (Sub-98F), filed December 18, 1978. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Jack H. Blanshan, 205 W. Touhy Ave., Suite 200, Park Ridge, IL 60068. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by pottery and pottery supply stores (except commodities in bulk, in tank vehicles), from Edgar, FL, Macon and McIntyre, GA, Mayfield, KY, High Hill, MO, Spruce Pine, NC, Oak Hill, OH, and Custer, SD, to the facilities of Earth and Fire Pottery Supply, Oklahoma City, OK, restricted to the transportation of traffic originating at the named origins and destined to the indicated destination. (Hearing site: Oklahoma City, OK, or Dallas, TX.)

MC 138882 (Sub-182F), filed December 7, 1978. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *construction materials* (except commodities in bulk), from the facilities of The Celotex Corporation, at Marrero, LA, to points in the United States (except AK and HI). (Hearing site: Birmingham, AL, or Tampa, FL.)

MC 138882 (Sub-183F), filed December 4, 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. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lumber, lumber mill products, particleboard, and wood turnings,* from points in CA, WA, and OR, to points in TX, OK, AR, AL, OH, MI, WI, IL, MN, IA, MO, KY, PA, KS, TN, and MS. (Hearing site: Sacramento, CA, or Birmingham, AL.)

MC 139119 (Sub-2F), filed December 28, 1978. Applicant: BOYD TRUCKING COMPANY, INC., P.O. Box 621, Athens, TN 37303. Representative: Blaine Buchanan, 1024 James Bldg., Chattanooga, TN 37402. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in McMinn County, TN (except Calhoun), on the one hand, and, on the other, Cleveland and Chattanooga, TN, restricted to the transportation of traffic having a prior or subsequent movement by rail. (Hearing site: Knoxville or Chattanooga, TN.)

MC 139193 (Sub-91F), filed December 6, 1978. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Kansas City, MO 64123. Representative: Jacob P. Billig, 2033 K Street, N.W., Washington, DC 20006. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *meats, meat products and meat byproducts, and articles* distributed by meat-packing houses, 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, skins, and commodities in bulk), from Montgomery, AL, to points in the United States (except AK and HI), and (2) *such commodities* as are used by meat packers in the conduct of their business (except hides, skins, and commodities in bulk), in the reverse direction, under contract with John Morrell & Co., of Chicago, ILL. (Hearing site: Washington, DC, or Chicago, IL.)

MC 139193 (Sub-92F), filed December 6, 1978. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Kansas City, MO 64123. Representative: Jacob P. Billig, 2033 K Street, NW., Washington, DC 20006. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *meats, meat products and meat byproducts, dairy products, and articles distributed by meat-packing houses* as described in sections, A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except

hides, skins, and commodities in bulk), from the facilities of John Morrell & Co., at Sioux Falls, SD, to points in IN, MI and OH, and (2) *such commodities* as are used by meat packers in the conduct of their business, (except hides, skins, and commodities in bulk), in the reverse direction, under contract with John Morrell & Co., of Chicago, IL. (Hearing site: Washington, DC, or Chicago, IL.)

MC 139458 (Sub-4F), filed December 27, 1978. Applicant: RICHNER, INC., CO Hwy 160 South, P.O. Box 1488, Durango, CO 81301. Representative: J. Albert Sebald, 1700 Western Federal Savings Bldg. Denver, CO 80202. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *salt (except in bulk), fertilizer*, and *animal feed*, form points in AZ, ID, KS, NM, TX, UT, and WY, to points in CO, NM, and UT, under contract with Basin Co-Op, Inc., of Durango, CO. (Hearing site: Durango, CO, or Denver, CO.)

MC 140389 (Sub-43F), filed December 26, 1978. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O. Box 12566, Atlanta, GA 30315. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *liquid cleaning compounds and liquid bleaching compounds* (except commodities in bulk), from the facilities of National Marketing Associates, Inc., at or near New Orleans, LA, to points in AL, FL, GA, and TN, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction. (Hearing site: New Orleans, LA, or Atlanta, GA.)

MC 140829 (Sub-169F), filed December 19, 1978. Applicant: CARGO CONTRACT CARRIER CORP., a New Jersey corporation, P.O. Box 206, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *meats, meat products and meat byproducts, dairy products, and articles* distributed by meat-packing houses, and as described in Sections A, B, and C of Appendix I to the report in Description in Motor Carrier Certificates, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), and (2) *foodstuffs* (except those in (1) above), when moving in mixed loads with the commodities in (1) above, form the facilities of Oscar Mayer & Co., at Davenport and Perry, IA, Woodstock, IL, and Madison WI, to points in TX. (Hearing site: Washington, DC.)

NOTE.— Dual operations may be at issue in this proceeding.

MC 140829 (Sub-172F), filed December 29, 1978. Applicant: CARGO CONTRACT CARRIER CORP., a New Jersey corporation, P.O. Box 206, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Ave., Morristown, NJ 07960. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, 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 Aurora Packing Co., Inc., at or near North Aurora, IL, to points in IN, KY, MD, MI, MO, NJ, NY, OH, and WI. (Hearing site: Washington, DC.)

NOTE.— Dual operations may be at issue in this proceeding.

MC 140829 (Sub-173F), filed December 29, 1978. Applicant: CARGO CONTRACT CARRIER CORP., a New Jersey corporation, P.O. Box 206, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Ave., Morristown, NJ 07960. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *drugs*, (2) *hospital supplies and materials*, and (3) *equipment and supplies* used in the administration of drugs, (except hospital supplies), from Grand Island, NY, to points in CA, IL, and TX. (Hearing site: Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 141675 (Sub-5F), filed December 4, 1978. Applicant: ECONOMY TRUCKING SERVICE, INC., 1079 West Side Avenue, Jersey City, NJ 07306. Representative: Arthur Liberstein, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by department stores (except commodities in bulk), (a) between New York, NY, and points in NJ, CT, and MA, on the one hand, and, on the other, Cleveland, OH, Detroit, MI, Chicago, IL, Dallas, TX, and Los Angeles, CA, under contract with Petrie Stores, Inc., of Secaucus, NJ, and (b) between New York, NY, and points in NJ, CT, and MA, on the one hand, and, on the other, Cleveland, OH, Detroit, MI, and Chicago, IL, under contract with Miller Wohl, Inc., of Secaucus, NJ. CONDITION: The permit to be issued shall be limited to a period expiring 2 years from its date of issue, unless, prior to the expiration (but not less than 6 months prior), applicant files a petition for permanent extension of the permit. (Hearing site: New York, NY.)

MC 142508 (Sub-44F), filed December 18, 1978. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, 10810 South 144th Street, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *welding equipment, welding materials, and welding supplies*, from the facilities of Miller Electric Manufacturing Company, at or near Appleton, WI, to points in CO, KS, LA, MO, NE, OK, SD, TX, and WY, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 142559 (Sub-82F), filed December 19, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Ave., Cleveland, OH 44114. Representative: John P. McMahon, 100 E. Broad St., Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, *such commodities* as are dealt in or used by manufacturers and distributors of containers (except commodities in bulk), between points in the United States (except AK and HI).(Hearing site: Columbus, OH.)

NOTE.—Dual operations are involved in this proceeding.

MC 143098 (Sub-1F), filed January 2, 1979. Applicant: LAUGHLIN TRUCKING, INC., Route 1, Box 95, Carlton, OR 97111. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Avenue, Portland, OR 97210. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *cottonseed meal, cottonseed crumbles, and cottonseed pellets*, from points in Fresno, Kern, Tulare, Madera, and Kings Counties, CA, to points in OR and WA. (Hearing site: Portland, OR.)

MC 143267 (Sub-29F), filed August 7, 1978. Applicant: CARLTON ENTERPRISES, INC., 4588 State Route 82, Mantua, OH 44255. Representative: Neal A. Jackson, 1155 15th St., NW., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from the facilities of Jones & Laughlin Steel Corporation, at Pittsburgh and Aliquippa, PA, to points in AR, KS, and MO. (Hearing

site: Pittsburgh, PA, or Washington, DC.)

MC 144083 (Sub-10F), filed December 4, 1978. Applicant: RALPH WALKER, INC., P.O. Box 3222, Jackson, MS 39207. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *new furniture and furnishings*, from points in MS, to points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, VT, VA, WA, WV, WI, and WY, restricted to the transportation of traffic destined to the facilities of Montgomery Ward. (Hearing site: Jackson, MS, or Chicago, IL.)

NOTE.—Dual operations may be involved.

MC 144352 (Sub-3F), filed December 6, 1978. Applicant: HARRIS BAKING COMPANY, a corporation, 33 North Street, Waterville, ME 04901. Representative: Kenneth B. Williams, 84 State Street, Boston, MA 02109. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *bakery products*, from Springfield, MA, to Conway, NH, and points in ME, under contract with Springfields' Bakery, Inc., of Springfield, MA. (Hearing site: Boston, MA, or Portland, ME.)

MC 144709 (Sub-5F), filed December 11, 1978. Applicant: MINERAL CARRIERS, INC., P.O. Box 110, Bound Brook, NJ 08805. Representative: Paul J. Keeler, P.O. Box 253, South Plainfield, NJ 07080. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *calcium chloride*, in dump trailers, from Solvay, NY, to Paterson, NJ, under contract with Para Industries, Inc., of Paterson, NJ. (Hearing site: Newark, NJ, or New York, NY.)

MC 144729 (Sub-1F), filed December 18, 1978. Applicant: RFK CHARTER COACHES, INC., 144 32nd St. Dr. SE., Cedar Rapids, IA 52403. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *passengers and their baggage* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Woodbury, Monona, Crawford, Carroll, Audubon, Guthrie, Dallas, Polk, Story, Jasper, Poweshiek, Cass, Adair, Madison, Warren, Marion, Mahaska, Adams, Union, Clarke, Lucas, Ringgold, Decatur, and Wayne Counties, IA, and extending to points in the United States (except AK and HI). CONDITION: The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. § 11343 (a) (formerly Section 5(2) of the Interstate Commerce Act), or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Omaha, NE, or Des Moines, IA.)

MC 144752 (Sub-1F), filed December 4, 1978. Applicant: MICHEL'S GARAGE, INCORPORATED, 4333 Highway 41, Franksville, WI 53126. Representative: Eugene L. Cohn, One N. LaSalle Street, Chicago, IL 60602. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *disabled motor vehicles*, and *replacement motor vehicles* by use of wrecker equipment only, between points in IN, IA, IL, WI, MI, and OH. (Hearing site: Chicago, IL.)

MC 144827 (Sub-11F), filed October 30, 1978. Applicant: DELTA MOTOR FREIGHT, INC., 2877 Farrisview, P.O. Box 18423, Memphis, TN 38118. Representative: Billy R. Hallum (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *materials, equipment, and supplies* used in the installation of elevators (except commodities in bulk, and those which because of size or weight require the use of special equipment), between points in the United States (except AK and HI), restricted to the transportation of traffic destined to the facilities of Dover Elevator Company. (Hearing site: Memphis, TN.)

MC 145042 (Sub-2F), filed December 6, 1978. Applicant: ZEELAND FARM SERVICES, INC., 2468 84th Street, Zeeland, MI 49464. Representative: James R. Neal, 1200 Bank of Lansing Building, Lansing, MI 48933. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *soybean meal and soybean hulls*, in bulk, from the facilities of Cargill, Incorporated, at or near Chicago, IL, to points in IL, IN, MI, and WI. (Hearing site: Lansing, MI, or Chicago, IL.)

MC 145097 (Sub-2F), filed November 1, 1978. Applicant: GEORGE C. HARPER, d.b.a. HARPER TRUCKING, P.O. Box 161, Green River, WY 82935. Representative: George C. Harper (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *oil drilling muds and oil drilling compounds*, between points in CO, ID, NV, SD, UT, and WY. (Hearing site: Rock Springs or Rawlins, WY.)

MC 145152 (Sub-22F), filed November 6, 1978. Applicant: BIG THREE TRANSPORTATION, INC., P.O. Box 706, Springdale, AR 72764. Representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum products*, in packages, from the facilities of Texaco, Inc., in Jefferson County, TX, to points in AR, IL, IN, KY, MI, MO, NJ, NY, OH, PA, TN, and WI. (Hearing site: Houston, TX, or Fayetteville, AR.)

MC 145498 (Sub-2F), filed December 27, 1978. Applicant: SKYLINE CONSTRUCTION COMPANY, INC., Box 38, Big Piney, WY 83113. Representative: Toni Gilchrist, Box 783, Big Piney, WY 83113. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum, their products, and byproducts, and (2) *earth drilling machinery and equipment*, and *machinery, equipment, materials, supplies, and pipe* incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites and (d) the injection or removal of commodities into or from holes or wells, between points in CO, ID, MT, ND, UT, and WY. CONDITIONS: (1) Applicant shall conduct separately its for-hire carriage and other business operations; (2) it shall maintain separate accounts and records for each operation; and (3) it shall not transport property as both a private and for-hire carrier in the same vehicle at the same time. (Hearing site: Idaho Falls, ID, or Cheyenne, WY.)

MC 145667F, filed November 2, 1978. Applicant: TRANSPORT PLANNING AND SERVICE, INC., 53 Evelyn St., North Dartmouth, MA 02747. Representative: Ronald Shapps, 450 Seventh Ave., New York, NY 10001. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *impregnated paper, imitation leather, latex adhesives, urethane adhesives, solvents, coatings, and cements*, and (2) *materials and equipment* used in the manufacture of the commodities in (1) above, between New Bedford

and Lynn, MA, on the one hand, and, on the other, points in the United States (except AK and HI), in (1) and (2) above under contracts with C. L. Hauthaway & Sons Corp., of Lynn, MA, and Fibre Leather Mfg. Corp., of New Bedford, MA. (Hearing site: Boston, MA.)

MC 145697F, filed November 6, 1978. Applicant: RICKETTS TRUCKING CO., INC., Rte. 1, Box 396A, Gurdon, AR 71743. Representative: Charles J. Lincoln, 1550 Tower Building, Little Rock, AR 72201. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *wood residual products*, (except commodities in bulk, in tank vehicles), from points in Clark County, AR, to points in Cass County, TX and Choctaw and McCurtain Counties, OK. (Hearing site: Little Rock or Texarkana, AR.)

MC 145713 (Sub-1F), filed December 4, 1978. Applicant: TAURUS TRUCKING CORPORATION, 199 Calcutta Street, Port Newark, NJ 07114. Representative: Joel J. Nagel, 19 Back Drive, Edison, NJ 08817. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *office furniture and library furniture*, and *materials* used in the manufacture of office furniture and library furniture (except in tank vehicles), from the facilities of Art Metal U.S.A., Inc., at Newark, NJ, to points in GA, MD, MA, NY, OH, PA, VA, and DC under contract with Art Metal U.S.A., Inc., of Newark, NJ. (Hearing site: Newark, NJ, or New York, NY.)

MC 145761F, filed October 30, 1978, previously published in the FEDERAL REGISTER issue of December 7, 1978, as MC 145679F. Applicant: A & A TRANSPORT SERVICES, INC., A Delaware Corporation, P.O. Box 12, Palmer, MA 01069. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd. Omaha, NE 68106. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lighting fixtures and such commodities* as are used in the manufacture of lighting fixtures, between Wilmington, MA, Olive Branch, MS, Los Angeles, CA, and Union, NJ, on the one hand, and, on the other, points in the United States (except AK and HI), under contract with Keene Corp., of Wilmington, MA. (Hearing site: Boston, MA, or Washington, DC.)

NOTE.—This republication shows the correct docket number assigned to this proceeding as MC 145761.

MC 145843F, filed December 6, 1978. Applicant: DEAN'S WATER SERVICE, INC. R.D. #1, Box 59, Amity, PA 15311. Representative: Stephen I. Richman, 325 Washington Trust Building, Washington, PA 15301. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *water*, between points in Washington County, PA, on the one hand, and, on the other, points in OH and WV. (Hearing site: Pittsburgh, PA, or Wheeling, WV.)

MC 145862F, filed December 5, 1978. Applicant: DON LEE SMITH AND GILBERT ERNEST SOMERA, a partnership, d.b.a., SOMERA, SMITH TRANSPORTATION, 1250 South Wilson Way, Stockton, CA 95205. Representative: Sidney J. Cohen, 1939 Harrison St., Suite 555, Oakland, CA 94612. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *aluminum and aluminum articles*, (1) from the facilities of Kaiser Aluminum & Chemical Corp., at points in CA, to points in WA and OR, and (2) from the facilities of Kaiser Aluminum & Chemical Corp., at points in WA and OR, to points in CA, under contract with Kaiser Aluminum & Chemical Corp., of Oakland, CA. (Hearing Site: San Francisco or Los Angeles, CA.)

MC 145682 (Sub-2F), filed December 1, 1978. Applicant: AAA COURIER SERVICE, INC., 611 Chestnut Street, Chattanooga, TN 37402. Representative: John R. Meldorf, Two Northgate Park, Chattanooga, TN 37415. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *cancelled checks*, between Chattanooga and Nashville, TN, and Atlanta, GA. (Hearing Site: Chattanooga, TN.)

MC 145989F, filed December 14, 1978. Applicant: BUFFALO TRANSPORTATION, INC., 4949 S. 36th St., Omaha, NE 68107. Representative: Scott E. Daniel, P.O. Box 82028, Lincoln, NE 68501. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *construction machinery*, and (2) *materials, equipment and supplies* used in the repair and maintenance of the commodities in (1) above, between points in the United States (except AK and HI), under contract with Buffalo Machinery Co., of Omaha, NE. CONDITIONS: Applicant shall conduct separately its for-hire carriage and other business operations. It shall maintain separate accounts and records for each operation. And it shall not transport property as both a private and for-hire carrier in the same vehicle at the same time. (Hearing site: Omaha, NE.)

MC 142083 (Sub-2F), filed December 6, 1978. Applicant: SPECIALTY CARRIER, INC., 596 Christman Street, P.O. Box 11229, Atlanta, GA 30310. Representative: Edward Malinzak, One Vandenberg Center, Grand Rapids, MI 49503. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, and *articles used in the manufacture, and distribution* of foodstuffs (except in bulk, in tank vehicles), (1) between Grand Rapids, MI, on the one hand, and, on the other, points in DE, ME, MI, MN, MT, NH, ND, RI, SD, VT, (2) between Atlanta, GA, on the one hand, and, on the other, points in AZ, CA, CO, DE, ID, IA, KS, ME, MN, MO, MT, NE, NV, NH, MN, ND, OK, OR, RI, SD, UT, VT, WA, WI, WY, (3) between Los Angeles, CA, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, IL, IN, KY, LA, ME, MD, MA, MI, MN, MS, MT, NH, NJ, NY, NC, ND, OH, PA, RI, SC, SD, TN, VT, VA, WV, (4) between Bridgeport, CT, on the one hand, and, on the other, points in AL, AZ, AR, CA, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NY, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY, (5) between Houston, TX, on the one hand, and, on the other, points in AL, AZ, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NY, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, UT, VT, VA, WA, WV, WI, WY, (6) between St. Louis, MO, on the one hand, and, on the other, points in the United States (except HI and AK), under contract with Readi-Bake, Inc., of Grand Rapids, MI, and St. Louis, MO, Borck's Country Home Bakers, Inc., of Atlanta, GA, and Houston, TX, Jessie Lord, Inc., Home of Pies, of Los Angeles, CA, and Country Home Bakers, Inc., of Bridgeport, CT. (Hearing site: Lansing, MI, or Chicago, IL.)

MC 144795 (Sub-2F), filed December 27, 1978. Applicant: MAX R. GAFFORD, Route 2, Box 3, Merino, CO 80741. Representative: Larry Morgan, 613 West Main Street, Sterling, CO 80751. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *dry drilling compounds*, in bags, between Sterling, CO, and points in Kimball, Banner, Scottsbluff, Morrill, Garden, and Cheyenne Counties, NE, on the one hand, and, on the other, points in Laramie, Platte, and Goshen Counties, WY, under contract with Dresser Industries, of Denver, CO. (Hearing site: Denver, CO.)

[FR Doc. 79-4180 Filed 2-7-79; 8:45 am]

[7035-01-M]

[Decisions Volume No. 8]

PERMANENT AUTHORITY APPLICATIONS

Decision-Notice

Decided: January 26, 1979.

The following applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission on or before March 12, 1979. Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, (as specifically noted below), and shall specify with particularity the facts, matters and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representatives is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247 (e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We Find: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the national transportation policy. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regualtions. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human invironment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930 [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman (Board Member Boyle, not participating).

H. G. HOMME, Jr.,
Secretary.

MC 2368 (Sub-89), filed January 3, 1979. Applicant: BRALLEY-WILLETT TANK LINES, INC., 2212 Deepwater Terminal Road, P.O. Box 495, Richmond, VA 23204. Representative: Steven L. Weiman, Suite 145, 4 Professional Drive, Gaithersburg, MD 20760. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals,* in bulk, between Hopewell, VA, and West Memphis, AR. (Hearing site: Washington, DC.)

MC 11207 (Sub-458F), filed November 6, 1978. Applicant: DEATON, INC., a Delaware corporation, 317 Ave. W., P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *metal buildings, metal building parts, and accessories* for metal buildings, and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, between Eufaula, AL, on the one hand, and, on the other, points in FL, GA, KY, LA, MS, NC, OH, SC, TN, TX, VA, and WV. (Hearing site: Birmingham, AL, or Washington, DC.)

MC 14138 (Sub-8F), filed December 15, 1978. Applicant: HEAVY TRANSPORT, INC., 6242 Paramount Blvd., P.O. Box 727, Long Beach, CA 90805. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *contractor's equipment, contractor's materials, and contractor's supplies,* (except commodities in bulk), and (2) *commodities* the transportation of which requires, by reason of size or weight, the use of special equipment, between Los Angeles, CA, on the one hand, and, on the other, points in AZ, NV, NM, and UT. (Hearing site: Los Angeles, CA.)

MC 14138 (Sub-9F), filed January 3, 1979. Applicant: HEAVY TRANSPORT, INC., 6242 Paramount Blvd., Long Beach, CA 90805. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *contractor's equipment, contractor's materials, and contractor's supplies* (except commodities in bulk), and (2) *commodities* the transportation of which requires, by reason of size or weight, the use of special equipment, between Los Angeles, CA, on the one hand, and, on the other, points in ID, OR, and WA. (Hearing site: Los Angeles, CA.)

MC 15735 (Sub-31F), filed December 26, 1978. Applicant: ALLIED VAN LINES, INC., a Delaware corporation,

P.O. Box 4403, Chicago, IL 60680. Representative: Ronald C. Nesmith (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting equipment, materials, and used in the manufacture of computers and computer equipment, in mixed loads with third proviso household goods as defined at 49 CFR §1056.1(a)(3), (a) between points in Essex, Hampden, Hampshire, Middlesex, and Worcester Counties, MA, Hillsborough and Rockingham Counties, NH, Chittenden County, VT, and Kennebeck County, ME, on the one hand, and, on the other, points in Maricopa County, AZ, Boulder and El Paso Counties, CO, Orange, San Francisco, San Mateo, Santa Clara, Alameda, and Los Angeles Counties, CA, and Bernalillo County, NM, and (b) between points in Boulder and El Paso Counties, CO, Maricopa County, AZ, Bernalillo County, NM, Orange, San Francisco, San Mateo, Santa Clara, Alameda, and Los Angeles Counties, CA. (Hearing site: Chicago, IL, or Washington, DC.)

MC 23618 (Sub-43F), filed January 2, 1979. Applicant: McALISTER TRUCKING SERVICE, a corporation d/b/a MATCO, P.O. Box 2377, Abilene, TX 79604. Representative: Lawrence A. Winkle, Suite 1125 Exchange Park, Dallas, TX 75245. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *plastic pipe and plastic pipe fittings*, from Corsicana and Dallas, TX, to points in the United States (except AK and HI); and (2) *materials, equipment, and supplies* used in the installation of plastic pipe and plastic pipe fittings (except commodities in bulk, in tank vehicles), in mixed loads with the commodities in (1) above, from Frisco, TX, to points in the United States (except AK and HI). (Hearing site: Dallas, TX.)

MC 24784 (Sub-17F), filed November 6, 1978. Applicant: BARRY, INC., 463 South Water Street, Olathe, KS 66061. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *steel containers*, from the facilities of Cortland Container Corp., at Kansas City, KS, to St. Joseph, MO, Omaha, NE, and Ponca City and Tulsa, OK. (Hearing site: Kansas City, MO.)

MC 26396 (Sub-192F), filed July 5, 1978. Applicant: POPELKA TRUCKING CO., INC., d/b/a THE WAGGONERS, P.O. Box 990, Livingston, MT 59047. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lumber, lumber products, and wood products*, from points in MT, to points in IA, MN, ND, NE, SD, and WI. (Hearing site: Billings, MT.)

MC 26396 (Sub-215F), filed November 8, 1978. Applicant: POPELKA TRUCKING CO., INC., d/b/a THE WAGGONERS, P.O. Box 990, Livingston, MT 59047. Representative: Bradford E. Kistler, Box 82028, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic pipe*, from Winnebago, MN, to points in AR, CA, CO, IA, ID, IL, KS, MO, MT, ND, NE, OK, OR, SD, TX, UT, WA, WI, and WY. (Hearing site: Billings, MT, or Minneapolis, MN.)

MC 36918 (Sub-10F), filed January 4, 1979. Applicant: FASTWAY TRANSPORTATION, INC., a Delaware corporation, P.O. Box 383, 151 Morristown Road, Matawan, NJ 07747. Representative: Thomas F. X. Foley, State Hwy 34, Colts Neck, NJ 07722. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *carpets, carpet padding, and adhesives*, and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, between the facilities of General Felt Industries, Inc., at or near (a) Camden and Trenton, NJ, and (b) Eddystone and Philadelphia, PA, on the one hand, and, on the other, Charlottesville, Hampton, Norfolk, Richmond, and Virginia Beach, VA, and points in CT, DE, MA, MD, NJ, PA, RI, and DC. (Hearing site: Newark NJ, or New York, NY.)

MC 41406 (Sub-98F), filed November 6, 1978. Applicant: ARTIM TRANSPORTATION SYSTEM, INC., 7105 Kennedy Ave., Hammond, IN 46323. Representative: Wade H. Bourdon (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *tanks*, from DeKanb, IL, to those points in the United States in and east of MN, IA, MO, AR, and LA. (Hearing site: Chicago, IL.)

MC 51146 (Sub-659F), filed November 8, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O., Box 2298, Green Bay, WI 54306. Representative: Neil A. DuJardin (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *canned and preserved foodstuffs*, from the facilities of Heinz U.S.A., division of H. J. Heinz Co., at or near Pittsburgh, PA, to points in IL, IN, KY, MI, MN, and WI, and those points in OH on, south, and west of a line beginning at the IN-OH State line and extending along Interstate Hwy 70 to junction Interstate Hwy 77, and then along Interstate Hwy 77 to the Ohio River, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Chicago, IL.)

MC 52704 (Sub-190F), filed November 7, 1978. Applicant: GLENN McCLENDON TRUCKING CO., INC., P.O. Drawer "H", LaFayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *glass containers and closures and accessories for glass containers*, from the facilities of Ball Corporation, at or near (a) Muncie, IN, (b) Asheville, NC, (c) Mundelein, IL, and (d) Okmulgee, OK, to points in the United States (except AK, HI, WA, OR, ID, MT, NV, and CA), (2) *metal cans and ends for metal cans*, from the facilities of Ball Corporation, at or near (a) Golden, CO, (b) Findlay, OH, and (c) Williamsburg, VA, to points in the United States (except AK, HI, WA, OR, ID, MT, NV, and CA), and (3) *materials, equipment, and supplies* used in the manufacture distribution of articles named in parts (1) and (2) (except commodities in bulk, in tank vehicles), from the destinations named in (1) and (2) to the origin facilities named in (1) and (2). (Hearing site: Atlanta, GA.)

MC 52704 (Sub-193F), filed November 7, 1978. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer "H", LaFayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *insulation materials and mineral wool*, from the facilities of Rock Wool Manufacturing Company, at or near Leeds, AL, to points in FL, GA, NC, SC, and TN. (Hearing site: Atlanta, GA.)

MC 59117 (Sub-62F), filed November 13, 1978. Applicant: ELLIOTT TRUCK LINE, INC., P.O. BOX 1, Vinita, OK 73401. Representative: Wilburn L. Williamson, 280 National Foundation Life Bldg., 3535 N.W. 58th St., Oklahoma City, OK 73112. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *fly ash* (except in bulk), from Sand Springs, OK, to points in AL, AR, CO, GA, IA, IL, IN, KS, LA, MO,

MN, MS, NE, NM, SD, TN, TX, and WI. (Hearing site: Tulsa or Oklahoma City, OK.)

MC 59135 (Sub-38F), filed December 27, 1978. Applicant: RED STAR EXPRESS LINES OF AUBURN, INC., d.b.a. Red Star Express Lines, 24-50 Wright Avenue, Auburn, NY 13021. Representative: Donald G. Hickman (same as above). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Jamestown, NY, and Erie, PA, from Jamestown over NY Hwy 60, to junction U.S. Hwy 62, then over U.S. Hwy 62, to junction U.S. Hwy 6, near Warren, PA, then over U.S. Hwy 6, to junction U.S. Hwy 6N, then over U.S. Hwy 6N, to Edinboro, PA, then over PA Hwy 99, to junction U.S. Hwy 19, then over U.S. Hwy 19, to Erie, and return over the same route, serving all intermediate points and the off-route points of Warren and Corry, PA, (2) between Jamestown, NY, and Columbus, PA, from Jamestown, over unnumbered Hwy to junction PA Hwy 957, near Sugargrove, PA, then over PA Hwy 957, to Columbus, and return over the same route, serving all intermediate points and the off-route points of Warren and Corry, PA, (3) between Union City and Erie, PA, from Union City over PA Hwy 97, to junction U.S. Hwy 19, then over U.S. Hwy 19 to Erie, and return over the same route, serving all intermediate points and the off-route points of Warren and Corry, PA, (4) between Russell and Sugargrove, PA, over PA Hwy 957, serving all intermediate points, and (5) between Lottsville, PA, and junction U.S. Hwy 6, near Wrightsville, PA, over PA Hwy 958, serving all intermediate points. (Hearing site: Jamestown and Albany, NY.)

MC 59668 (Sub-8F), filed November 16, 1978. Applicant: HAROLD G. CLINE, INC., Penns Grove, NJ 08069. Representative: M. Bruce Morgan, 104 Azar Bldg., Glen Burnie, MD 21061. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers and distributors of chemicals, dyes, and motor fuel anti-knock compounds, between the facilities of E. I. DuPont de Nemours and Company, at or near Deepwater, NJ, and Saugett, IL, under continuing contract(s) with E. I. DuPont de Nemours & Company, of Wilmington, DE. (Hearing site: Philadephia, PA.)

MC 62538 (Sub-22F), filed December 26, 1978. Applicant: ASHTON TRUCKING COMPANY, A Corporation, 1245 North Highway 285, Monte Vista, CO 81144. Representative: Leslie R. Kehl, 1600 Lincoln Center Bldg., 1660 Lincoln Street, Denver, CO 80264. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *such commodities* as are dealt in or used by flour mills and by distributors of feeds, grains, and foodstuffs, (a) from Ogden and Salt Lake City, UT, to points in AZ, CA, CO, ID, IA, OR, NE, NV, NM, UT, WA, and WY, (b) from Billings, MT, to points in AZ, CO, ID, IA, OR, NE, NV, NM, UT, WA, and WY, (c) from Denver, CO, to points in IA, KS, NE, and WY, (d) from Dallas, TX, to points in AZ, CA, CO, and NM, and (e) from Minneapolis and Hastings, MN, Oconomowoc, WI, and Alton, IL, to points in AZ, CA, CO, KS, MO, MT, NE, NM, OR, TX, UT, and WY; and (2) *materials and supplies* used in the manufacture and distribution of flour, feeds, grains, and foodstuffs, from points in AZ, CA, CO, KS, LA, ID, MO, NE, OR, TX, UT, and WA, to the facilities of Peavey Company, at (a) Alton, IL, (b) Billings, MT, (c) Denver, CO, (d) Minneapolis and Hastings, MN, (e) Ogden and Salt Lake City, UT, and (f) Oconomowoc, WI, restricted in (1)(a) and (2) above against the transportation of traffic, in containers, (A) from Salt Lake City, UT, and (B) from Ogden, UT, to points in CO, under continuing contract(s) in (1) and (2) above with Peavey Company, of Minneapolis, MN. (Hearing site: Denver, CO.)

NOTE.—Dual operations are involved in this proceeding.

MC 64600 (Sub-49F) (Partial Republication), filed September 15, 1978, and previously noticed in the FR issue of December 19, 1978. Applicant: WILSON TRUCKING CORPORATION, P.O. Drawer 2, Fishersville, VA 22939. Representative: William J. Jones (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (A)(1) between Roanoke, VA, and Greensboro, NC: over U.S. Hwy 220, serving all intermediate points, and the off-route points of Henry and Bassett, VA, and Winston-Salem, NC, (2) between Asheville and Statesville, NC: over U.S. Hwy 70, (3) between Salisbury and Smithfield, NC: over U.S. Hwy 70 (also Alternate U.S. Hwy 70), (4) between Statesville and Winston-Salem, NC: from Statesville over U.S. Hwy 64 to Mocksville, NC, then over U.S. Hwy 158 to Winston-Salem, and return over the same route, (5) between Raleigh and Rocky Mount, NC: over U.S. Hwy 64, (6) between Charlotte, NC, and junction NC Hwy 55 and U.S. Hwy 70; from Charlotte over NC Hwy 27 to Benson, NC, then over NC Hwy 50 to Newton Grove, NC, then over NC Hwy 55 to junction U.S. Hwy 70, and return over the same route, (7) between Reidsville and Sanford, NC: over NC Hwy 87, (8) between Sanford and Clinton, NC: over U.S. Hwy 421, (9) between Wilson and Washington, NC: over U.S. Hwy 264, (10) between Rocky Mount and Williamston, NC: from Rocky Mount over NC Hwy 97 to junction NC Hwy 125, then over NC Hwy 125 to Williamston, and return over the same route, (11) between junction U.S. Hwy 70 and unnumbered hwy (approximately 11 miles northwest of Raleigh, NC) and Nelson, NC: over the unnumbered hwy, (12) between Henderson and Newton Grove, NC: from Henderson over U.S. Hwy 158 (also Alternate U.S. Hwy 158) to Oxford, NC, then over U.S. Hwy 15 to Durham, NC, then over NC Hwy 55 to Newton Grove, and return over the same route, (13) between Weldon and Wilmington, NC: from Weldon over U.S. Hwy 301 to junction U.S. Hwy 117, then over U.S. Hwy 117 to Wilmington, and return over the same route, (14) between Wilson and Morehead City, NC: from Wilson over NC Hwy 58 to Kinston, NC, then over U.S. Hwy 258 to Jacksonville, NC, then over NC Hwy 24 to Morehead City, and return over the same route, (15) between Greensboro and Stoneville, NC: over U.S. Hwy 220, (16) between Reidsville and Stoneville, NC: from Reidsville over NC Hwy 14 to Eden, NC, then over NC Hwy 770 to Stoneville, and return over the same route, (17) between Reidsville, NC, and Eden, NC: from Reidsville over NC Hwy 65 to junction NC Hwy 87, then over NC Hwy 87 to Eden, and return over the same route, (18) between Winston-Salem and Lexington, NC: over U.S. Hwy 52, (19) between Reidsville and Charlotte, NC: over U.S. Hwy 29, (20) between junction U.S. Hwys 70 and 321, and Lincolnton, NC: over U.S. Hwy 321, (21) between Weldon and Raleigh, NC: from Weldon over U.S. Hwy 158 (also Alternate U.S. Hwy 158) to Norlina, NC, the over U.S. Hwy 1 (also Alternate U.S. Hwy 1) to Raleigh, and return over the same route, (22) between Raleigh and Fayetteville, NC: over U.S. Hwy 401, (23) between junction U.S. Hwys 301 and 117 and Smithfield, NC: over U.S. Hwy 301, (24) between Fayetteville and Lumberton, NC: over U.S. Hwy 301, (25) between Clinton and Elizabethtown, NC: over U.S. Hwy 701, (26) between Norlina, NC, and junction U.S. Hwy 158

and NC Hwy 39: over U.S. Hwy 158, (27) between Edenton and New Bern, NC: over U.S. Hwy 17, (28) between Pittsboro and Sanford, NC: over U.S. Hwy 501, and (29) between Sanford and Laurinburg, NC: over U.S. Hwy 501, serving in A(2) through (29), inclusive, all points in NC as intermediate or off-route points, and restricted, in A(1) through (29), inclusive, to the transportation of traffic moving to, from, or through a point in VA. NOTE: This republication adds route (17), and adds the word "through" in the restriction at the end of the grant.

MC 65475 (Sub-22F), filed December 21, 1978. Applicant: JETCO, INC., 4701 Eisenhower Avenue, Alexandria, VA 22304. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *zinc, zinc alloy, and zinc products*, from the facilities of Jersey Miniere Zinc Co., in Montgomery County, TN, to points in and east of ND, SD, NE, CO, OK, and TX. (Hearing site: Nashville, TN.)

MC 70557 (Sub-6F), filed November 6, 1978. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 W. Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 S. LaSalle St., Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *paper and paper products* (except commodities in bulk), and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, (except commodities in bulk), between the facilities of St. Regis Paper Co., at or near Cantonment, FL, on the one hand, and, on the other, points in AL, AR, FL, GA, LA, MS, NC, SC, TN, and TX. (Hearing site: Miami, FL.)

NOTE.—Dual operations are at issue in this proceeding.

MC 82492 (Sub-211F), filed December 11, 1978. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., 2109 Olmstead Road, P.O. Box 2853, Kalamazoo, MI 49003. Representative: Dewey R. Marselle (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles* distributed by meat-packing houses, 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 MBPXL Corporation, at or near Dodge City, KS, to points in IL, IN, IA, KY, MI, MN, NE, NY, OH, PA, TN, and WI, restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: Chicago, IL, or Columbus, OH.)

MC 82492 (Sub-215F), filed December 13, 1978. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., 2109 Olmstead Road, P.O. Box 2853, Kalamazoo, MI 49003. Representative: Dewey R. Marselle (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *frozen foods*, from the facilities of Banquet Foods Corporation, at Carrollton, Marshall, Macon, and Moberly, MO, to those points in NY in and west of Allegany, Livingston, and Monroe Counties, those points in PA on and west of U.S. Hwy 219, and points in IL, IN, MI, and OH. (Hearing site: Chicago, IL, or Washington, DC.)

MC 93235 (Sub-12F), filed December 27, 1978. Applicant: INDIANA TRUCKING, INC., 400 Blaine Street, Gary, IN 46406. Representative: Eugene L. Cohn, One North LaSalle Street, Chicago, IL 60602. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles, and aluminum and plastic articles*, between the facilities of Joseph T. Ryerson & Son, Inc., at Chicago and Elk Grove Village, IL, on the one hand, and, on the other, points in IN, under continuing contract(s) with Joseph T. Ryerson & Son, Inc., of Chicago, IL. (Hearing site: Chicago, IL.)

MC 95084 (Sub-129F), filed November 6, 1978. Applicant: HOVE TRUCK LINE, a corporation, Stanhope, IA 50246. Representative: Kenneth F. Dudley, 611 Church Street, Ottumwa, IA 52501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *plastic pipe, fittings, valves, and hydrants*, (2) *accessories* for the commodities in part (1), and (3) *materials, equipment, and supplies* used in the installation of the commodities in part (1), from the facilities of Clow Corp., at or near Buckhannon, WV, to points in IL, IN, IA, MI, MN, MO, NE, ND, OH, SD, and WI. (Hearing site: Chicago, IL, or Kansas City, MO.)

MC 104654 (Sub-162F), filed November 2, 1978. Applicant: COMMERCIAL TRANSPORT, INC., P.O. Box 469, Belleville, IL 62222. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Avenue & 13th St. NW., Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum, petroleum products (except fertilizer), and fertilizer*, between Hickman, KY, on the one hand, and, on the other, points in AR, MO, IL, TN, IN, and WV. (Hearing site: Jackson or Memphis, TN.)

MC 105045 (Sub-92F), filed December 28, 1978. Applicant: R. L. JEFFRIES TRUCKING CO., INC., 1020 Pennsylvania Street, Evansville, IN 47701. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *enameled steel silos, loading and unloading devices, waste storage tanks, livestock feed bunkers, livestock scales, forage metering devices, animal waste spreader tanks, and livestock feeding systems*, and (2) *parts and accessories* for the commodities in (1) above, from the facilities of A. O. Smith Corporation, Harvestore Division, at DeKalb, IL, to points in IN, KY, NC, and SC. (Hearing site: Chicago, IL.)

MC 106074 (Sub-73F), filed November 7, 1978. Applicant: B and P Motor Lines, Inc., Oakland Road and U.S. Highway 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, Suite 212, 5299 Roswell Road, NE., Atlanta, GA 30342. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *clay, floor sweeping compounds, and absorbents*, (except commodities in bulk), from the facilities of Oil-Dri Corporation of America, at or near Ripley, MS, to points in IA, IL, KS, MN, MO, NE, and WI. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 106398 (Sub-856F), filed December 27, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Fred Rahal, Jr., (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *steel pipe and structural steel products*, between the facilities of Vinton Pipe & Steel, Inc., at El Paso, TX, Clovis and Albuquerque, NM, and Salt Lake City, UT, on the one hand, and, on the other, points in the United States (including AK, but excluding HI); and (2) *steel pipe*, between points in AZ, CA, CO, ID, KS, NE, NV, NM, OK, TX, UT, and WY, restricted in (1) above to the transportation of traffic originating at or destined to the above named facilities of Vinton Pipe & Steel, Inc. (Hearing site: Albuquerque, NM.)

MC 107496 (Sub-1173F), filed November 7, 1978. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Ave., Des Moines, IA 50309. Representative: E. Check, P.O. Box 855, Des Moines, IA 50304. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *wax*,

in bulk, from Casper, WY, to points in CT; and (2) *synthetic resins,* in bulk, in tank vehicles, from Valley Park, MO, to points in FL, GA, NC, and WA. (Hearing site: Des Moines, IA, or Chicago, IL.)

MC 108207 (Sub-488F), filed November 7, 1978. Applicant: FROZEN FOOD EXPRESS, INC., P.O. Box 225888, Dallas, TX 75265. Representative: M. W. Smith, (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses,* 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 MBPXL Corporation, at or near Dodge City, KS, to points in AZ, AL, CA, IL, IN, IA, KY, MI, MN, MO, NE, NM, OH, SD, TN, and WI, restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: Dallas, TX, or Wichita, KS.)

MC 109351 (Sub-7F), filed November 17, 1978. Applicant: G & E TRUCKING CO., a corporation, 936 Front St., NW, Grand Rapids, MI 49504. Representative: George A. Pendleton, P.O. Box 51, Comstock Park, MI 49321. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *finished paper box board,* from Childsdale, MI, to Lexington, Louisville, and Owensboro, KY, points in WI, points in IN (except Elkhart, IN and points in IN in the Chicago, IL Commercial Zone as defined by the Commission), and points in IL (except points in the Chicago, IL Commercial Zone as defined by the Commission), and (2) *scrap paper,* from Lexington, Louisville, and Owensboro, KY, points in WI, points in IN (except points in Lake and Porter Counties, IN, and points in the Chicago, IL Commercial Zone as defined by the Commission), and points in IL (except points in Cook, DuPage, Henry, Kane, Kankakee, Kendall, Lake and Will Counties, IL), to Childsdale, MI, under continuing contract in (1) and (2) above with Rockford Paper Mills, Inc., of Childsdale, MI. (Hearing site: Lansing, MI, or Chicago, IL.)

MC 112304 (Sub-156F), filed November 3, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., a corporation, 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: John D. Herbert (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lumber,* from the facilities of Dixie Wood Preserving Co., Division of Hoover Universal, Inc., at or near Thomson, GA, to points in OH, PA, IL, IN, MI, KY, WV, NY, MA, CT, NJ, MD, and VA. (Hearing site: Louisville, KY, or Washington, DC.)

MC 112588 (Sub-27F), filed January 8, 1979. Applicant: RUSSELL TRUCKING LINE, INC., 2011 Cleveland Road, Sandusky, OH 44870. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *cement and mortar,* (1) from East Fultonham, OH, to points in IN, KY, MI, PA, and WV, and (2) from Nitro, WV, to points in KY, OH, and PA. (Hearing site: Columbus, OH.)

NOTE.—The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. § 11343(a) [formerly section 5(2) of the Interstate Commerce Act], or submit an affidavit indicating why such approval is unnecessary.

MC 112617 (Sub-409F), filed November 13, 1978. Applicant: LIQUID TRANSPORTERS, INC., 1292 Fern Valley Road, P.O. Box 21395, Louisville, KY 40221. Representative: Charles R. Dunford (same address as applicant) To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *salt,* from Louisville, KY, to points in IL, IN, MI, MO, OH, TN, and WV. (Hearing site: Louisville, KY, or Washington, DC.)

MC 113784 (Sub-72F), filed November 6, 1978. Applicant: LAIDLAW TRANSPORT LIMITED, P.O. Box 3030, Station B, Hamilton, Ontario, Canada L8L 4M1. Representative: David A. Sutherland, 1150 Connecticut Ave., NW., Suite 400, Washington, DC 20036. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *gypsum products and roofing materials,* from points on the international boundary line between the United States and Canada in MI and NY, to points in PA, IL, IN, KY, MI, NY, OH, and WV; and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in part (1), from the destination states in (1) above to points on the international boundary line between the United States and Canada in MI and NY. (Hearing site: Buffalo, NY.)

MC 113784 (Sub-737F), filed November 6, 1978. Applicant: LAIDLAW TRANSPORT LIMITED, P.O. Box 3020, Station B, Hamilton, Ontario, Canada. Representative: David A. Sutherlund, 1150 Connecticut Avenue, NW., Suite 400, Washington, DC 20036. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *Plastic corrugated drainage pipe,* from those ports of entry on the international boundary line between the United States and Canada in MI, to points in MI. (Hearing site: Buffalo, NY.)

MC 113855 (Sub-459F), filed December 28, 1978. Applicant: INTERNATIONAL TRANSPORT, INC., a North Dakota Corporation, 2450 Marion Road SE., Rochester, MN 55901. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58102. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *logging equipment,* (2) *attachments, and parts* for logging equipment, and (3) *iron and steel articles,* between Franklin, VA, and Independence, OR, on the one hand, and, on the other, points in the United States (including AK, but excluding HI). (Hearing site: Washington, DC.)

MC 113861 (Sub-71F), filed November 16, 1978. Applicant: WOOTEN TRANSPORTS, INC., 153 Gaston Ave., Memphis, TN 38106. Representative: James N. Clay, III, 2700 Sterick Bldg., Memphis, TN 38103. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum* and *petroleum products,* in bulk, in tank vehicles, from Nashville, TN, to points in MS. (Hearing site: Memphis or Nashville, TN.)

MC 114045 (Sub-525F), filed December 27, 1978. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, Dallas, TX 75261. Representative: J. B. Stuart (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *clay, chemicals, lead, linseed oil, soap, vegetable wax, soybeans, acids, metal alloys, ground barytes, ground limestone, zarconium ore, and rutile ore,* (1) Bayonne and Jersey City, NJ, Philadelphia, PA, Niagara Falls, NY, and Charleston, WV, to St. Louis, MO, and points in CA, CO, OR, TX, and WA, and (2) from St. Louis, MO, to points in CA, CO, OR, TX, and WA. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 114194 (Sub-208F), filed November 3, 1978. Applicant: KREIDER TRUCK SERVICE, INC., 8003 Collinsville Road, East St. Louis, IL 62201. Representative: Donald D. Metzler (Same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *dry corn products,* in bulk, from Paris, IL, to points in IN, MI,

OH, NY, PA, VA, WV, DE, CT, MA, ME, VT, and NH. (Hearing site: St. Louis, MO.)

MC 114274 (Sub-53F), filed November 6, 1978. Applicant: VITALIS TRUCK LINES, INC., 137 N.E. 48th St. Place, Des Moines, IA 50306. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *canned and preserved foodstuffs*, from the facilities of Heinz U.S.A., Division of H. J. Heinz Co., at or near Pittsburgh, PA, to points in KS and MO, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. CONDITION: The certificate to be issued in this proceeding shall be limited to a period expiring 3 years from its date of issue, unless, prior to the expiration (but not less than 6 months prior to that time), applicant files a petition for permanent extension of the certificate. (Hearing site: Pittsburgh, PA.)

MC 114457 (Sub-457F), filed November 13, 1978. Applicant: DART TRANSIT COMPANY, a Corporation, 2102 University Ave., St. Paul, MN 55114. Representative: James H. Wills (Same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *containers and pulpboard*, from Cincinnati, OH, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Atlanta, GA, or St. Paul, MN.)

MC 115213 (Sub-5F), filed October 30, 1978. Applicant: ELLIOT AND FIKES TRUCK LINE, INC., P.O. Box 8827, Pine Bluff, AR 71611. Representative: Horace Fikes, Jr., 414 National Building, Pine Bluff, AR 71601. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *gypsum and gypsum products* (except commodities in bulk), and (2) *materials and supplies* used in the manufacture, installation, and distribution of the commodities in (1) above, (except commodities in bulk, in tank vehicles), between the facilities of Georgia-Pacific Corporation, Gypsum Division, at Cuba, MO, and points in AL, AR, GA, IL, IA, KS, KY, LA, MS, NE, OK, TN, and TX. (Hearing site: Little Rock, AR, or Memphis, TN.)

MC 115242 (Sub-16F), filed December 11, 1978. Applicant: DONALD MOORE, 601 North Prairie Street, Prairie du Chien, WI 53821. Representative: Michael S. Varda, 121 South Pinckney Street, Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lumber, posts, and ties*, (1) from Prairie du Chien, WI, to points in IL, IN, IA, MI, MN, MO, NE, ND, OH, and SD, and (2) from Janesville, WI, to the destination points in (1) above (except points in the Upper Peninsula of MI). (Hearing site: Madison, WI, or Chicago, IL.)

MC 115331 (Sub-465F), filed September 19, 1978, previously noticed in the FEDERAL REGISTER of December 12, 1978. Applicant: TRUCK TRANSPORT INCORPORATED, A Delaware Corporation, 29 Clayton Hills Lane, St. Louis, MO 63131. Representative: J. R. Ferris, 230 St. Clair Ave., East St. Louis, IL 62201. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *foundry sand, moulding sand, foundry and moulding sand additives, foundry and moulding sand treating compounds, coal*, and *such commodities* as are produced or distributed by producers of foundry sand and moulding sand, and, (2) *materials and supplies* used in the production and distribution of the commodities named in (1) above, between St. Louis, MO, on the one hand, and, on the other, points in AL, AR, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, OK, OH, TN, TX, and WI. (Hearing site: St. Louis, MO.)

NOTE.—This republication modifies the commodity description.

MC 115331 (Sub-473F), filed November 21, 1978. Applicant: TRUCK TRANSPORT INCORPORATED, a Delaware corporation, 29 Clayton Hills Lane, St. Louis, MO 63131. Representative: J. R. Ferris, 230 St. Clair Ave., East St. Louis, IL 62201. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *vegetable oils*, in bulk, in tank vehicles, from the facilities of Hunt-Wesson Foods, Inc., at or near Harvey, LA, to points in the United States (except AK and HI). (Hearing site: New Orleans, LA.)

MC 115557 (Sub-18F), filed November 6, 1978. Applicant: CHARLES A. McCAULEY, 308 Leasure Way, New Bethlehem, PA 16242. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *new furniture*, and (2) *materials, equipment, and supplies* used in the manufacture of new furniture, between Jamestown, NY, Brookville, Conneautville, Genesee, and Reno, PA, and points in Clarion County, PA, on the one hand, and, on the other, points in the United States, including AK and HI. (Hearing site: Washington, DC, or Pittsburgh, PA.)

MC 115648 (Sub-32F), filed December 22, 1978. Applicant: LOCK TRUCKING, INC., P.O. Box 278, Wheatland, WY 82001. Representative: Ward A. White, P.O. Box 568, Cheyenne, WY 82201. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *ore and concentrates*, from points in Converse and Platte Counties, WY, to points in Fremont County, CO. (Hearing site: Cheyenne, WY, or Denver, CO.)

MC 116645 (Sub-27F), filed December 26, 1978. Applicant: DAVIS TRANSPORT CO., a corporation, P.O. Box 56, Gilcrest, CO 80623. Representative: Leslie R. Kehl, 1660 Lincoln Street, Suite 1600, Denver, CO 80264. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *liquefied sugar, syrup, and sugar and syrup blends*, in bulk, (a) from points in Weld County, CO, to points in AZ, MT, ND, and SD, (b) from points in Weld County, CO (except Johnstown), to points in KS, MN, MO, NE, NM, OK, TX, UT, and WY, and (2) *sugar and syrup blends*, in bulk, from Johnstown, CO, to points in KS, MN, MO, NE, NM, OK, TX, UT, and WY. (Hearing site: Denver, CO.)

MC 117068 (Sub-106F), filed January 11, 1979. Applicant: MIDWEST SPECIALIZED TRANSPORTATION, INC., P.O. Box 6418, Rochester, MN 55901. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic articles, aluminum articles, and iron and steel articles*, between Plymouth, MN, and the facilities of Joseph T. Ryerson & Sons, Inc., at Chicago, IL. (Hearing site: Chicago, IL, or Washington, DC.)

MC 117589 (Sub-55F), filed November 28, 1978. Applicant: PROVISIONERS FROZEN EXPRESS, INC., P.O. Box 24507, Seattle, WA 98124. Representative: Michael D. Duppenthaler, 211 S. Washington, St., Seattle, WA 98104. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *canned food products* in mixed loads with frozen fruits, frozen berries, frozen vegetables, frozen potatoes, frozen potato products, and frozen seafood, from points in WA, OR, and ID, to Denver and Pueblo, CO and Salt Lake City, UT. (Hearing site: Seattle, WA, or Denver, CO.)

MC 117686 (Sub-225F), filed November 6, 1978. Applicant: HIRSCHBACH MOTOR LINES, INC., P.O. Box 417, Sioux City, IA 51102. Representative: George L. Hirschbach (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by grocery and food business houses (except frozen foods and commodities in bulk), from points in AZ and CA, to the facilities of Fairway Foods, Inc., at (a) Northfield, MN, and (b) Fargo, ND. (Hearing site: Minneapolis, MN, or Washington, DC.)

NOTE.—Dual operations are involved in this proceedings.

MC 117686 (Sub-226F), filed November 7, 1978. Applicant: HIRSCHBACH MOTOR LINES, INC., P.O. Box 417, Sioux City, IA 51102. Representative: George L. Hirschbach (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *bananas*, from Tampa, FL, to points in IA, IL, KS, MO, NE, and WI. (Hearing site: Miami, FL, or New Orleans, LA.)

NOTE.—Dual operations are involved in this proceedings.

MC 117686 (Sub-227F), filed November 8, 1978. Applicant: HIRSCHBACH MOTOR LINES, INC., P.O. Box 417, Sioux City, IA 51102. Representative: George L. Hirschbach (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *frozen foods*, and (2) *materials and suppies* used in the manufacture and distribution of frozen foods (except commodities in bulk), between the facilities of The Pillsbury Company, at or near Murfreesboro and Nashville, TN, on the one hand, and, on the other, points in AL, AR, FL, GA, IA, IL, KY, LA, MN, MO, MS, NC, SC, VA, and WI, restricted to the transportation of traffic originating at or destined to the above named facilities of The Pillsbury Company. (Hearing site: Minneapolis, MN, or Washington, DC.)

NOTE.—Dual operations are involved in this proceedings.

MC 117851 (Sub-27F), filed November 15, 1978. Applicant: JOHN CHEESEMAN TRUCKING, INC., 501 North First Street, Fort Recovery, OH 45846. Representative: Eirl N. Merwin, 85 East Gay Street, Columbus, OH 43215. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *water pumps, water softeners, and filters*, and (2) *accessories and parts* for the commodities named in (1) above, from Santa Fe Springs, CA, Union City, TN, Kaufman, TX, and Deerfield and Delavan, WI, to points in the United States (except AK and HI), and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) and (2) above, from the destination points named in (1) and (2) above, to the origin points named in (1) and (2) above, under continuing contract(s) with Sta-Rite Industries, Inc., of Delavan, WI. (Hearing site: Columbus, OH.)

MC 118142 (Sub-201F), filed December 12, 1978. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Brad T. Murphree, 814 Century Plaza Building, Wichita, KS 67202. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *pizza, pizza ingredients, and supplies* used in the manufacture and distribution of pizza and pizza ingredients, in vehicles equipped with mechanical refrigeration, between the facilities of Tony's Pizza Service, at or near Salina, KS, on the one hand, and, on the other, points in the United States (except AK, HI, and KS), restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Kansas City, MO, or Wichita, KS.)

NOTE.—Dual operations are involved in this proceeding.

MC 118202 (Sub-99F), filed December 8, 1978. Applicant: SCHULTZ TRANSIT, INC., P.O. Box 406, 323 Bridge Street, Winona, MN 55987. Representative: Eugene A. Schultz (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, 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 Farmland Foods, Inc., at Denison, Carroll, Iowa Falls, Sioux City, Fort Dodge, and Des Moines, IA, and Crete, Omaha, and Lincoln, NE, to points in MI, IN, KY, OH, WV, VA, NY, PA, MD, DE, NJ, VT, NH, ME, MA, CT, RI, and DC. (Hearing site: Minneapolis, MN, or Des Moines, IA.)

MC 119399 (Sub-87F), filed November 13, 1978. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, Joplin, MO 64801. Representative: Wilburn L. Williamson, 280 National Foundation Life Bldg., 3535 NW 58th St., Oklahoma City, OK 73112. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *dry prepared feed*, (except in bulk), from the facilities of Doane Products Company, in Jasper County, MO, to points in AL, AR, GA, MS, NM, and TN. (Hearing site: Kansas City or St. Louis, MO.)

MC 119741 (Sub-122F), filed November 16, 1978. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., an Illinois Corporation, 1515 Third Ave., NW, P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts*, and *articles distributed by meat-packing houses*, 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 in tank vehicles), from the facilities of Spencer Foods, Inc., at Schuyler and Fremont, NE, to points in OH and IN, restricted to the transportation of traffic originating at the above-named origin facilities and destined to the indicated destinations. (Hearing site: Omaha, NE.)

MC 119988 (Sub-180F), filed January 2, 1979. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *plumbing fixtures and plumbing supplies*, (2) *generator engines*, (3) *internal combustion engines*, and (4) *materials, equipment, and supplies* used in the manufacture and distrubution of the commodities in (1), (2), and (3) above, between the facilities of Kohler Company, in Sheboygan County, WI, on the one hand, and, on the other, points in the United States (except AK, HI, and WI). (Hearing site: Dallas, TX.)

NOTE.—Dual operations are involved in this proceeding.

MC 119991 (Sub-26F), filed November 19, 1978. Applicant: YOUNG TRANSPORT, INC., P.O. Box 3, Logansport, IN 46947. Representative: Warren C. Moberly, 777 Chamber of Commerce Bldg., Indianapolis, IN 46204. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *steel articles* from Auburn and Buffalo, NY, Cleveland, Toledo, and Marion, OH, Kokomo, IN, Chicago, IL, Knoxville, TN, and Mt. Airy, NC, to points in IA, IL, IN, KS, KY, MI, MO, NE, OH, PA, WI, and WV. (Hearing site: Indianapolis, IN, or Washington, DC.)

MC 120427 (Sub-23F), filed November 8, 1978. Applicant: WILLIAMS

TRANSFER, INC., P.O. Box 488, Grand Island, NE 68801. Representative: Kenneth F. Dudley, 611 Church St., P.O. Box 279, Ottumwa, IA 52501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *steel buildings, knocked down, grain drying equipment, grain storage equipment, grain handling equipment, and iron and steel articles*, and (2) *material, equipment*, and supplies used in the manufacture of grain drying equipment, grain storage equipment, and grain handling equipment, between points in the United States (except AK and HI), on the one hand, and, on the other, points in TX. (Hearing site: Houston, TX, or Omaha, NE.)

MC 120924 (Sub-3F), filed November 6, 1978. Applicant: B & W CARTAGE CO., INC., 2932 W. 79th St., Chicago, IL 60652. Representative: Carl L. Steiner, 39 S. La Salle St., Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *automobile parts*, from Grand Rapids, MI, to Chicago, IL, restricted to the transportation of traffic having a subsequent movement by rail. (Hearing site: Chicago, IL.)

MC 121664 (Sub-46F), filed November 6, 1978. Applicant: G. A. HORNADY, CECIL M. HORNADY, AND B. C. HORNADY, a partnership, d/b/a HORNADY BROTHERS TRUCK LINE, P.O. Box 846, Monroeville, AL 36460. Representative: Donald B. Sweeney, Jr., 603 Frank Nelson Building, Birmingham, AL 35203. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *steel coils, sheet steel, steel tubing, mufflers, and tail pipes*, between Monticello, AR, and Gadsden, Birmingham, Fayette, and Monroeville, AL. (Hearing site: Birmingham, AL, or Columbus, OH.)

MC 121664 (Sub-47F), filed November 6, 1978. Applicant: G. A. HORNADY, CECIL M. HORNADY, AND B. C. HORNADY, a partnership, d/b/a HORNADY BROTHERS TRUCK LINE, P.O. Box 846, Monroeville, AL 36460. Representative: Donald B. Sweeney, Jr., 603 Frank Nelson Building, Birmingham, AL 35203. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lumber*, from Nashville and Jackson, TN, to points in MS, AL, FL, GA, NC, and SC. (Hearing site: Birmingham, AL.)

MC 124408 (Sub-11F), filed January 3, 1979. Applicant: THOMPSON BROS., INC., 3604 Hoveland Drive, Sioux Falls, SD 57101. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by (a) hardware stores, (b) drug stores, (c) discount stores, (d) department stores, and (e) supermarkets, (except commodities in bulk, in tank vehicles), from the facilities of Action Industries, Inc., at or near Cheswick, PA, to points in AR, AL, AZ, CA, CO, ID, IL, IA, KS, KY, LA, MN, MS, MO, MT, NE, NV, NM, ND, OK, OR, TN, TX, UT, WA, WI, and WY. (Hearing site: Pittsburgh, PA, or St. Paul, MN.)

NOTE.—Dual operations are involved in this proceeding.

MC 124692 (Sub-260F), filed December 8, 1978. Applicant: SAMMONS TRUCKING, a Corporation, P.O. Box 4347, Missoula, MT 59806. Representative: J. David Douglas (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *precast concrete modular mausoleum crypt systems*, from Denver, CO, to points in NE, MT, KS, UT, SD, ND, WY, OR, WA, CA, ID, AZ, NM, OK, and TX. (Hearing site: St. Paul, MN.)

MC 124711 (Sub-71F), filed November 15, 1978. Applicant: BECKER CORPORATION, P.O. Box 1050, El Dorado, KS. Representative: T. M. Brown, P.O. Box 1540, Edmond, OK 73034. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum* and *petroleum products*, in bulk, between points in KS, on the one hand, and, on the other, points in OK, those points in TX on and north of Interstate Hwy 40, and those points in AR on and north of Interstate Hwy 40. (Hearing site: Oklahoma City, OK, or Wichita, KS.)

MC 124947 (Sub-121F), filed November 6, 1978. Applicant: MACHINERY TRANSPORTS, INC., an Oklahoma Corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: David J. Lister (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *heating and cooling systems*, and (2) *parts, attachments, and accessories* for the commodities in (1) above, (except commodities in bulk), from Stuttgart, AR, to points in the United States (except AK, AR, and HI). (Hearing site: Chicago, IL, or Salt Lake City, UT.)

MC 125335 (Sub-47F), filed December 29, 1978. Applicant: GOOD-WAY, INC., a Maryland corporation, P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *cheese and cheese products*, from the facilities of Borden Foods, Division of Borden, Inc., at or near Plymouth, WI, to points in AL, GA, FL, TN, NC, SC, NY, NJ, PA, VA, DE, MD, CT, MA, ME, NH, VT, RI, WV, and DC. (Hearing site: Columbus, OH, or Harrisburg, PA.)

NOTE.—Dual operations are involved in this proceeding.

MC 125335 (Sub-48F), filed December 29, 1978. Applicant: GOOD-WAY, INC., a Maryland corporation, P.O. Box 2283, York, PA 17405. Representative Gailyn L. Larsen, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *confectionery*, from the facilities of Falcon Candy Co., at or near Philadelphia, PA, to points in TX. (Hearing site: Philadelphia or Harrisburg, PA.)

NOTE.—Dual operations are involved in this proceeding.

MC 125708 (Sub-157F), filed December 20, 1978. Applicant: THUNDERBIRD MOTOR FREIGHT LINES, INC., 425 West 152nd Street, East Chicago, IN 46312. Representative: Anthony C. Vance, 1307 Dolley Madison Blvd., McLean, VA 22101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *magnesium granules*, in containers, from Freeport, TX, to the port of entry on the International Boundary line between the United States and Canada at Sault Ste. Marie, MI; and (2) *containers*, from Sault Ste. Marie, MI, to Freeport, TX. (Hearing site: Chicago, IL.)

MC 128007 (Sub-131F), filed November 8, 1978. Applicant: HOFER, INC., P.O. Box 583, Pittsburg, KS 66762. Representative: Larry E. Gregg, 641 Harrison St., Topeka, KS 66603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *ammonium nitrate*, in bulk, from the facilities of Gulf Oil Chemicals Company, at or near Military, KS, to points in AR, CO, IA, MO, NE, OK, and TX. (Hearing site: Kansas City, MO, or Wichita, KS.)

MC 128555 (Sub-27F), filed December 29, 1978. Applicant: MEAT DISPATCH, INC., a Delaware Corporation, 2103 17th Street, East, Palmetto, FL 33561. Representative Robert D. Gunderman, 710 Statler Building, Buffalo, NY 14202. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *air conditioners, furnaces, and space heat-*

ers, and (2) *materials, equipment, and supplies* used in the manufacture, sale, and distribution of the commodities named in (1) above, (a) from Granada, MS, Jonesville, MI, Evansville, IN, Somerset, KY, and Garland, TX, to Orlando, FL and (b) from Orlando, FL, to Philadelphia, PA, and Kansas City, MO, under continuing contract(s) with Weatherking, Inc., of Orlando, FL. (Hearing site: Buffalo, NY.)

MC 129032 (Sub-67F), filed December 8, 1978. Applicant: TOM INMAN TRUCKING, INC., 6015 South 49th West Avenue, Tulsa, OK 74107. Representative David R. Worthington, (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *nutritional food supplements* (except commodities in bulk), from the facilities of Shaklee Corporation, at or near Norman, OK, to points in the United States (except AK and HI); and (2) *materials* used in the manufacture of nutritional food supplements (except commodities in bulk), from points in the United States (except AK and HI), to the facilities of The Shaklee Corporation, at or near Norman, OK. (Hearing Site: San Francisco or Los Angeles, CA.)

MC 133655 (Sub-138F), filed December 22, 1978. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amerillo, TX 79120. Representative: Warren L. Troupe, 2480 East Commercial Blvd., Fort Lauderdale, FL 33308. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *paper and paper products*, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk), between the facilities of Container Corporation of America, at or near Ft. Worth, TX, on the one hand, and, on the other, points in AR, IL, IN, KS, LA, MD, MA, MI, MS, MO, OH, OK, PA, RI, NE, NJ, NY, and WI. (Hearing site: Chicago, IL.)

MC 133708 (Sub-37F), filed January 2, 1979. Applicant: FIKSE BROS., INC., 12647 East South St., Artesia, CA 90710. Representative: R. Y. Schureman, 1545 Wilshire Blvd., Los Angeles, CA 90017. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *cement*, in bulk, from San Diego, CA, to points in AZ. (Hearing site: Los Angeles, CA.)

MC 134145 (Sub-71F), filed December 22, 1978. Applicant: NORTH STAR TRANSPORT, INC., Rt. 1, Highway 1 and 59 West, Thief River Falls, MN 56701. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. To operate as a *contract carrier*, by motor vehicle, in foreign commerce only over irregular routes, transporting *athletic goods, batteries, purses, and alcoholic beverages*, from New York, NY, to Minneapolis, MN, under continuing contract(s) with Control Data Corporation, of Minneapolis, MN. (Hearing site: St. Paul, MN.)

NOTE.—Dual operations are involved.

MC 134145 (Sub-72F), filed December 28, 1978. Applicant: NORTH STAR TRANSPORT, INC., Route 1, Highway 1 and 59 West, Thief River Falls, MN 56701. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *computing machine paper and paper forms*, between the plant-sites of Control Data Corporation, at (a) Merced, CA, (b) Arlington, TX, (c) Lincoln, ME, and (d) Manchester, CT, under continuing contract(s) with Control Data corporation, of Minneapolis, MN. (Hearing site: St. Paul, MN.)

NOTE.—Dual operations are involved.

MC 134084 (Sub-6F), filed November 6, 1978. Applicant: SHROCK TRUCKING, INC., P.O. Box 428, Hubbard, OR 97032. Representative: Lawrence V. Smart, Jr., 419 Northwest 23rd Avenue, Portland, OR 77210. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lumber*, (1) from Longview and Everett, WA, to Springfield, OR, and points in Marion, Clackamas, Yamhill, and Washington Counties, OR, and (2) from points in Clackamas County, OR, to points in Clark and Cowlitz Counties, WA. (Hearing site: Portland, OR.)

MC 134477 (Sub-284F), filed November 14, 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. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, 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 MBPXL Corporation, at or near Dodge City, KS, to those points in the United States in and east of ND, SD, NE, CO, OK, and TX (except KS), restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: St. Paul, MN.)

MC 136318 (Sub-57F), filed November 13, 1978. Applicant: COYOTE TRUCK LINE, INC., a Delaware corporation, P.O. Box 756, Thomasville, NC 27360. Representative: David R. Parker, 717 Seventeenth Street, Suite 2600, Denver, CO 80202. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *television sets, radios, phonographs, stereo systems, recorders, players, recorded material, television stands, speaker systems, and audio equipment*, (2) *accessories, components, and parts* for the commodities in (1) above, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between points in OR and WA, on the one hand, and, on the other, points in CA and IN, restricted in (2) and (3) above against the transportation of commodities in bulk, in tank vehicles, under continuing contract(s) in (1), (2), and (3) with RCA, of Cherry Hill, NJ. (Hearing site: Denver, CO.)

MC 136464 (Sub-41F), filed November 7, 1978. Applicant: CAROLINA WESTERN EXPRESS, INC., Box 3961, Gastonia, NC 28052. Representative: Eric Meierhoefer, Suite 423, 1511 K Street, NW., Washington, DC 20005. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *textiles and textile products*, (a) from Aberdeen and Hickory, NC, and Clemson and Greenville, SC, to points in OK, NM, UT, NV, AZ, CO, WA, and OR, (b) from Aberdeen and Hickory, NC, to points in CA, and (c) between Seattle, WA, and Los Angeles, CA, under continuing contract(s) with J. P. Stevens & Co., Inc., of New York, NY. (Hearing site: Greensboro, NC.)

NOTE.—Dual operations are involved.

MC 136611 (Sub-3F), filed November 21, 1978. Applicant: RED & WHITE MARKET & TRANSFER, INC., 1214 East South St., Hastings, NE 68901. Representative: Lavern R. Holdeman, 521 South 14th St., P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from points in OH, PA, and WV, to Hastings, NE, restricted to the transportation of traffic originating at the indicated origins and destined to the named destination point. (Hearing site: Hastings or Lincoln, NE.)

MC 136786 (Sub-143F), filed November 6, 1978. Applicant: ROBCO TRANSPORTATION, INC., a Minnesota corporation, 4333 Park Ave., Des Moines, IA 50321. Representative: William L. Libby, 7525 Mitchell Rd., Eden Prairie, MN 55344. To operate as a

common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *animal feed*, and *feed supplements and additives*, and (2) *materials and supplies* used in the manufacture of animal feed (except commodities in bulk), between the facilities of Kal Kan Foods, Inc., at or near Mattoon, IL, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Minneapolis, MN.)

MC 138824 (Sub-18F), filed November 6, 1978. Applicant: REDWAY CARRIERS, INC., 5910 49th Street, Kenosha, WI 53140. Representative: Paul J. Maton, 10 South La Salle St., Rm. 1620, Chicago, IL 60603. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *food products*, in containers, and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, between the facilities of Ocean Spray Cranberries, Inc., (a) in Kenosha County, WI, and (b) at North Chicago, IL, on the one hand, and, on the other, points in AR, MN, KS, and those points in MO west of U.S. Hwy 65, including Springfield, MO. (Hearing site: Chicago, IL.)

MC 138826 (Sub-5F), filed November 9, 1978 Applicant: JERALD HEDRICK, d.b.a. HEDRICK & SON TRUCKING, R.R. No. 1, Warren, IN 46792. Representative: Robert A. Kriscunas, 1301 Merchants Plaza, Indianapolis, IN 46204. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *soybean meal*, in bulk, from the facilities of Cargill, Inc., at or near Sidney, OH, to points in NC, TN, KY, IL, WI, MI, IN, OH, VA, WV, MD, PA, DE, NJ, NY, CT, RI, MA, VT, NH, ME, and DC. (Hearing site: Indianapolis, IN or Chicago, IL.)

MC 138875 (Sub-123F), filed December 26, 1978. Applicant: SHOEMAKER TRUCKING COMPANY, a corporation, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *laminated wooden beams*, from the facilities of Glu-Laminated Wood Systems, Inc., at or near Magna, UT, to points in AZ, CA, CO, ID, MI, NM, NV, TX, and WY. (Hearing site: Salt Lake City, UT, or Washington, DC.)

MC 140241 (Sub-35F), filed November 16, 1978. Applicant: DALKE TRANSPORT, INC., Box 7, Moundridge, KS 67107. Representative: William B. Barker, 641 Harrison St., Topeka, KS 66603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *precut log buildings*, knocked down, between Chadron, NE, Brainerd, MN, and Malin, OR, on the one hand, and, on the other, points in the United States (except AK and HI); and (2) *materials and supplies* used in the manufacture of the commodities in (1) above (except commodities in bulk), from points in the United States (except AK and HI), to Chadron, NE, Brainerd, MN, and Malin, OR, restricted in (1) and (2) to the transportation of traffic originating at the named origins and destined to the named destinations. (Hearing site: Kansas City, MO.)

MC 140447 (Sub-1F), filed November 9, 1078. Applicant: BOYCE HOWARD, d.b.a. BOYCE HOWARD TRUCKING, Highway 67, Newport, AR 72112. Representative: Thomas J. Presson, P.O. Box 71, Redfield, AR 72132. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *steel borings and steel turnings*, in bulk, in dump vehicles, from Batesville and Pocahontas, AR, to points in AL, KS, KY, LA, MO, MS, OK, TN, and TX. (Hearing site: Little Rock, AR, or Memphis, TN.)

MC 141124 (Sub-33F), filed November 6, 1978. Applicant: EVANGELIST COMMERCIAL CORPORATION, P.O. Box 1709, Wilmington, DE 19899. Representative: Boyd B. Ferris, 50 West Broad Street, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper and paper products*, (except commodities in bulk), from the facilities of The Mead Corporation at Lynchburg, VA, to points in MI and OH. (Hearing site: Columbus, OH, or Washington, DC.)

MC 141312 (Sub-6F), filed December 11, 1978. Applicant: DOKTER TRUCKING CORP., P.O. Box 408, Weeping Water, NE 68463. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *cement*, from Kansas City, MO, and points in KS, to Lincoln, NE, under continuing contract(s) with NEBCO, Inc., of Lincoln, NE. (Hearing site: Lincoln or Omaha, NE.)

MC 141921 (Sub-33F), filed November 16, 1978. Applicant: SAV-ON TRANSPORTATION, INC., 143 Frontage Rd., Manchester, NH 03108. Representative: John A. Sykas (Same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *plastic film* and *plastic sheeting*, and (2) *materials, equipment, and supplies* used in the distribution and sale of the commodities named in (1) above, (except commodities in bulk, in tank vehicles), (a) from the facilities of Borden Chemical at or near North Andover, MA, to points in PA, WV, OH, IN, MI, KY, GA, WI, IL, MO, IA, MN, SD, NE, CA, KS, and CO, and (b) from the facilities of Borden Chemical at or near Griffin, GA, to points in PA, WV, MA, OH, IN, MI, KY, WI, IL, MO, IA, MN, SD, NE, CA, KS, and CO, restricted in (a) and (b) to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations (except on traffic moving in foreign commerce). (Hearing site: Concord, NH, or Boston, MA.)

NOTE.—Dual operations may be involved.

MC 143127 (Sub-19F), filed November 9, 1978. Applicant: K. J. TRANSPORTATION, INC., 1000 Jefferson Road, Rochester, NY 14623. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *beet sugar and cane sugar*, (except raw sugar, and commodities in bulk, in tank vehicles), from the facilities of Food Packaging, Inc., at or near Xenia, OH, to points in Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Cortland, Erie, Monroe, Onondaga, and Oswego Counties, NY. (Hearing site: Philadelphia, PA, or Rochester, NY.)

MC 143254 (Sub-3F), filed November 6, 1978. Applicant: BOSTON CONTRACT CARRIER, INC., a Vermont corporation, P.O. Box 68, Brookline, MA 02167. Representative: Alan Bernson (Same address as applicant). To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *electric light bulbs*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of electric light bulbs, between the facilities of GTE Sylvania Incorporated, in Essex County, MA, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with GTE Sylvania Incorporated, of Danvers, MA. (Hearing site: Boston, MA, or Washington, DC.)

MC 143331 (Sub-4F), filed November 17, 1978. Applicant: FREIGHT TRAIN TRUCKING, INC., 4906 E. Compton Blvd., P.O. Box 817, Paramount, CA 90723. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting *plastic bottle car-*

riers, and *can carriers,* from Fullerton, CA, to Portland, OR, and points in CO and WA under a continuing contract(s) with Hi-Cone Division, Illinois Tool Works, Inc., of Fullerton, CA. (Hearing site: Los Angeles, CA.)

MC 143530 (Sub-1F), filed October 18, 1978. Applicant: WOLF'S TOWING, INC., Routes 80 and 51, Peru, IL 61354. Representative: John S. Duncan, P.O. Box 515, La Salle, IL 61301. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *wrecked and disabled motor vehicles,* and (2) *replacement vehicles for the commodities named in (1),* between Peru, Cedar Point, and Dixon, IL, on the one hand, and, on the other, points in IN, IA, MN, MO, and WI. (Hearing site: Springfield or Rockford, IL.)

MC 143607 (Sub-3F), filed November 7, 1978. Applicant: BAYWOOD TRANSPORT, INC., a Delaware Corporation, P.O. Box 8155, Waco, TX 76710. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals,* (except commodities in bulk), from points in the United States (except AK and HI), to Arlington, San Antonio, and Houston, TX, under continuing contract(s) with Accron Chemical Distr., of Arlington, TX. (Hearing site: Houston or Dallas, TX.)

MC 143607 (Sub-4F), filed November 7, 1978. Applicant: BAYWOOD TRANSPORT, INC., a Delaware Corporation, P. O. Box 8155, Waco, TX 76710. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St. NW., Washington, DC 20001. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *textiles and textile products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), from points in the United States (except AK and HI), to Del Rio, Eagle Pass, and Carrizo Springs, TX, under continuing contract(s) with Salant Corporation, of El Paso, TX. (Hearing site: El Paso or Dallas, TX.)

MC 143691 (Sub-14F), filed November 13, 1978. Applicant: PONY EXPRESS COURIER CORPORATION, P.O. Box 4313, Atlanta, GA 30302. Representative: Francis J. Mulcahy (Same address as applicant). To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *commercial papers, documents, written instruments, business records, accounting media, data processing media, microfilm, microfiche,* and *microforms,* between Kansas City, MO, on the one hand, and, on the other, points in KS, under continuing contract(s) with banks, banking institutions, and data processing centers. (Hearing site: Kansas City, MO.)

MC 144041 (Sub-27F), filed November 13, 1978. Applicant: DOWNS TRANSPORTATION CO., INC., 2705 Canna Ridge Circle, NE, Atlanta, GA 30345. Representative: K. Edward Wolcott, 1200 Gas Light Tower, 235 Peachtree St., NE, Atlanta, GA 30303. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *electrical equipment and electrical parts,* from West Hazleton, PA, to the facilities of Sarama Lighting, at or near College Park, GA. (Hearing site: Philadelphia, PA, or Washington, DC.)

NOTE.—Dual operations may be involved.

MC 144448 (Sub-4F), filed January 2, 1979. Applicant: HERMAN STEFFENSMEIER, d/b/a HERMAN STEFFENSMEIER TRUCKING, 811 E. Decatur Street, West Point, NE 68788. Representative: Steven K. Kuhlman, P.O. Box 82028, Lincoln, NE 68501. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *soybean meal* (except in bulk, in tank vehicles), from the facilities of Grain States Soya, Inc., at or near West Point, NE, to points in KS and MO. (Hearing site: Lincoln, NE.)

MC 144678 (Sub-2F), filed December 26, 1978. Applicant: AMERICAN FREIGHT SYSTEM, INC., a Delaware corporation, 9393 W. 110th Street, Fifth Floor, Overland Park, KS 66210. Representative: Harold H. Clokey (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Spartan Packaging, Inc., at or near Lawrenceville, GA, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 144702 (Sub-1F), filed November 8, 1978. Applicant: ASHEVILLE-NEW YORK MOTOR EXPRESS, INC., Box 9907, Asheville, NC 28805. Representative: Eric Meierhoefer, Suite 423, 1511 K Street, NW, Washington, DC 20005. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *textiles and textile products,* and (2) *materials and supplies* used in the manufacture and sale of the commodities in (1) above, between New York, NY, on the one hand, and, on the other, points in NC. (Hearing site: Asheville, NC.)

MC 144747 (Sub-3F), filed November 6, 1978. Applicant: INTERSTATE EQUIPMENT CO., INC., 22821 N. 81st Avenue, Peoria, AZ 85345. Representative: Lewis P. Ames, 10th Floor, 111 West Monroe, Phoenix, AZ 85003. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *(I) materials, equipment, and supplies* used in the manufacture of wooden flush doors (except commodities in bulk), (1) from points in the United States (except AK and HI), to the facilities of Walled Lake Door Company, at (a) Tupelo, MS, (b) Cameron, TX, (c) Mobile, AL, and (d) Orange, CA, and (2) between the facilities of Walled Lake Door Company, at (a) Tupelo, MS, (b) Cameron, TX, (c) Mobile, AL, and (d) Orange, CA, and *(II) wooden flush doors and parts* for wooden flush doors, (a) from the facilities of Walled Lake Door Company, at Tupelo, MS, to points in AL, FL, GA, IA, IL, IN, MI, MN, NC, OH, SC, and WI, (b) from the facilities of Walled Lake Door Company at Orange, CA, to points in AZ, CO, NM, NV, OR, UT, and WA, (c) from the facilities of Walled Lake Door Company at Cameron, TX, to points in AR, CO, IA, IL, KS, MN, MO, NE, ND, OK, and SD, and (d) from the facilities of Walled Lake Door Company at Mobile, AL, to points in CO, FL, GA, ID, IL, IN, KS, LA, MN, NE, ND, OH, OK, PA, SD, TX, and WI, in (1) and (2) above under continuing contract(s) with Walled Lake Door Co., of Phoenix, AZ. (Hearing site: Phoenix, AZ.)

MC 144827 (Sub-14F), filed November 7, 1978. Applicant: DELTA MOTOR FREIGHT, INC., 2877 Farrisview, Box 18423, Memphis, TN 38118. Representative: Billy R. Hallum (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities,* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from New York, NY, to Dallas, Houston, and San Antonio, TX, restricted to the transportation of traffic moving on bills of lading of freight forwarders. (Hearing site: Dallas, TX.)

MC 144827 (Sub-15F), filed November 13, 1978. Applicant: DELTA MOTOR FREIGHT, INC., 2877 Far-

risview, Box 18423, Memphis, TN 38118. Representative: Billy R. Hallum (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities*, (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from New York, NY, to Memphis, TN, restricted to the transportation of traffic moving on bills of lading of freight forwarders. (Hearing site: Memphis, TN.)

MC 145086 (Sub-2F), filed November 2, 1978. Applicant: C. HENDERSON TRUCKING, INC., 8 Ruth St., East Brunswick, NJ 08816. Representative: A. Dayton Schell, 6 Eileen Way, Edison, NJ 08817. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting (1) *wallpaper pulp coloring, dry paint, paste paint, and carbon black*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, between the facilities of Wilson Products Company, at Neshanic, NJ, on the one hand, and, on the other, points in CT, DE, GA, IL, IN, LA, MA, MD, ME, MI, NC, NH, NJ, NY, OH, PA, RI, TX, VT, VA, and WV, under continuing contracts with Wilson Products Company, of Neshanic, NJ. (Hearing site: Newark, NJ, or New York, NY.)

MC 145185 (Sub-1F), filed January 2, 1979. Applicant: DONALD L. DOYEN, d/b/a Doyen & Sons, 509 No. Smith, Clark, SD 57225. Representative: M. Mark Menard, P.O. Box 480, Sioux Falls, SD 57101. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *french fried potatoes*, from Clark, SD, to Watertown and Sioux Falls, SD, restricted to the transportation of traffic having a subsequent movement by rail, under continuing contract(s) with Midwest Foods Corporation, of Clark, SD. (Hearing site: Sioux Falls, SD, or Sioux City, IA.)

MC 145375 (Sub-1F), filed December 29, 1978. Applicant: H. D. EDGAR TRUCKING COMPANY, INC., Route 1, Box 48, Opp, AL 36467. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street, N.W., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *wheels, toys, juvenile furniture, and outdoor playground equipment*, from Dothan, AL, to points in CA, WA, OR, NV, UT, ID, MT, CO, NM, WY, and AZ. (Hearing site: Birmingham, AL.)

MC 145441 (Sub-4F), filed November 17, 1978. Applicant: A. C. B. TRUCKING, INC., An Indiana Corporation, I-40 & Protho Junction, P.O. Box 5130, North Little Rock, AR 72119. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts*, 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 MBPXL Corporation, at or near Dodge City, KS, to points in AL, AZ, CA, CT, DE, FL, GA, ID, IL, IN, KY, LA, ME, MD, MA, MI, MS, NV, NH, NJ, NY, NC, OH, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI, and DC, restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: Dallas, TX.)

NOTE.—Dual operations may be involved.

MC 145468 (Sub-1F), filed January 2, 1979. Applicant: K.S.S. TRANSPORTATION CORP., Route 1 and Adams Station, P.O. Box 3052, North Brunswick, NJ 08902. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts*, 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 Sioux City, IA, Worthington, MN, and Huron, SD, to points in AL, FL, GA, KY, LA, MS, NC, SC, and TN. (Hearing site: Phoenix, AZ, or Omaha, NE.)

NOTE.—Dual operations may be involved.

MC 145468 (Sub-2F), filed December 26, 1978. Applicant: K.S.S. TRANSPORTATION CORP., P.O. Box 3052, Route 1 and Adams Station, North Brunswick, NJ 08902. Representative: Bernard J. Kompare, 10 S. LaSalle Street, Suite 1600, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts*, 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 Wilson Foods Corporation, at Des Moines, IA, to points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, and DC, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Chicago, IL.)

NOTE.—Dual operations may be involved.

MC 145565 (Sub-2F), filed January 3, 1979. Applicant: C. D. BRESHEARS, d.b.a. J & B SERVICES, 1307 So. Lincoln, Casper, WY 82601. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *equipment and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum, and their products and byproducts, (except oil drilling rigs), between points in WY, ND, UT, CO, MT, and ID. (Hearing site: Casper or Cheyenne, WY.)

MC 145595 (Sub-2F), filed January 10, 1979. Applicant: WARREN G. GORMLEY, d.b.a. GORMLEY TRUCKING, 1607 W. Swan, Springfield, MO 65807. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk), (1) from Kansas City, MO, to points in AZ, AR, LA, NM, OK, and TX, and (2) from Bonner Springs, KS, to points in AZ, AR, LA, NM, MO, OK, and TX. (Hearing site: Kansas City, MO.)

MC 145694F, filed November 2, 1978. Applicant: C & P CONTRACT CARRIERS, INC., 10670 Los Jardines, Fountain Valley, CA 92708. Representative: Eric Meierhoefer, Suite 423, 1511 K Street, NW, Washington, DC 20005. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, transporting *agricultural chemicals* (except in bulk), between points in CA, NV, AZ, NM, KS, OK, TX, AL, MO, AR, LA, TN, MS, FL, GA, NC, SC, VA, WV, MD, DE, NJ, NY, PA, and DC, under continuing contract(s) with Helena Chemical Company, of Memphis, TN. (Hearing site: Memphis, TN, or Los Angeles, CA.)

MC 145700F, filed November 2, 1978. Applicant: TIGATOR, INC., d.b.a. TIGATOR TRUCKING SERVICE, 8686 Anselmo Lane, P.O. Box 1748, Baton Rouge, LA 70821. Representative: J. H. Campbell, Jr. (same address as applicant). To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *beef*, in boxes, from Amerillo, TX, to Baton Rouge, LA; and (2) *frozen orange juice concentrate*, from points in FL, to Baton Rouge, LA, under continuing contract(s) with Associated Grocers, Inc., of Baton Rouge, LA. (Hearing site: New Orleans, LA, or Dallas, TX.)

MC 145711 (Sub-1F), filed November 16, 1978. Applicant: KEYSTONE TRANSPORTATION, INC., 3400 Oakcliff Rd. Atlanta, GA 30340. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd, NE, Atlanta, GA 30326. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *inorganic mineral fillers*, and (2) *materials, equipment, and supplies* used in the manufacture, distribution, and sale of inorganic mineral fillers, between the facilities of Solem Industries, Inc., at or near (a) Benton, AR, and (b) Fairmount, GA, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Solem Industries, Inc., of Atlanta, GA. (Hearing site: Atlanta, GA.)

MC 145766F, filed November 9, 1978. Applicant: OREN TRANSPORT, INC., P.O. Box 2446, Muncie, IN 47302. Representative: Edward W. Harris, III, 1100 Merchants Bank Building, Indianapolis, IN 46204. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (*1*) *insulating materials, and* (*2*) *equipment, materials, and supplies* used in the manufacture, distribution, and installation of insulating materials, between the facilities of Oren Corporation, at (a) Muncie, IN. (b) Atlanta, GA, and (c) Binghamton, NY, on the one hand, and, on the other, points in CO, and those in the United States in and east of MN, IA, MO, KS, OK, and TX, under continuing contract(s) with Oren Corporation, of Muncie, IN. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 145774F, filed November 7, 1978. Applicant: Arthur E. Johnston and Michael A. Johnston, a partnership, d.b.a. JOHNSTON TRUCKING, P.O. Box 325, Spearfish, SD 57783. Representative: J. Maurice Andren, 1734 Sheridan Lake Road, Rapid City, SD 57701. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting such *commodities* as are dealt in or used by dealers and servicers of water wells, between points in CO, MT, NE, ND, SD, UT, and WY, on the one hand, and, on the other, points in CO, CA, ID, IL, KS, MN, MO, MT, NE, NM, ND, OK, SD, TX, UT, WI, and WY, under continuing contract(s) with Great West Pump Co., of Upton, WY. (Hearing site: Spearfish, SD, or Upton, WY.)

NOTE.—Dual operations may be involved.

MC 145835 (Sub-1F), filed December 26, 1978. Applicant: TODAY CARTAGE, INC., Rt. 2, Box 49B, Plano, IL 60545. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *sand*, in bulk, from points in LaSalle County, IL, and Berrien County, MI, to points in AL, AR, CT, DE, FL, GA, IL, IN, KS, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, and WI. (Hearing site: Chicago, IL.)

MC 145922F, filed December 12, 1978. Applicant: WRIGHT TRUCKING, INC., Rt. 1, Box 116, Coalville, UT 84017. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. To operate as a *contract carrier* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *acids and chemicals*, and *equipment, materials, and supplies* used in the manufacture and distribution of acids and chemicals (except commodities in bulk), between points in CA, NV, UT, ID, and WY, under continuing contracts with Chemopharm Company and Dychem International, or Salt Lake City, UT. (Hearing site: Salt Lake City, UT.)

MC 145955F, filed December 21, 1978. Applicant: CENTRAL TRUCK SERVICE, INC., 4440 Buckingham Drive, Omaha, NE 68107. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *packing-house products, and equipment, materials, and supplies*, used in the manufacture and distribution of packing-house products, between Chicago, IL, on the one hand, and, on the other, Sioux City, IA, and Omaha, NE, and (2) *meats, meat products and meat by-products, and articles distributed by meat-packing houses*, 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 chemicals, chemical compounds, emulsifiers, fatty acids, greases, glycerine, hides, pelts, lard, lard compounds, lard substitutes, oils, tallow, vegetable oils, and vegetable oil shortenings), (a) from the facilities of E. W. Kneip, Inc., at or near Wahoo, NE, to Aurora and Chicago, IL, and (b) from the facilities of E. W. Kneip, Inc., at Omaha, NE, to Aurora, IL. CONDITION: Prior or coincidental cancellation, at applicant's written request, of its Permit in MC-59694, issued October 9, 1964, and MC-59694 (Sub-No. 7), issued December 10, 1970. (Hearing site: Omaha, NE.)

MC 145958 (Sub-1F), filed January 2, 1979. Applicant: STELLA AND WRIGHT, INC., d.b.a.-M & M WAREHOUSE, 1655 W. 31st Place, Hialeah, FL 33010. Representative: Richard B. Austin, Suite 214, Palm Coast II Bldg., 5255 N.W. 87th Avenue, Miami, FL 33178. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *new crated furniture and new crated household fixtures*, and (2) *new uncrated furniture and new uncrated household fixtures*, when moving in mixed shipments with the commodities in (1) above, between the facilities of M & M Warehouse, at or near Miami, FL, on the one hand, and, on the other, points in Dade, Broward, and Palm Beach Counties, FL. (Hearing site: Miami, FL.)

MC 145995F, filed January 4, 1979. Applicant: FRANK KEELER, 4717 164th SW., Lynnwood, WA 98036. Representative: Frank Keeler (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum and petroleum products* in containers, between points in CA, OR, and WA. (Hearing site: Seattle, WA.)

PASSENGER AUTHORITY

MC 146028F, filed December 18, 1978. Applicant: LEWIS BUS LINE LIMITED, 99 Beech Street, Aylmer, Ontario, Canada N5H 1A2. Representative: Robert D. Gunderman, 710 Statler Bldg., Buffalo, NY 14202. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, in round-trip tours, beginning and ending at points on the international boundary line between the United States and Canada, and extending to points in the United States (including AK, but excluding HI). (Hearing site: Buffalo, NY.)

FF 514F, filed November 8, 1978. Applicant: Southern Pacific Marine Transport, Inc., a Delaware corporation, One California Street, Suite 2760, San Francisco, CA 94111. Representative: John MacDonald Smith, 813 Southern Building, One Market Plaza, San Francisco, CA 94105. To operate as a *freight forwarder*, in foreign commerce only, through the use of the facilities of common carriers by rail, motor, and water, in the transportation of *general commodities* (except articles of unusual value, classes A and B explosives, and household goods as defined by the Commission), between points in the United States (including AK, but excluding HI), on the one hand, and, on the other, points in WA, OR, CA, TX, LA, AL, FL, SC, NC, VA, DE, NJ, PA, NY, and MA, restricted to the transportation of traffic having a

prior or subsequent movement by water in foreign commerce. (Hearing site: San Francisco, CA.)

[FR Doc. 79-4190 Filed 2-7-79; 8:45 am]

[7035-01-M]

[Exemption No. 156]

PROVIDENCE AND WORCESTER CO.

Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

TO ALL RAILROADS:

It appearing, That the railroad named below owns numerous sixty-foot plain boxcars; that under present conditions there are substantial surpluses of these cars on its lines; that return of these cars to the owner would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owner; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, sixty-foot plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 410, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", and bearing reporting marks assigned to the railroad named below, shall be exempt from provisions of Car Service Rules 1, 2(a) and 2(b).

PROVIDENCE AND WORCESTER COMPANY
REPORTING MARKS: PW

Effective February 1, 1979, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., January 26, 1979.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 79-4375 Filed 2-7-79; 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)

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[6320-01-M]

1

[M-193, Amdt. 1; Feb. 2, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of items to the February 7, 1979, meeting agenda.

TIME AND DATE: 10 a.m., February 7, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

5a. Docket 33113: Draft final rules on advance notice for tariffs, and deadlines for complaints and answers regarding tariff suspension (OGC).

5a. Notices of rulemaking on intrastate fares and routes and Mainland-Hawaii fares. (Memo 7847-K, 7847-L, BPDA, OGC, BCP).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMTARY INFORMATION: Items 5a and 5b are being added because existing Board rules conflict with the Airlines Deregulation Act of 1978. The subject rulemaking is necessary to end that conflict and should go into effect as soon as possible. Accordingly, the following Members have voted that agency business requires the addition of Items 5a and 5b to the February 7, 1979 agenda and that no earlier announcement of these additions was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-268-79 Filed 2-6-79; 3:52 pm]

[6335-01-M]

2

COMMISSION ON CIVIL RIGHTS.

DATE AND TIME: Wednesday, February 7, 1979.

PLACE: Room 800, 1121 Vermont Avenue NW., Washington, D.C.

STATUS: Meeting is cancelled.

CONTACT PERSON FOR MORE INFORMATION:

Loretta Ward, 202-254-6697.

[S-263-79 Filed 2-6-79; 3:03 pm]

[6335-01-M]

3

COMMISSION ON CIVIL RIGHTS.

DATE AND TIME: Monday, February 12, 1979, 9 a.m. to 12 noon; 1:30 p.m. to 5 p.m.

PLACE: Room 512, 1121 Vermont Avenue NW., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: 9 a.m. to 12 noon:

I. Approval of agenda.
II. Approval of minutes from last meeting.
III. Staff Director's Report:
A. Status of Funds.
B. Personnel Report.
C. Office Directors' Reports.
D. Correspondence:
1. Letter from Labor Secretary Marshall on employment data for women, Indians and other minorities.
2. Letter from OMB Deputy John P. White on Housing Report recommendations.
3. Letter to Maryland Advisory Committee Chairperson Marjorie Smith on Commission equal employment profile.
4. Miscellaneous correspondence.
IV. Report on civil rights developments in Northwest Region.
V. State Advisory Committee Recharters: A. Hawaii; B. Illinois; C. Louisiana; D. Maryland; E. Montana; F. North Carolina; G. Oregon; H. Virginia.
VI. Status report on affirmative action initiative for 1979.
VII. Recommendation re: Battered Women Consultation follow-up.

MATTERS TO BE CONSIDERED: 1:30 p.m. to 5 p.m.:

VIII. Action re: report on Higher Education Desegregation.
IX. Philadelphia Police Practices hearing status report.
X. Wyoming Advisory Committee report on emergency of civil rights.
XI. Montana Advisory Committee report on corrections.
XII. Review of Statement on Status of Civil Rights.

CONTACT PERSON FOR MORE INFORMATION:

Loretta Ward, Public Affairs Unit, 202-254-6697.

[S-264-79 Filed 2-6-79; 3:03 pm]

[6351-01-M]

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., February 13, 1979.

PLACE: 2033 K Street NW., Washington, D.C., 5th Floor Conference Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Publication of Futures Prices by the Exchanges Part 16.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-265-79 Filed 2-6-79; 3:48 pm]

[6351-01-M]

5

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., February 13, 1979.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-266-79 Filed 2-6-79; 3:48 pm]

[6351-01-M]

6

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., February 16, 1979.

PLACE: 2033 K Street NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stucky, 254-6314.

[S-267-79 Filed 2-6-79; 3:48 pm]

[6570-06-M]

7

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-239-79.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, February 6, 1979.

CHANGE IN THE MEETING: The following matter is added to the agenda for the open portion of the meeting:

Final Report pursuant to Executive Order 12044.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of change: Eleanor Holmes Norton, Chair; Daniel E. Leach, Vice Chair; Armando M. Rodriguez, Commissioner; and J. Clay Smith, Jr., Commissioner.
Opposed: None.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat at 202-634-6748.

This notice issued February 2, 1979.

[S-259-79 Filed 2-6-79; 3:19 p.m.]

[6740-02-M]

8

FEBRUARY 5, 1979.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: February 7, 1979; 4 p.m.

PLACE: Room 9306, 825 North Capitol St., N.E., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Matters relating to an investigation. This meeting is a continuation of a closed meeting held on February 2, 1979 and, therefore, the General Counsel's certification and the notice of explanation of action closing meeting relating to the February 2 meeting apply to the February 7 meeting.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

The following members of the Commission voted that agency business requires the holding of a closed meeting on less than the one week's notice required by the Government in the Sunshine Act:

Chairman Curtis
Commissioner Smith
Commissioner Sheldon
Commissioner Holden
Commissioner Hall

[S-256-79 Filed 2-6-79; 11:14 am]

[6730-01-M]

9

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., February 13, 1979.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Delegation of authority to the Managing Director to administer special permission applications under the Ocean Shipping Act, 1978.
2. Status Report on General Order 7, Revised.

CONTACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5725.

[S-260-79 Filed 2-6-79; 1:59 pm]

[6730-01-M]

10

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., February 14, 1979.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Monthly report of actions taken pursuant to authority delegated to the Managing Director.
2. General rate increase by Matson Navigation Company in the United States-Hawaii trades.
3. Docket No. 76-10: *Joy Manufacturing Co. v. Lykes Bros. Steamship Co., Inc.*—Petition of Complainant for reconsideration of Commission decision.

Portions closed to the public:

1. Agreement Nos. 9929-3, et al. (Combi Lines Joint Service Agreement)—Decision on Remand of Interim Approval Order.
2. Docket No. 74-8: *European Trade Specialists, Inc. and Kunzle & Tasin v. Prudential-Grace Lines, Inc., and the Hippage Co., Inc.*—Consideration of the record on remand.
3. Docket No. 74-41: Agreement Nos. 8200, 8200-1, 8200-2, and 8200-3—Between the Pacific Westbound Conference and Far East Conference—Consideration of the record.
4. Discussion of Commission procedures regarding settlement of civil penalties.

CONTACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5725.

[S-261-79 Filed 2-6-79; 1:59 pm]

[6735-01-M]

11

FEBRUARY 6, 1979.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 2:30 p.m., February 8, 1979.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: This meeting may be closed.

MATTERS TO BE CONSIDERED:

Secretary of Labor v. Republic Steel Corporation, Docket Nos. IBMA 76-28, MORG 76-21.
Secretary of Labor v. Republic Steel Corporation, Docket Nos., IBMA 77-39, MORG 76X95-P.
Secretary of Labor v. Kaiser Steel Corporation, Docket No. DENV 77-13-P.

It was determined by unanimous vote of all Commissioners that Commission business required that a meeting be held on these items and that no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION:

Joanne Kelley, 202-653-5632.

[S-257-79 Filed 2-6-79; 11:28 am]

[6210-01-M]

12

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 6838, February 2, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, February 7, 1979.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such open item was added:

Alternative actions with respect to the Board's amendment to Regulation Z (Truth in Lending) regarding open end credit plans secured by consumers' residences. (This matter was originally announced for a meeting on February 1, 1979).

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: February 5, 1979.

GRIFFITH GARWOOD,
Deputy Secretary of the Board.

[S-255-79 Filed 2-6-79; 11:14 am]

[7555-01-M]

13

NATIONAL SCIENCE BOARD.

DATE AND TIME: February 15, 1979, 9-10 a.m., open session. February 16, 1979, 9 a.m., closed session.

PLACE: Room 540, 1800 G Street NW., Washington, D.C.

STATUS: Change in agenda.

MATTERS TO BE CONSIDERED:

Change to portions closed to public.

Changed Item: B. NSB and NSF Assistant Director Nominees.

CONTACT PERSON FOR MORE INFORMATION:

Miss Vernice Anderson, Executive Secretary, 202-632-5840.

[S-258-79 Filed 2-11-79; 1:08 pm]

[7910-01-M]

14

RENEGOTIATION BOARD.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

DATE, TIME, AND MATTERS TO BE CONSIDERED: Division Meetings concerning the following contractors for the fiscal years indicated will be held as follows:

1. Monday, February 12, 1979, 1:30 p.m., Temtex Industries, Inc., consolidated with: Temco, Inc., fiscal year ended August 31, 1972.
2. Tuesday, February 13, 1979, 9:30 a.m., Lankford Manufacturing Company, Inc., fiscal years ended December 31, 1974 and 1975.
3. Thursday, February 15, 1979, 9:30 a.m., Teledyne Industries, Inc., SII to the Ryan Aeronautical Co., fiscal years ended October 31, 1967 and 1968; fiscal years ended December 31, 1967 and 1968.
4. Wednesday, February 21, 1979, 9:30 a.m., A. J. Industries, Inc., consolidated with: Sargent-Fletcher Company, Fleetwood Metals, Inc., Armstrong Products Company, and Transpro, Inc., fiscal years ended March 31, 1973, 1974, and 1975.
5. Thursday, March 1, 1979, 9:30 a.m., Dow Corning Corporation, fiscal years ended December 31, 1970, 1971, 1972, and 1973.
6. Friday, March 2, 1979, 9:30 a.m., Rex Precision Products, Inc., fiscal year ended November 30, 1974.
7. Monday, March 5, 1979, 9:30 a.m., University Computing Company, SII to Computer Technology, Inc., fiscal years ended December 31, 1970 and 1971.
8. Monday, March 12, 1979, 9:30 a.m., Chrysler Corporation, consolidated with: Chrysler Outboard Corporation, and Chrysler Motors Corporation, fiscal year ended December 31, 1971.
9. Wednesday, March 14, 1979, 9:30 a.m., A. J. Industries, Inc., consolidated with: Sargent-Fletcher Company, Fleetwood Metals, Inc., Armstrong Products Company, and Transpro, Inc., fiscal years ended March 31, 1973, 1974, and 1975.
10. Thursday, March 15, 1979, 9:30 a.m., the Dow Chemical Company, fiscal years ended December 31, 1972, 1973, 1974, and 1975.
11. Monday, March 19, 1979, 9:30 a.m., Cutler-Hammer, Inc., consolidated with: Yig-Tek Corporation, I. I. Industries, Inc., Kasper Instruments, Inc., Eltek Corporation, and Automated Equipment Corporation, fiscal years ended December 31, 1972, 1973, 1974, and 1975.
12. Wednesday, March 21, 1979, 9:30 a.m., National Steel & Shipbuilding Company, fiscal years ended December 31, 1973 and 1974.
13. Friday, March 23, 1979, 9:30 a.m., Motorola, Inc. (a Delaware corporation), SII to Motorola, Inc. (an Illinois corporation), fiscal years ended December 31, 1971, 1972 and 1973.
14. Monday, March 26, 1979, 9:30 a.m., University Computing Company, SII to Computer Technology, Inc., fiscal years ended December 31, 1970 and 1971.
15. Wednesday, March 28, 1979, 9:30 a.m., the Scott & Fetzer Company, fiscal year ended November 30, 1975.
16. Monday, April 2, 1979, 9:30 a.m., Chrysler Corporation, consolidated with: Chrysler Outboard Corporation, Chrysler Motors Corporation, fiscal year ended December 31, 1971.
17. Thursday, April 5, 1979, 9:30 a.m., the Dow Chemical Company, fiscal years ended December 31, 1972, 1973, 1974, and 1975.
18. Friday, April 6, 1979, 9:30 a.m., Sanders Associates, Inc., fiscal years ended July 25, 1975 and 1976.
19. Monday, April 9, 1979, 9:30 a.m., Texas Instruments Incorporated, fiscal years ended December 31, 1973 and 1974; Texas Instruments Supply Company, fiscal years ended December 31, 1973 and 1974.
20. Tuesday, April 10, 1979, 1:30 p.m., Cutler-Hammer, Inc., consolidated with: Yig-Tek Corporation, I. I. Industries, Inc., Kasper Instruments, Inc., Eltek Corporation, and Automated Equipment Corporation, fiscal years ended December 31, 1972, 1973, 1974 and 1975.
21. Wednesday, April 11, 1979, 9:30 a.m., National Steel & Shipbuilding Company, fiscal years ended December 31, 1973 and 1974.
22. Wednesday, April 18, 1979, 9:30 a.m., Motorola, Inc. (a Delaware corporation), SII to Motorola, Inc. (an Illinois corporation), fiscal years ended December 31, 1971, 1972 and 1973.
23. Thursday, April 19, 1979, 9:30 a.m., the Scott & Fetzer Company, fiscal year ended November 30, 1975.
24. Friday, April 27, 1979, 9:30 a.m., Sanders Associates, Inc., fiscal years ended July 25, 1975 and 1976.
25. Monday, April 30, 1979, 9:30 a.m., Texas Instruments Incorporated, fiscal years ended December 31, 1973 and 1974; Texas Instruments Supply Company, fiscal years ended December 31, 1973 and 1974.
26. Wednesday, May 2, 1979, 9:30 a.m., National Presto Industries, Inc., consolidated with: World Aerospace Corporation, Midwestern Company, SII: National Presto Industries, Inc., Jackson Sales & Storage Company, Century Metalcraft Corporation, Presto Manufacturing Company, Master Corporation of Texas, Johnson Printing, Inc., Presto Parts & Service Corporation, Presto Parts & Service, Inc., Presto Parts & Service Company, Presto Parts & Service Corp., National Presto Industries Export Corporation, and Presto International Limited, fiscal years ended December 31, 1973, 1974 and 1975.
27. Thursday, May 3, 1979, 9:30 a.m., Marion Corporation, fiscal years ended January 31, 1975 and 1976; Marion Corporation, SII to: Alabama Refining Company, Inc., fiscal year ended January 31, 1974.
28. Friday, May 4, 1979, 9:30 a.m., AMF Incorporated (Agent), consolidated with: AMF Beaird, Inc., the Cuno Engineering Corporation, and W. J. Voit Rubber Corporation, fiscal years ended December 31, 1969 and 1970.
29. Monday, May 7, 1979, 9:30 a.m., Burroughs Corporation, fiscal years ended December 31, 1971, 1972, 1973, 1974, and 1975.
30. Thursday, May 10, 1979, 9:30 a.m. International Business Machines Corporation, consolidated with: The Service Bureau Corporation, Science Research Associates, Inc., fiscal years ended December 31, 1971, 1972, 1973, 1974, and 1975.
31. Friday, May 18, 1979, 9:30 a.m., AMF Incorporated (Agent), consolidated with: AMF Beaird, Inc., the Cuno Engineering Corporation, and W. J. Voit Rubber Corporation, fiscal years ended December 31, 1969 and 1970.
32. Wednesday, May 23, 1979, 9:30 a.m., National Presto Industries, Inc., consolidated with: World Aerospace Corporation, Midwestern Company, SII: National Presto Industries, Inc., Jackson Sales & Storage Company, Century Metalcraft Corporation,

Presto Manufacturing Company, Master Corporation of Texas, Johnson Printing, Inc., Presto Parts & Service Corporation, Presto Parts & Service, Inc., Presto Parts & Service Company, Presto Parts & Service Corp., National Presto Industries Export Corporation, and Presto International Limited, fiscal years ended December 31, 1973, 1974 and 1975.

33. Thursday, May 24, 1979, 9:30 a.m., Marion Corporation, fiscal years ended January 31, 1975 and 1976; Marion Corporation, SII to: Alabama Refining Company, Inc., fiscal year ended January 31, 1974.

34. Thursday, May 31, 1979, 9:30 a.m., Burroughs Corporation, fiscal years ended December 31, 1971, 1972, 1973, 1974, and 1975.

35. Friday, June 1, 1979, 9:30 a.m. International Business Machines Corporation, consolidated with: The Service Bureau Corporation, Science Research Associates, Inc., fiscal years ended December 31, 1971, 1972, 1973, 1974, and 1975.

SUPPLEMENTAL INFORMATION: Present appropriations for the functions of the Renegotiation Board are available only through March 31, 1979. A request for additional funds for the continuation of the Board's operation through fiscal year 1979 is included in the *Appendix of the Budget of the United States Government, 1980,* however. In establishing the dates of the meetings described in items 16 through 35 above, inclusive, the Board is acting in furtherance of this Budget request.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Council-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: February 5, 1979.

HARRY R. VAN CLEVE,
Acting Chairman.

[S-262-79 Filed 2-6-79 2:52 pm]

federal register

THURSDAY, FEBRUARY 8, 1979

PART II

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

■

LIQUEFIED NATURAL GAS FACILITIES; FEDERAL SAFETY STANDARDS

Development of New Standards

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

[49 CFR Part 193]

[Docket No. OPSO-46; Notice 4]

LNG FACILITIES; FEDERAL SAFETY STANDARDS

Development of New Standards

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes establishment of a set of comprehensive safety standards governing the design (including site selection) and construction of liquefied natural gas (LNG) facilities used in the transportation of natural gas by pipeline in or affecting interstate or foreign commerce. Present safety standards are considered inadequate in light of the grave consequence that could result from a major accident at a facility. The new standards would provide safety through a combination of engineering features and sufficient area around a facility to protect the nearby population.

DATE: Comments must be received by May 9, 1979.

ADDRESS: Send comments to the Docket Branch, Room 6500, Materials Transportation Bureau, Trans Point Building; 2100 Second Street, S.W., Washington, D.C. 20590. Comments should identify the docket and notice number and be submitted in triplicate. They will be available to the public for review at the above location.

FOR FURTHER INFORMATION CONTACT:

Walt Dennis, 202-426-2082.

SUPPLEMENTARY INFORMATION: The Materials Transportation Bureau (MTB) believes that a new comprehensive set of safety standards is needed for LNG facilities. LNG is natural gas (mostly methane) that has been cooled to about minus 260°F, where it is a liquid. As a liquid, natural gas is 1/600th of its original volume, making it economically feasible to transport by vehicle or vessel and store in large quantities. The hazards of LNG derive from its cold temperature, flammability, and characteristics upon release. LNG can cause severe freeze burns and immediate cracking of certain metals such as carbon steel. Upon exposure to ground temperatures, LNG vaporizes rapidly and returns to a gaseous state. The vapor may remain close to the ground and travel in the form of a plume or cloud dispersed into the atmosphere. While the vapor is not poisonous, it can cause asphyxiation, and it is flammable in a concentration in air between 5 and 15 percent.

The standards proposed by this notice concerns the design (including site selection) and construction of facilities used to liquefy natural gas or to transfer, store, or vaporize LNG in conjunction with the pipeline transportation of natural gas. If adopted, they would be published in a new Part 193 of Title 49 of the Code of Federal Regulations. Standards for the operation, including security, and maintenance of LNG facilities will be the subject of a notice of proposed rulemaking to be issued in March 1979. These standards also would be included in Part 193.

The intent of the new Part 193 would be to prescribe an acceptable level of public safety with regard to LNG facilities in consideration of the hazards of LNG and the potential causes and consequences of accidents and the steps that may be taken to safeguard against them. In most cases, Part 193 would provide for employee safety only to the extent that it is affected by measures required for public safety.

Each of the proposed standards relates to a potential accident cause. For example, weak structures, faulty construction, installation defects, fires or spills of LNG near components, and environmental forces (high winds, earthquakes) can cause accidents or worsen an existing hazardous condition resulting from some other cause. The proposed standards would prescribe actions needed to minimize or prevent (1) the occurrence of accidents due to controllable causes (e.g., faulty construction) or uncontrollable causes (e.g., earthquakes) and (2) the potentially damaging effects of accidents that may occur. Some standards would require redundant or back-up measures for extra protection, as in the case of manual and automatic shut-off valves. Because of the severity of potential consequences, even more special precautions would have to be taken to prevent accidents which could result in failure of an LNG storage tank.

If an accident were to result in a spill of LNG, under the proposed Subpart E a second level of protection would be provided by impounding systems that are designed to hold LNG and prvent it from endangering other components, entering neighboring property, or rapidly turning to gas. Since there is a threat of ignition once LNG is released, Part 193 also would provide a final level of safety through safe distances around a facility. (§§ 193.107 and 193.109) These distances would protect persons who live or work near the facility site by providing enough room for flammable gas to dissipate or enough separation from the heat of burning LNG at the site.

The need for comprehensive new Federal LNG facility safety standards arises because of the seriousness of potential hazards from LNG facilities coupled with the anticipated increase of LNG facility construction to meet the nation's energy needs, and the developing variations in the design of facilities near population centers, or areas of greatest energy demand. Congressional committees, the General Accounting Office, the Federal Energy Regulatory Commission and other Federal, State, and Local agencies; nongovernment organization; representatives of industry; and the public in general have expressed concern over the adequacy of present standards to provide for public safety.

A report issued on July 31, 1978, by the General Accounting Office titled "Liquefied Energy Gases" (EMD 78-28) shows some of the safety concerns in the transportation and storage of LNG. Foremost among these are: (1) protection of persons and property near an LNG facility from thermal radiation (heat) caused by ignition of a major spill of LNG, (2) protection of persons and property near an LNG facility from dispersion and delayed ignition of a natural gas cloud arising from a major spill of LNG, and (3) reduction of the potential for a catastrophic spill of LNG.

The existing Federal safety standards governing LNG facilities used in the transportation of natural gas by pipeline are contained in 49 CFR Part 192. These standards were adopted by Amendment 192-10, issued on Oceober 10, 1972 (37 FR 21638). The Amendment added § 192.12, adopting as the Federal LNG safety standards the National Fire Protection Association (NFPA) Standard 59A (1971 edition), as well as the other applicable requirements of Part 192. Subsequently, the 1972 edition of NFPA 59A was adopted (41 FR 13590).

In the preamble of Amendment 192-10, it was stated that the NFPA standard was adopted only as an interim measure while permanent Federally developed regulations specifically applicable to LNG facilities were being developed. MTB believes that there is a need for Federally developed regulations for LNG facilities because the present referenced standards are not written in enforceable terms and do not adequately cover all safety problems respecting an LNG facility.

In 1974, the Department's Office of Pipeline Safety contracted for a study by Arthur D. Little, Inc. (ADL) to provide safety information on LNG facilities (NTIS No. PB-241048). The study included a comparative analysis of national, state, local, industrial, and professional society codes, standards,

practices, and regulations relating to LNG facilities. The ADL report, made in December 1974, is titled "Technology and Current Practices for Processing, Transferring, and Storing Liquefied Natural Gas." Copies of the report (NTIS No. PB-241048) are available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151, telephone (703) 557-4650, in paper for $7.75 and in microfiche for $3.00. A copy is also available for review in the docket.

The ADL study provides useful information in developing safety standards for LNG facilities. The study identified and analyzed many areas of public concern about the operation of LNG facilities. It also addressed many practices and functions where special precautions are needed to protect persons and property. MTB believes that the results of the ADL study are consistent with current information obtained from other sources. Therefore, MTB has adopted the ADL report as a basis for this regulatory action.

The ADL report found that NFPA 59A was the basis for practically all national, state and local codes for LNG facilities. MTB agrees with this conclusion and has used the 1975 edition of the NFPA 59A, in part, as a basis for these proposed regulations. The following tables shows that 59A derivation of standards proposed in this notice:

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193.11	—

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193.111	406 including reference 1, 601
193.113	200(3), 200(4), 410, 411
193.115	200(4), 2301, 410
193.117	200(3), 410, 411
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193.121	200(4)
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193.523	24
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193.533	4123
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193.605	524, 525, 850, 810
193.607	812
193.609	8603
193.611	8605, 870, 871, 872, 873, 821, 880
193.615	84, 851, 8612, 8614, 8611
193.617	801, 845, 6224

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193.703	—
193.705	510, 511
193.711	522, 7310
193.713	52
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SUBPART I

193.801	—
193.803	—
193.805	6224
193.807	711
193.809	812
193.811	3370
193.813	34
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SUBPART J

193.901	—
193.903	—
193.905	334, 335, 35, 67
193.907	—
193.909	926
193.911	926
193.915	82
193.917	622
193.919	741
193.921	—
193.925	740
193.927	—

SUBPART K

193.1001	—
193.1002	4000
193.1004	—
193.1005	654
193.1009	23
193.1011	400
193.1013	23, 400, 424, 440, 441, 65
193.1015	—
193.1017	623, 624
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193.1023	23, 400, 424, 440, 441, 65
193.1025	650, 332
193.1027	65
193.1029	440
193.1031	—
193.1033	4000, 411, 424
193.1037	651, 654, 655

In April 1977, MTB issued an Advance Notice of Proposed Rulemaking (ANPRM) (42 FR 20776, April 21, 1977) inviting public participation at an early stage in the rulemaking process for adoption of new Federal safety standards in 49 CFR Part 193. Although that notice was not a proposal to amend the present standards, it contained a comprehensive set of draft regulations which were intended to serve as a basis for public comment and participation in identification of LNG safety problems and the development of appropriate regulatory solutions to those problems, considering all reasonable alternatives. Subsequently, a correctional notice was published at 42 FR 24758; and a third notice (42 FR 42235, August 22, 1978) extended the comment period to December 1, 1978, and set forth a bibliography of resource information.

The notice of proposed rulemaking (NPRM) is based on Subparts A through K of the ANPRM. These subparts provide a broad coverage of closely related proposed standards for the design and construction of new facilities and parts of existing facilities that are replaced, relocated, or significantly altered. Interested persons can meaningfully comment on this body of proposed standards, since the remaining standards to be proposed for inclusion in Part 193 should not have a significant impact on design and construction.

Persons interested in LNG safety were particularly urged to submit comments regarding those draft regulations in the ANPRM which related to the safety problems mentioned above since those problems involve highly technical fields and LNG spill characteristics which are still being researched. Comments were also solicited on other safety problems and on environmental and economic issues; and persons were asked to support their comments with rationale and documentation, and where appropriate, to propose alternative regulations that would provide an acceptable level of safety.

To ensure that the new Part 193 does not result in costs to the private sector, consumers, or government

above those necessary to provide an acceptable level of public safety, in the ANPRM, MTB also encouraged interested persons to submit information on the annual and aggregate costs, benefits, and other anticipated impacts associated with each of the draft regulations and all alternatives which commenters might suggest thereto. The information received has enabled MTB to adequately consider the impact of this rulemaking proposal early in the developmental process. A Draft Evaluation of the impact is in the docket for this proceeding in accordance with the Departmental procedures for improving regulations (43 FR 9582, March 8, 1978). MTB has determined that a Regulatory Analysis is not required under those procedures.

DRAFT EVALUATION REVIEW

The Draft Evaluation, prepared by Booz-Allen and Hamilton, is an impact analysis of the costs and benefits of the alternative potential Federal regulations affecting the sitting, design, and construction of new liquefied LNG facilities. These alternatives are:

- This Notice of Proposed Rulemaking.
- Standard 59A of the National Fire Protection Association (1975 edition).
- Recommendations made in the General Accounting Office Report EMD-78-28.
- The Advance Notice of Proposed Rulemaking issued by MTB on April 21, 1977.

For this impact analysis, the NFPA Standard 59A (1975 edition) was used as the baseline regulatory standard against which the incremental facility costs, safety benefits, employment and environmental effects, and effects on consumers of the other alternative LNG regulations were measured. Standard 59A was considered to be the baseline because it is the minimum standard that normally would be observed if the MTB does not adopt a different one. Impacts were measured for five representative facilities which included baseload, peakshaving, and satellite facilities. Projections of costs and benefits were then made for two levels of planned LNG facilities, a minimum of 6 and a maximum of 64, assumed to be built from 1979 to 1998. In addition, the actual costs of constructing the five facilities were investigated.

The Booz-Allen report concludes that the majority of sections of the NPRM regulatory alternative would not significantly affect the costs of new LNG facilities. Without considering the probability of an accident occuring, the Booz-Allen analysis indicates that a wide range of potential benefits exist. At the lower end of this range, the benefit of avoiding a 10 cubic meter spill of LNG at a remotely located satellite facility in terms of reduced accident costs is estimated at $1.5 million. At the upper end the benefit of avoiding maximum spill and ignition at a large peak-shaving facility in a densely settled area is estimated to be $29 billion.

Of the 130 sections of the NPRM analyzed, 95 sections would involve no incremental costs when compared to baseline safety standards, but 21 of these sections would have major incremental benefits. Of the remaining 35 sections, the Booz-Allen report concludes that 22 sections would have minor incremental costs. Seven of these NPRM sections would produce major benefits while the rest would have minor benefits. Thirteen NPRM sections would create a major incremental cost of more than $50,000 per component of an LNG facility. Eleven of these sections were subjected to a detailed quantitative analysis of their costs and benefits because they comprise the bulk of overall cost impacts. The eleven sections are: § 193.107, *Thermal Radiation Protection;* § 193.109, *Flammable Vapor Gas Dispersion Protection;* § 193.111, *Seismic Investigation and Design;* § 193.113, *Flooding;* § 193.117, *Wind Forces;* § 193.423, *Gas Leak Detection;* § 193.511, *Penetrations;* § 193.513, *Internal Design Pressure;* § 193.535, *Support Systems;* § 193.1027, *Non-Destructive Tests;* and § 193.1033, *Storage Tank Tests.*

Over the next 20 years, the incremental costs (in 1977 dollars, discounted at 10 percent) of these 11 NPRM sections range from $275 million to $502 million for the minimum and maximum estimated level of planned facilities. The annualized cost over the 20-year period ranges from $29 million to $54 million per year. These cost estimates are based on an operator's choosing to purchase or lease land to comply with the proposed vapor dispersion zone under § *193.109.* Buying or leasing land under § *193.109* would represent 80 percent of the incremental costs of these 11 NPRM sections. If the compliance alternative of planned vapor ignition were chosen (§ *193.109(e)*) instead of land acquisition, the 20-year incremental costs would be reduced to either $55 million or $106 million, depending on the number of facilities, and annualized costs could be as low as $6 million. It is important to note that the planned ignition alternative is intended for situations where it would be impractical to provide a vapor dispersion zone (either by land acquisition or zoning) and an operator's plan would have to be approved by MTB.

The aggregate incremental costs of the 11 costly sections shown in the Draft Evaluation are based on an estimated cost of compliance with each section viewed in isolation from the other sections. Because of the many complex design options that might be used at a new facility, the Evaluation does not attempt to relate one section to another to determine where estimated costs or benefits may overlap (although the Evaluation acknowledges a cost overlap with regard to land acquisition under §§ *193.107* and *193.109*). For the same reason, the Evaluation does not indicate how costs might be minimized through design innovations or options. Hereafter, in the discussion with regard to the 11 costly sections, MTB has pointed out ways that compliance costs might be mitigated either through available design options or because compliance with one section may offset the cost of another section. The views of interested persons are particularly invited with regard to the possible cost savings.

The costs and benefits provided herein are intended to provide guidance to what must eventually be a difficult decision. LNG has the potential to play a substantial role in meeting the Nation's future energy needs. In recognizing this, however, we must also recognize that there is a vital need to examine the risks associated with the movement and storage of LNG, and to provide the full measure of protection to the public. What is sought here is to establish the most reasonable alternative, among many difficult ones, or new alternatives as may appear as a result of this rulemaking.

The Evaluation quantitatively estimated the safety benefits at each facility type for the 11 costly sections based on a probability assessment of risk. While each of these sections was projected to have major benefits should an accident occur, Booz-Allen concludes that net benefits would not be expected to exceed added costs because its risk assessment shows very low probability of accident occurrence. Since as the Booz-Allen report states the risk assessment is uncertain, MTB does not think it should be used as an exclusive determinant of what is necessary for public safety. Rather, because of the potential catastrophy which may result from a foreseeable accident, MTB's decision to propose measures for public protection has been based on what can reasonably be accomplished without incurring extreme costs. Comments are specifically requested on this issue.

As further reason for proposing adoption of the 11 costly sections, MTB recognizes that the industry's actual "self-imposed" safety practices in many instances exceed the standards in NFPA 59A. In particular, with regard to §§ 193.107, 193.109, 193.113, 193.423, and 193.1027, the bulk of commenters' suggested changes were

adopted, in whole or in part. These comments indicate that in many instances "self-imposed" industry practices exceed NFPA 59A standards. This is supported by the Booz-Allen report that found the most recently completed facility at Elba Island had safety features which exceed the requirements in NFPA 59A. A further discussion of the costs and benefits of all 11 sections is covered hereafter in the discussion related to the sections.

Over 4,000 pages of comments were received on the ANPRM from 135 different commenters. Most of the comments were from industry associations or LNG operators, but a few government agencies, nonindustry-related organizations, and individuals also commented.

About 15 percent of the commenters agreed with MTB's view that the standards in NFPA 59A are inadequate and could be improved. In support of this view comments indicated that most LNG facilities being designed and constructed today are designed and constructed to levels of safety exceeding the current requirements in NFPA 59A.

While the bulk of the comments received related to specific draft regulations set out in the ANPRM, there were many general comments that deserve attention. About one-fourth of the commenters encouraged MTB to continue to adopt the NFPA 59A standards. These commenters argued that the need for new standards has not been demonstrated because the LNG industry has an enviable safety record, with no accidents in operating facilities in over 20 years. Most of these commenters mentioned the excellent quality, experience, and expertise of membership in the NFPA 59A Committee, over 50 experts in LNG technology.

Even though many commenters proposed that MTB continue to reference NFPA 59A, about one-fourth of these commenters recognized the need for improved standards. Many suggested that MTB add to the NFPA 59A standards where necessary, while adopting as much of NFPA 59A as possible.

Over half of the commenters said that the draft Part 193 in the ANPRM would be an excessive or overly burdensome body of regulations, or that the draft needed major modification. Many commenters proposed two sets of standards—one for "peak-shaving" facilities (used by gas distribution companies to supplement gas supplies during periods of high demand) and one for major import terminals. Many persons commented that the draft regulations were too specific and would not permit alternative approaches or implementation of new technological development, and they argued that performance language should be used. Also, several commenters proposed that regulations should be developed in closer cooperation with nongovernment organizations such as the American Gas Association.

MTB does not agree that there is not any need for the development of new, more stringent Federal standards for LNG facilities. The hazard from a catastrophic spill of LNG is very significant. The spill of LNG from a rupture of two LNG storage tanks in Cleveland on October 20, 1944, that killed 130 persons and injured 225 more, very clearly represents the extent of potential hazards and subsequent consequences if a large amount of LNG escapes. Although there have not been any major incidents since then in the operation of LNG facilities in the United States, research conducted by various government agencies and industry groups on thermal radiation and Vapor cloud dispersion has further indicated the significant potential hazards that would occur if LNG escapes. Also, as indicated in the ANPRM and the study by ADL mentioned above, MTB has identified many deficiencies in the present standards which should be corrected to mitigate the potential for a major spill of LNG and provide an acceptable level of public safety. Some of the deficiencies can be corrected by clarifying or restating in enforceable terms provisions of NFPA 59A. However, the more significant ones (such as those relating to seismic design and the design of storage tanks and impounding systems) require the development of entirely new standards.

NFPA continues to express the fear that the new Federal regulations will eliminate the need for the NFPA 59A Committee and result in disbandment of a valuable group of LNG experts. Alternatively, NFPA suggests that MTB work within the NFPA standards-setting process to bring about the needed changes in LNG safety regulations. While MTB fully recognizes the quality, experience, and expertise emobodied in the NFPA 59A Committee, MTB does not agree that such a vital function as setting the level of safety for LNG facilities should be left to a nongovernment organization. Even though the NFPA process for standards development may be fair and open to everyone, it still does not provide a forum equivalent to the Federal rulemaking process where decisions are made on the broadest possible base of information, the decision makers are subject to public scrutiny, and independent judgment is applied to develop standards that serve the public interest. As a consensus standards developing body, by its nature, the NFPA 59A Committee generally reflects a perspective common to the group. Moreover, because of the various ties, most Committee members owe allegiance to the industries affected by the standards. Therefore, while use of the NFPA 59A standards as a basis for Federal safety regulations may be reasonable, the standards still must be evaluated with care in light of public safety and welfare interests—a function inherent in the Federal rulemaking process.

It is clear the the NFPA 59A Committee is important to MTB's regulatory program for LNG facilities, but the functions of each organization differ. The NFPA should devise and recommend means of meeting the governmentally prescribed safety level and investigate new areas where regulations may be needed or existing regulations should be changed. To that end, MTB wants the NFPA 59A Committee to continue to participate in the rulemaking process on the development of the new Part 193 and expects that a signficant public benefit will be achieved.

MTB essentially agrees with the commenters that proposed that MTB adopt NFPA 59A to the extent possible. However, because of the difficulties in adapting the format of NFPA 59A to Federal regulation format and the need for appropriate regulatory language to facilitate enforcement of the LNG regulations, only a few sections of NFPA 59A are being proposed for incorporation by reference in Part 193. Other 59A sections are used as a basis for, and restated as, Part 193 sections.

MTB has reviewed the comments to the ANPRM and has adopted those comments which it deems appropriate. Those draft regulations in the ANPRM which comments indicated were particularly burdensome or unneeded have been revised where appropriate as discussed hereafter. However, the proposal for two separate sets of standards—one for "peak-shaving" facilities and one for large import terminals—as suggested by several commenters, has not been adopted. Instead, as set forth in the draft regulations in the ANPRM, those components that because of size should meet different standards have been designated in the text of the proposed regulations. Commenters to these proposed regulations should further point out those particular areas where different standards might be appropriate because of size of component or the extent of the operation of an LNG facility and its associated risk.

MTB has tried not to be overly rigid and to permit alternative approaches for specific safety concerns. Where appropriate, draft regulations in the ANPRM have been revised to allow this flexibility. In this regard, MTB recognizes the technological development occurring in the LNG field.

MTB has generally stated the proposed requirements in performance terms, using specific requirements where deemed necessary for safety, and also referencing several industry consensus standards. The use of performance language rather than specification (how-to-do-it) language is consistent with the longstanding Departmental policy in prescribing Federal pipeline safety standards. Performance standards prescribe what level of safety must be achieved, leaving the regulated industry free to develop and use improved technological means of meeting the required level. Where necessary, the performance standards may include tests and analytical procedures to check that the level of performance if achieved.

MTB does not concur with those commenters who suggested that the new LNG regulations should be developed in cooperation with private groups outside the government. The groups recommended generally reflect the limited view of the regulated industry. With regard to the comments that MTB develop these regulations in coordination with the U.S. Coast Guard, MTB agrees, and this NPRM has been so developed. Also, the subsequent development of final rules will be in coordination with USCG.

The proposed Part 193 would be adopted under the Natural Gas Pipeline Safety Act of 1968 (49 USC 1671 et seq.). The jurisdiction of that Act is limited to LNG facilities which are used in connection with a system for pipeline transportation of natural gas to consumers. Thus, the contemplated Part 193 would not apply to facilities used exclusively in the transportation of natural gas or LNG by modes other than pipeline. For example, the standards would not apply to an LNG storage and transfer facility at a marine terminal used to transfer LNG between ships or barges and rail or motor carriers unless the facility was also connected with a system for pipeline transportation. Also, Part 193 would not apply to LNG facilities used by ultimate consumers of LNG or natural gas or facilities used in the course of natural gas treatment or hydrocarbon extraction which do not store LNG. With regard to the proposed development of offshore LNG facilities, while the standards would apply, it is proposed that an offshore LNG facility need not comply with any requirement of Part 193 which the Secretary of Transportation finds impractical or unnecessary because of the offshore location (Section 193.2).

While almost all existing and planned facilities involve the supply or delivery of natural gas by pipeline, as LNG facilities become more widespread, it may be necessary to enlarge the scope of the Federal regulations to cover facilities which are not related to the pipeline transportation of natural gas. Any future action that may be taken with regard to these LNG facilities would, under current law, be by authority of the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.).

Effective February 7, 1978, the U.S. Coast Guard (USCG) and the Materials Transportation Bureau executed a Memorandum of Understanding (MOU) with respect to a division of regulatory responsibilities for waterfront LNG facilities, or those facilities which are on, or immediately adjacent to, the navigable waters of the United States. This MOU was published in the FEDERAL REGISTER on July 14, 1978 (43 FR 30381).

The division of responsibilities agreed to by the MOU was considered necessary due to the overlapping regulatory authority of the USCG and the MTB affecting the siting, design, construction, operation, and maintenance of waterfront LNG facilities.

The text of the Memorandum of Understanding follows:

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES COAST GUARD AND THE MATERIALS TRANSPORTATION BUREAU FOR REGULATION OF WATERFRONT LIQUIFIED NATURAL GAS FACILITIES

I. INTRODUCTION

Within the Department of Transportation (DOT), the United States Coast Guard (USCG) and the Materials Transportation Bureau (MTB) exercise separate and overlapping safety regulatory authority affecting the siting, design, construction, maintenance, and operation of waterfront liquified natural gas (LNG) facilities adjoining the navigable waters of the United States. The USCG derives its authority over such facilities from the Ports and Waterways Safety Act of 1972 (Pub. L. 92-340, 33 U.S.C. 1221-1227) and the Magnuson Act (50 U.S.C. 191). The regulatory authority of the MTB over these same facilities (as well as non-waterfront LNG facilities) is derived from the Natural Gas Pipeline Safety Act of 1968 (Pub. L. 90-481, 49 U.S.C. 1671 *et seq.*) and the Hazardous Materials Transportation Act (Pub. L. 93-633, 49 U.S.C. 1801 *et seq.*).

In recognition of each of the parties' respective regulatory responsibilities, the USCG and the MTB agree that a memorandum of understanding is needed to avoid duplication of regulatory efforts regarding waterfront LNG facilities and to maximize the exchange of relevant information.

II. RESPONSIBILITIES OF THE PARTIES

For the foregoing reasons, the USCG and the MTB agree to the following division of regulatory responsibilities with respect to waterfront LNG facilities and cooperation in carrying out those responsibilities:

USCG RESPONSIBILITIES

The USCG is responsible for establishing regulatory requirements for—

(1) Facility site selection as it relates to management of vessel traffic in and around the facility;

(2) Fire prevention and fire protection equipment, systems, and methods for use at a facility;

(3) Security of a facility; and

(4) All other matters pertaining to the facility between the vessel and the last manifold (or valve) immediately before the receiving tank(s)

MTB RESPONSIBILITIES

The MTB is responsible for establishing regulatory requirements for—

(1) Facility site selection except as provided by paragraph (1) of the "USCG Responsibilities" set forth in this Memorandum; and

(2) All other matters pertaining to the facility beyond (and including) the last manifold (or valve) immediately before the receiving tank(s) except as provided by paragraphs (2) and (3) of the "USCG Responsibilities" set forth in this Memorandum.

JOINT RESPONSIBILITIES

(1) The USCG and the MTB will cooperate and assist each other in carrying out their respective waterfront LNG facility regulatory enforcement activities; and

(2) The USCG and the MTB, in an effort to avoid inconsistent regulation of similar safety matters (including as between waterfront and non-waterfront LNG facilities), will consult with each other before issuing each Advance Notice of Proposed Rulemaking, Notice of Proposed Rulemaking, and final regulation affecting waterfront LNG facilities.

Dated: February 7, 1978.

For the United States Coast Guard.

ADM OWEN W. SILER,
Commandant.

Dated: February 1, 1978.

For the Materials Transportation Bureau.

L. D. SANTMAN,
Acting Director.

Concurrent with this proceeding, the USCG is developing regulations for the storage and handling of hazardous materials, including LNG, at ports. On August 3, 1978, the USCG issued an Advance Notice of Proposed Rulemaking in the FEDERAL REGISTER (43 FR 34362) inviting public participation at the earliest stages in the development of regulations to provide standards for safety, security, and environmental protection in the transportation, transfer, handling, and storage of liquefied natural gas at water front facilities. The USCG intends for these regulations to become an integral part of its revised general waterfront facility regulations. The USCG published an Advance Notice of Proposed Rulemaking as General Waterfront Facilities Requirements (43 FR 15107) on April 10, 1978. MTB and USCG are coordinating their regulatory activities in this area to preclude problems involving overlapping jurisdiction in consonance with the MOU.

The ANPRM issued by MTB included draft regulations relating to (1) fire prevention and fire protection equipment, systems and methods for use at

a facility; and (2) security of a facility. At a waterfront LNG facility, in accordance with the MOU between MTB and the USCG, these safety matters will be subject to USCG regulatory responsibility. Accordingly, this NPRM, covering only design and construction, does not include standards for these two areas. Although both fire protection and security for nonwaterfront facilities will be covered in MTB's next NPRM in this proceeding, which will cover operation and maintenance topics, appropriate delineation of the limits of MTB's responsibilities under the MOU over fire protection and security will be set forth in that notice. There are standards in this notice which could be applied to that part of a waterfront facility between the vessel and the last manifold (or valve) immediately before the receiving tank(s), but in accordance with the MOU, an operator would refer to USCG requirements for applicable design and construction regulations for this portion of a waterfront LNG facility (See § 193.1(b)(3)).

MTB and USCG have coordinated in developing a format that would be used by both agencies in the development of regulations for all waterfront facilities, including LNG facilities. Using a similar format for all of the DOT waterfront facility regulations in Part 193 will make it easier for the regulated industry to use these regulations. The proposed format to be used by MTB, as well as by the USCG, in the issuance of the final regulations for LNG facilities will be the following:

Subpart A—General
Subpart B—Siting
Subpart C—Design
Subpart D—Construction
Subpart E—Equipment
Subpart F—Operations
Subpart G—Maintenance
Subpart H—Personnel Qualifications & Training
Supart I—Fire Protection
Subpart J—Security

The notice of proposed rulemaking, however, does not follow this format. The NPRM follows the same format, section by section, as published in the ANPRM. In this way commenters to the ANPRM are able to more easily follow any revisions made by MTB to the draft proposed regulations issued in the ANPRM.

The following portion of the preamble discusses the comments made to each particular section in the draft regulations in the ANPRM as well as any revisions to those draft regulations used in developing the standards proposed in this notice.

SUBPART A—GENERAL

This subpart would explain the applicablity of Part 193 to new and existing facilities and define several terms. If a term used in the proposed Part is not defined, it is used in its ordinary sense or the sense commonly understood in the LNG industry. Subpart A would also set forth rules for interpreting certain regulatory terms, explain how documents are incorporated by reference in Part 193, and make it clear that leaks and spills of LNG are to be reported to the Secretary as required by Part 191 of title 49 of the Code of Federal Regulations.

Applicability. In response to numerous requests that *§ 193.1* indicate more precisely which LNG facilities would be covered by Part 193, this section has been rewritten to refer to facilities used in the transportation of gas by pipeline that are subject to the Natural Gas Pipeline Safety Act of 1968 and the Federal Gas pipeline safety standards in 49 CFR Part 192.

There were many recommendations that LNG facilities not covered by Part 193 should be described in *§ 193.1.* As a result, *§ 193.1(b)* now sets forth three types of facilities not covered by the proposed Part 193. Consistent with the present regulation of LNG facilities in 49 CFR Part 192, the first type is an LNG facility used by an ultimate consumer of the product. The second applies to the large number of refinery-type plants which use low temperature processes. One commenter expressed great concern about the adverse economic effect that could result if these plants were regulated by Part 193. MTB believes that since LNG facilities of this type do not receive, store, or transport LNG, they do not present a level of hazard comparable to a typical LNG facility and, therefore, are not proposed to be covered. A third exemption applies to those aspects of a waterfront LNG facility receiving or sending out LNG by marine vessel which are to be regulated in accordance with the MOU between MTB and the USCG.

A new *§ 193.2* has been added covering "offshore LNG facilities." As mentioned in the ANPRM preamble, MTB believes that if facilities of this type are built, they should comply with the proposed standards to the largest extent practicable. Two commenters to the ANPRM mentioned that such facilities would not be appropriately covered by the draft regulations. MTB agrees, and will study this aspect further to determine what more appropriate standards would be needed for facilities in the offshore environment. However, in the interim, it is proposed under *§ 193.2* that any questions involving the appropriateness of a standard for an offshore facility be resolved by MTB on a case by case basis. Also, MTB recognizes that the USCG as well as other agencies have jurisdictional responsibilities over the safety of offshore facilities. As in the case of waterfront LNG facilities, MTB and the USCG intend to reach an understanding as to how their respective jurisdictional responsibilities will be exercised to preclude any overlaps from becoming an unnecessary regulatory burden. Final rules regarding offshore LNG facilities that are developed as a result of this notice would reflect this understanding.

Under the Natural Gas Pipeline Safety Act of 1968, general safety standards affecting the design and construction of "pipeline facilities" may not apply to facilities in existance when the standards are adopted (49 U.S.C. 1672(b)). Section 193.3 in intended to apply this statutory requirement with respect to LNG facilities that would be subject to Part 193.

The majority of commenters addressing *§ 193.3* in the ANPRM felt that to apply the design and construction requirements of Part 193 to facilities "substantially under development" when the new rules are adopted, even if such application were practical, would be much too indefinite and could lead to enforcement difficulties as well as adverse economic effects. A wide variety of recommendations were given for establishing an appropriate cutoff point whereby an existing facility would not be subject to the design and construction standards intended for new facilities. Many commenters recommended the beginning of construction as an appropriate cutoff point. This view was adopted as most reasonable and easy to apply. As restated, *§ 193.3(b)* now provides that any component of an LNG facility upon which construction, installation, relocation, replacement, or significant alteration is begun after Part 193 is issued would have to meet the requirements of Part 193 related to design and construction, including siting and initial testing and inspection. Of course, as stated in *§ 193.3(a)*, all facilities would have to comply with the requirements of Part 193 which affect operation and maintenance.

Considerable concern was expressed also that the suggested scopes of various subparts in the ANPRM would make design and construction requirements apply retroactively to all components of an existing facility if any one component were changed. Since this result was not intended, MTB has modified the scope of individual subparts in this notice (Subpart B and K) to more clearly define each subpart's intended applicability to new or existing facilities, consistent with § 193.3. (See §§ 193.101, 193.201, 193.301, 193.401, 193.501, 193.601, 193.701, 193.801, 193.901, 103.1001). In this regard, MTB believes that it is in the public interest to require that existing LNG facilities meet the design and

construction requirements applicable to new facilities to the exent an existing facility is replaced, relocated, or significantly altered. In applying the standards in this way, it is not intended to unnecessarily restrict the improvement or expansion of existing facilities, but to enchance their level of safety.

Definitions. Many commenters suggested changes to various definitions in § *193.5.* Appropriate editorial and clarifying revisions were made to the suggested definitions of certain terms in response to comments. The terms "bunkering," "gasification," and "gasifier" are deleted because changes to the proposed standards and the division of responsibility with the USCG made these definitions unnecessary. The suggested definitions of "LNG" and "LNG facility" are combined. Also, the term "storage tank" is changed to include underground caverns to assure that if caverns are used to store LNG they meet the applicable safety requirements of Part 193. The following definitions have been significantly changed as a result of comments to the ANPRM:

"Cargo transfer system" is made more concise and revised to apply to the transfer of hazardous "fluids" rather than hazardous "liquids" between piping and a tank car or tank truck.

"Controllable emergency" and "emergency" are revised to mean situations where prudent action can prevent "harm" rather than prevent a "hazard," since some form of hazard is implicit in either term.

"Determine" is revised to mean an "appropriate" investigation using scientific methods rather than a "thorough" investigation.

"Exclusion zone" is revised to permit governmental control as well as control by an operator of activities within the zone in accordance with the proposed § *193.107* and § *193.109.* This change would allow means others than ownership by an operator to provide the required restrictions on land development around an LNG facility.

"Piping system" is revised to delete the reference to "insulation" and to make the term applicable to the containment of hazardous fluids.

Regulatory Terms. In § *193.7,* subparagraph (b)(3) has been deleted because the gender of sex is not used in the proposed Part 193.

Inspection and Maintenance Plans. As an improvement in format, § *193.9* in the ANPRM, "Filing inspection and maintenance plans," has been transferred to Subpart M, Maintenance, and will be incorporated in the NPRM on that subject to be issued in March, 1979.

Reporting. Operators of gas distribution systems and transmission systems which include LNG facilities are required to report leaks and spills of gas or LNG at LNG facilities under the reporting requirements of 49 CFR Part 191. A new § *193.10* is added in this notice to assure that there is no misunderstanding regarding this reporting requirement. The MTB recognizes that LNG facilities are not effectively covered by the present reporting forms under Part 191. Until these forms are changed, however, information applicable to leaks or spills of gas or LNG at LNG facilities must be reported to the maximum extent possible on the existing forms prescribed by Part 191.

SUBPART B—SITE RELATED DESIGN REQUIREMENTS

This subpart would establish design criteria pertaining to the site of a new LNG facility or the site of an existing critical component which is replaced, relocated, or significantly altered. A site would have to provide safe separation distances needed for public protection in the event of a spill and would have to be designed to withstand the effects of natural and manmade hazards which may occur at the site.

Site Acceptability. A small number of comments were made about § *193.103* in the ANPRM, which suggested that a site not be used for an LNG facility unless it is investigated and designed in accordance with Subpart B. The most significant comments proposed that Section 20 of NFPA 59A be adopted instead, or that § *193.103* be deleted because it duplicates Federal, State, or local authority in establishing an acceptable LNG facility site. The proposal to use the more general NFPA wording was not adopted because MTB feels that the present requirements in NFPA 59A are not sufficient to ensure the adequate investigation of a site for an LNG facility. The proposed Subpart B has considerably broader and more appropriate requirements. With regard to the comments suggesting possible duplication of other governmental authority, MTB acknowledges the authority of other agencies over the nonsafety related aspects of siting an LNG facility, but DOT authority is primary with regard to the safety aspects of siting. Therefore, § *193.103* is necessary and does not duplicate any other Federal, State, or local jurisdiction.

Persons commenting on the general siting criteria suggested by § *193.105,* suggested editorial changes which they felt would clarify the intent of this provision. A few commenters felt that general siting requirements should be limited to a land-based site so as not to preclude use of offshore locations that could not comply with the suggested requirement for ease of access to the site. This suggestion was not adopted since the proposed standards in Part 193 are intended to apply to offshore facilities to the maximum extent practical and MTB feels that offshore LNG facilities could comply with a proposed requirement for "ease of access." Several suggestions to modify the term "ease of access" were not adopted. MTB feels that this phrase adequately describes the space needed for access by offsite emergency response personnel and as one commenter suggested, evacuation of personnel. Similarly, MTB feels that the term "jeopardize" adequately describes the intent of the proposed requirement that an operator investigate all site characteristics which have potential for harm to the facility. MTB did not adopt the comments that Sections 200 and 925 of NFPA 59A be adopted as a general requirement because it was felt that § *193.105* better states the broad intent of this proposal rather than the narrower wording of NFPA 59A. The suggested rule is modified, however, to adopt those comments that argued that as a general standard, a site should enable a facility to be "designed to minimize hazards."

Thermal radiation protection. Under § *193.107* each space provided for impounding, or holding, a spill of LNG would have to be located a sufficient distance away from certain structures or areas of public assembly (as set forth in § *193.107(d)*) outside the LNG facility so that persons would have protection from the heat of any fire which may occur at the impounding space. Added protection is necessary because even a small spill of LNG into an impounding system can result in a fire just as hot as that from a large spill. For a new facility, the proposed distances could range from about 50 to 500 meters.

The current Federal standard for protection against the heat, or thermal radiation, from a fire (49 CFR 192.12) as well as the 1975 edition of NFPA 59A prescribe a safe distance based on a fixed level of heat flow at the plant boundary (measured as units of thermal flux equal roughly to 10,000 BTU/ft^{2}hr.). A formula is provided for computing a safe distance depending on the area of impoundment ($d=.8A^{.5}$). However, evidence shows that at the prescribed distance, persons would not be adequately protected if they are openly exposed to such heat levels or in buildings that do not provide adequate shielding from the heat.

In the ANPRM, MTB suggested that safety be provided by safe distances to structures, with distances varying according to the effect of heat on the structure, and by distance to open areas based on the time people would

need to walk away or seek shelter. By using a diagram to precisely define a method for measurement of the distance, the ANPRM approach took into account site topography and the effect of wind on a fire that might be expected during the early stages of ignition.

Some commenters appeared to favor retention of the NFPA method, but many commenters supported the use of allowable thermal flux levels as the basis for determining a safe zone rather than prescribing the distances. In consideration of these views, § *193.107* has been modified. Under § *193.107(d)*, maximum allowable thermal flux levels are proposed for different structures and open areas, and under § *193.107(b) and (c)*, a method for measuring and determining distance is proposed.

Section *193.107(a)* of the ANPRM has been changed to clearly show that a "thermal exclusion zone" is defined by the computed safe distances. A number of commenters objected to use of the word "target" to refer to a structure or open area, stating that it has an unfavorable meaning. However, in view of the general acceptance of the definition of target and because the term is used extensively in technical literature on thermal flux from an LNG fire, adoption of this comment does not appear justified. Some commenters to § 193.107(a) in ANPRM also objected to use of the term "flammable liquid," preferring instead "LNG." Considering the relative quantities of flammable liquids other than LNG at a facility, exclusion zones for other liquids should fall within the boundaries of exclusion zones for the larger LNG volumes. Therefore, § 193.107(a) is changed to apply only to LNG impounding systems.

A large number of commenters stated that local weather conditions should be considered in defining safe distances. Neither NFPA 59A nor the ANPRM, which each rely on assumed fixed conditions, provide for local variations. However, in view of the comments and the wide range in ambient weather conditions that may exist at proposed sites, and the effect variations may have in defining appropriate thermal exclusion zones, provisions for site specific conditions appear justified.

Among the commenters who proposed procedures for determining the thermal exclusion zone, only one proposed a precise method of measurement. This proposal essentially was based on the diagram in § *193.107(b)* of the ANPRM, but added modifications for flame angle and length related to flame base dimensions and local wind condition. Although the ANPRM method did not intend to specifically account for flame angle and height because of the uncertainities involved in LNG fire characteristics, in this notice the measurement diagram is changed in § *193.107(b)* to provide for site specific determination of flame angle and length of the flame. The flame angle and length of flame would affect the amount of thermal radiation in the thermal exclusion zone.

One commenter presented a comparison showing the differences that can be expected in flame angle depending on the method of computation used. Others indicated that a specific method should not be mandated due to the lack of verification by current technology. These comments serve to illustrate the uncertainties involved and emphasize the need for a definitive procedure to assure uniform safety levels at all facilities. Most commenters who specifically addressed the flame angle aspect recommended use of the American Gas Association (AGA) report. MTB proposes that the AGA Interim Report, IS-3-1 (July 1, 1974) be used for determining flame angle and length under § *193.107(b)*.

Commenters said that using the ANPRM method for measuring distance would not reflect flame length when impoundment dimensions are long and narrow, as the case might be with transfer piping. Consequently, a requirement to account for this situation has been included as a note under § *193.107(c)*. The note provides that the thermal flux on a target must be determined on the basis of multiple fire sources when impounding systems with base dimensions in a ratio of more than 2 are involved.

In accordance with the suggestion of one commenter, the term "innermost" has been added to the definition of point (D) under § *193.107(b)* to better describe the way a safe distance is measured. This change is needed in order to make clear which dike is referenced in a multiple diking system.

Most commenters who suggested methods to determine safe distances proposed that AGA report IS-3-1, or "a method at least as accurate" be used. Others did not reference a data source but specified factors to be considered in determining distances and some suggested that determinations should be made by an engineering consultant. Two prepared comparative data showing the diversity of results that might be expected depending on the method employed.

While the AGA report does not provide a unique model for distance determination, two commenters proposed a unique model for distance determination based on that report (see Columbia LNG Corp. Consolidated Systems LNG Co. comments). The model suggested appears to be appropriately conservative. Accordingly, with some modification, this model is proposed in this Notice under § *193.107(c)(2)*. The model provides for site specific parameters suggested by many other commenters and thermal flux levels discussed under § *193.107(d)*. Although the commenters' model is based on a thermal flux of 31,500 BTU/ft.^{2} hr., at the fire, the MTB proposes that 45,000 BTU/ft.^{2} hr. be used in view of the uncertainties regarding this value. For example, the AGA IS-3-1 report suggests a value of 56,000 BTU/ft.^{2} hr. for use in one instance. Also. large verification testing has not yet been performed to determine maximum flux from a large fire, which some experts believe may exceed 50,000 BTU/ft.^{2} hr. In addition, preliminary results from research performed for the Department at China Lake, California, have shown that there are still uncertain characteristics about LNG fires.

These same commenters also proposed that a mathematical formula on thermal flux be permitted as an alternate method for determining distance. MTB has incorporated this proposal under § *193.107(c)(1)*, since it will permit LNG facilities, particularly those of smaller size, to establish thermal exclusion zones with less data accumulation and computation.

Several commenters to § *193.107(c)*, in the ANPRM felt that thermal exclusion distances derived as suggested would be much too short. Many others argued that the ANPRM distances would be excessive and proposed retention of the 10,000 BTU/ft.^{2} hr. thermal flux level set by NFPA 59A. With regard to open areas (category (1) under § *193.107(d)*) most commenters recommended that the flux level be 1,600 BTU/ft.^{2} hr., since it is the level for human exposure recommended in recent technical reports. This level was said to be conservative because clothing could afford some protection and there would be sufficient time (20 seconds) for a person to either find shelter or move away. Also, the commenters asserted that if a wind factor is used in conjunction with the measurement diagram it would afford some safety when the wind speed is low, or, for remotely located areas, provide some cooling effect. In addition, altering position to change the area of the body exposed to the radiant heat would allow additional escape time.

At the same time, the Department of Housing and Urban Development (HUD), who is developing its own standards for locating HUD sponsored outdoor recreational projects near LNG or other highly volatile liquid facilities, has expressed a vew in a letter dated November 28, 1978, that 1600 BTU/ft^2 hr. would provide little time for people to take protective measures. In HUD's view a 20-second reaction time to find refuge before experiencing pain would be unrealistic,

since it is doubtful that people at a crowded beach, swimming pool, or other exposed recreational area would be able to find shelter within that time. HUD also asserts that special attention should be given to the limited mobility of the elderly, small children, and the handicapped. Accordingly, HUD recommends, that a more realistic reaction time be provided such as 2 minutes which corresponds to a thermal flux of 500 BTU/ft² hr. HUD further recommends making this thermal flux level applicable to yard areas associated with residential dwellings since the levels recommended by the ANPRM would not allow sufficient time for persons outside their homes to escape radiant heat in the event of an LNG fire. On this latter point MTB does not agree because setting a low level for yards would have the concomitant effct of requiring unnecessarily long separation distances for houses, and unlike outdoor recreational areas, houses are readily available as shelter for persons in yards. Because of questions raised by HUD and the differing views stated by commenters, MTB is proposing that a level between 500 and 1600 BTU/ft² hr. be adopted for open areas under category (1) of § *193.107(d)*. To avoid confusion, the 1600 BTU/ft² hr. level is shown in the text of the rule, but this level may be reduced in the final rule depending on the views expressed by commenters.

With regard to certin cellulose (wood or wood fiber) or metal structures, (category (2) under § *193.107(b)*), commenters recommended that 4,000 BTU/ft² hr. be adopted, since at this level structural properties available to shield persons or materials will not be impaired. This recommended flux level is adopted for this Notice.

In response to recommendations that safe distances for transportation facilities be specifically addressed, a new category (3) is included in this Notice. For reasons given above, and since either shelter or a more rapid means of escape would be expected, the flux level for category (2) applies to this new category also.

A flux level of 10,000 BTU/ft² hr. for masonry structures (category (3) in the ANPRM) was generally accepted and is retained in this Notice as category (4).

With regard to the proposed flux of 6,700 BTU/ft² hr. for other cellulose, metal or masonry structures (category (4) in the ANPRM) one commenter thought it could be too restrictive in some situations and not restrictive enough in others. Two who proposed detailed procedures did not object to the category and flux level. This category and flux is retained in this Notice as category (5) to provide protection for less critical structures. Some safety factor is included for the integrity of metal structures and ignition of cellulose materials in view of the many uncertainties that remain with respect to thermal radiation levels.

Some of the commenters suggested varying acceptable flux levels with structures identified by local zoning descriptions. MTB, however, believes the concept of zoning would not be useful since, for example, in an industrial zone, a high-concentration of humans could be exposed to high levels of thermal flux.

A variety of methods to mitigate heat radiating from a fire, such as high expansion foam and water screens, have been considered for inclusion in the Notice. Many commenters, including one who prepared an extensive report covering this and other factors, felt that a reduced exclusion zone should be permitted when a facility has foam systems. Based on available data, it appears that high expansion foam can reduce the magnitude of heat radiation. However, MTB is not proposing that exclusion distance determinations be modified to account for any potential mitigating effects of foam or other systems since there is insufficient data to assure predictable results particularly for large scale events.

The Draft Evaluation for this Notice shows that the proposed § *193.107* would have a major cost impact on construction of a new LNG facility as compared to NFPA 59A because of the additional land area that would have to be acquired. MTB believes that there are factors which may lessen the cost impact of the proposed § *193.107*:

(1) Selection of a site which minimizes the need for construction of additional pipelines so that the combined cost of land and piping is not high.

(2) Choosing a site where, because of the nature of the surrounding area, the thermal flux permitted under the proposed § *193.107* would equal or approach that allowed by NFPA 59A.

(3) Locating a facility where local meteorological conditions would result in lower exclusion distances.

(4) Utilizing government land controls to provide the necessary distances rather than purchasing the land.

(5) Utilization of alternative plant designs to reduce the exclusion distances. For example, the use of either Class I impounding system (§ *193.407*), cavern storage, or a larger number of small tanks would minimize the necessary distances. Such designs could also provide savings in compliance with other proposed standards.

Protection Against Gas Dispersion. While the thermal exclusion zone requirements in § *193.107* would provide protection from thermal radiation of a potential fire on a facility, § *193.109* would protect against the hazards of a vapor plume traveling downwind from a large spill of LNG. Section § *193.109* would require that each LNG impounding space be surrounded by a "vapor dispersion exclusion zone" computed on the basis of separation distances within which places of outdoor assembly and certain structures (as set forth in § *193.109(a)*) would be prohibited and LNG vapor would dissipate. Alternatively, safety would be provided by igniting LNG vapors at the plant site. Depending on the site of a facility, as stated in the Draft Evaluation, an exclusion zone could range from about 500 to 5,000 meters.

The Draft Evaluation for this Notice shows that § *193.109* would have a major cost impact if the "exclusion zone" alternative is chosen in design rather than planned ignition of vapors. Since the bulk of this cost would be due to land acquisition, most of the factors discussed under § *193.107* on how land costs might be mitigated are equally applicable to § *109.109*. Even assuming a low probability of accident event that would cause flammable vapors to leave a plant site, MTB believes the added costs involved are justified by the potentially disastrous effects that could result from ignition of a vapor plume in a populated area.

Several commenters expressed concern that § *193.109(a)*, which suggested that new LNG facilities be surrounded by a dispersion exclusion zone, would prohibit any structure, even control rooms, within LNG plant boundaries. Obviously, each structure or component in an LNG facility must be located within the facility's exclusion zone and, therefore, § *193.109(a)* is changed in this Notice to make it clear that items prohibited within the zone are not those associated with the LNG facility.

With respect to § *193.109(b)* in the ANPRM, a number of commenters objected to an exclusion zone being required for impounded liquids other than LNG, because of the differences in physical characteristics and possible conflict with acceptable practices. Objections were also expressed to the suggestion that an additional safe distance to protect against thermal radiation be added to the dispersion distance on the grounds that continuous burning of dispersed gas, as with a pool fire, would be unlikely. Regarding these comments, MTB agrees that because of the larger dispersion distance needed for LNG, a safe distance for LNG is likely to extend well beyond that needed for other liquids. MTB also agrees that it appears unlikely that ignition would occur at the precise instant of maximum dispersion. Consequently, § *193.109(b)* is changed

in this Notice to eliminate reference to commodities other than LNG and to any added distance.

A mathematical model in the AGA report, IS-3-1, was suggested in §*193.109(c)* of the ANPRM for use in determining a safe dispersion distance for LNG spills. Many commenters agreed with the use of IS-3-1. Similarly, the NFPA 59A, 1975 ed., recommends IS-3-1 for determining vapor dispersion distances. However, many commenters objected to the proposed model on the basis that it is applicable to instantaneous spills only, and is now outdated. They suggested that other models should be adopted or that the selection of a model should be delayed pending further research. Upon further evaluation, it appears that some error in test data may have existed and that an alternative to the IS-3-1 model should now be proposed.

MTB believes a specific model giving conservative results should be adopted as a standard to assure that adequate safety levels are uniformly established. The model being proposed (Appendix B of "Evaluation of LNG Vapor Control Methods" American Gas Association) was recommended by many of the commenters and currently is believed to have a sound basis and background development.

The ANPRM suggested that computation of dispersion distance be based on gas concentrations of 2.0 percent. This value is changed in this notice to 2.5 percent, a more appropriate level.

Instead of fixed weather conditions suggested in the ANPRM, site specific variables are proposed for use in the model. This change was proposed by many commenters and is justified for the same reasons discussed above regarding the use of site specific variables in determining safe distance for thermal radiation.

MTB is not proposing that less distance be permitted if higher dikes are used since current evidence to support this change appears insufficient.

Most commenters to §*193.109(d)* in the ANPRM regarding vaporization rates indicated that to determine dispersion distances based on an assumed sudden instantaneous spill would not be creditable. Other commenters proposed use of the 10-minute design spill rate set forth in NPFA 59A, but MTB believes that use of an arbitrary design spill could result in an excessive dispersion distance in some cases and not enough in others.

Both the ANPRM and this Notice base the proposed protection against the threat of gas dispersion under §*193.109* on the premise that more stringent design requirements for components would make a catastrophic failure unlikely as long as accident causes are predictable and can be accommodated by engineering design. Under this condition projected spill rates into an impounding system can safely be based on the discharge from a failed transfer line, and vapor generation rates limited to the spill rate itself plus flash vaporizations. Where transfer piping runs over a dike and automatic shutdown is available, as proposed by this Notice, the entire impounding and retention space can be assumed to be available for vapor retention. Additional dispersion distance to protect against failure of the component served by impoundment would be necessary only where accident causes are unpredictable or cannot be accommodated by design. Accordingly, the essential features of §*193.109(d)* in the ANPRM are retained in this Notice, with some modifications for detail and clarity as proposed by comments. The seismic acceleration suggested in the ANPRM as a design standard for unpredictable seismic motion has been increased from .3G to .4G to reflect areas where earthquake activity is high but can be accommodated be design. Also, in paragraph (d)(3), a new equation for determining a more realistic time of spillage is proposed based on a comment by Columbia LNG Corporation and Consolidated Systems LNG Company.

As recommended by most comments on the subject, the ANPRM's suggested specifications describing heat transfer properties and insulation design in an impounding system have been changed in this Notice to permit greater flexibility and use of future technological improvements.

The planned ignition suggested in §*193.109(e)* was opposed by most commenters. Some felt that requiring ignition of LNG vapor could increase the hazard of a small spill and argued that insurance on facility equipment would be unobtainable. Still others advocated planned ignition as an alternative to a dispersion exclusion zone as long as it would not have to operate automatically. Several opposed only the suggested requirement for redundancy in hardware.

MTB believes that planned ignition would provide a needed safety alternative to the vapor dispersion distance that would otherwise be required by §*193.109(a)* to (1) allow for future development at existing LNG facilities with limited or unsuitable land to meet the distance requirement, and (2) permit new facilities to be sited on the basis if criteria that may be more relevant than population density, such as seismic or land use considerations. However, because there is not enough information about ignition systems on which to base an adequate performance standard, an acceptable level of safety would be assured under §*193.109(e)* by requiring operators who choose the planned ignition alternative to obtain Secretarial approval of the plan.

The suggested requirement for automatic ignition has been deleted from §*193.109(e)* in this Notice to allow personnel responsible for responding to emergencies greater latitude in action under an ignition plan.

Earthquake Design. Section *193.111* would establish site investigation requirements and design criteria for response spectra (ground motion) caused by earthquakes to protect against the catastrophic failure of certain critical components. Storage tanks and impounding systems at facilities located where there has been a relatively high incident of seismic activity, would have to be designed to withstand response spectra that has a 99.5 percent probability of not being exceeded in 50 years. Alternatively, an operator would have to base seismic design on the effect of recorded earthquakes at the site if there would be a higher damaging effect.

Under NFPA 59A seismic study is required for a facility of any size when located in Zones 2 and 3 of Seismic risk Map of the Uniform Building code, 1973. However, specific seismic design provisions apply only to storage tanks, and no consideration is mandated for potential vertical seismic motion. In addition, only seismic acceleration rather than critical "response spectra" must be addressed, and no method of prescribing the level of motion intensity is included so that a uniform level of safety among facilities would be unlikely. Factores which should be considered, such as surface faulting, motion amplification, soil liquefaction, land slide, foundation and dike design in areas of high seismic activity, and reaction of contained liquid are also omitted in 59A. Considering the failure to address these critical features, particularly vertical seismic motion, and the lack of uniformity in seismic safety design, current standards do not appear to provide an adequate level of safety.

The proposed rule addresses all of the factors discussed above. Consideration of seismic loading would be required for all flammable fluid containers, shutdown control, transfer piping and impounding systems as well as the storage tanks. Most significantly, it proposes to require design accommodation of vertical seismic motion and establish a uniform level of seismic safety at all facilities with more stringent requirements for storage tanks and their impounding systems, the most critical components from a safety viewpoint in an LNG facility.

Several commenters to §*193.111* in the ANPRM advocated that the seismic design requirements of the Nuclear Regulatory commission (NRC) be adopted. Others felt the NRC require-

ments should be strengthened, making specific suggestions. In contrast, most commenters declared that the suggested design earthquake for a storage tank and dikes (based on a 10,000-year recurrence interval) would be excessive (see § 193.111(d) of the ANPRM), and they argued that the Uniform Building Code (UBC) design method should be used since it has been proven by experience to be adequate.

Obviously, the probability of a natural disaster occurring at an LNG facility may be similar to that of a nuclear facility, and this in Subpart B the ANPRM addressed the same range of natural occurrence risks as the NRC regulations. However, MTB believes the release of LNG in an accident would not have the long term implications presented by escaping radioactive materials and this difference in consequences should be reflected in any design standard intended to protect against the potentially catastrophic effects of natural occurrences. For example, in § 193.111(c), the return period for the proposed design seismic motion is either 475 or 9,975 years, while the period for a nuclear plant may be from 10 thousand to 10 million years. thus, even though the most critical components of an LNG facility would have a level of seismic safety closely approximate to some components in nuclear plants, the overall level of design would not be as high.

Engineering literature shows that the UBC basis for design earthquakes is not universally considered adequate and is not suitable for critical components, particularly those components in areas of high seismic activity. MTB believes that more stringent design criteria are needed, and the concept of 99.5 percent probability of seismic response spectra not being exceeded in 50 years would provide a uniform level of risk for all facilities. Some commenters also supported this view.

A number of commenters to § *193.111(a)* in the NPRM proposed that the need for a detailed geotechnical investigation should be based solely on the potential for earthquakes at the site, as shown by the UBC Seismic Risk Map, and not on storage capacity. Since an investigation is probably not warranted even for a large facility where seismic activity is low, this Section has been revised to propose detailed investigation of all sizes of facility in zones 2, 3, and 4 of the UBC map. However, even in these higher risk areas, sites for small storage tanks such as "bullets" should not have to be investigated unless there is evidence indicating a potential for surface faulting.

Section *193.111(b)* in the ANPRM specified information (patterned after the NRC regulations) that would have to be determined from a detailed investigation to assure a sound basis for design. In this Notice, performance language in § *193.111(a)* is intended to cover the important aspects of the investigation.

In accordance with comments to § 193.111(f) in the ANPRM requesting that a minimum distance be prescribed for proximity of surface faulting to critical components, considering other factors of the investigation, one mile has been proposed as a reasonable minimum.

In response to several comments to § *193.111(g)* in the ANPRM, the maximum seismic acceleration above which additional design requirements would be imposed on certain critical components has been increased from 30 to 40 percent of gravity under § *193.111(e)* in recognition of arguments that seismic forces up to this level can be accommodated without the added design measures.

The suggestion that a large dike width be one of the added design features was strongly opposed by a number of commenters. This provision is not changed, however. MTB believes that added dike width is the best means of preventing impounding capability from being breached by fissures caused by earth movement.

The Draft Evaluation for this Notice shows that the proposed § *193.111* would have a major cost impact on construction of a new LNG facility as compared to NFPA 59 A because of the more detailed seismic investigation proposed for high risk areas, more stringent seismic design requirements, and the added cost of structural steel, concrete and earthwork. A large proportion of this impact can be attributed to the proposal that facility design account for a vertical component of motion even in areas of relatively low seismic (See § *193.111(b)(2)*), since low risk zones predominate over the United States. MTB believes that the impact of seismic design (not including the cost of investigation) should be minimal because of one or more of the following conditions:

(1) Overstressing of foundations and materials by as much as ⅓ above design operating stress would be permitted under the proposed Part 193 for the accommodation of seismic loading.

(2) Design for wind loads (§ *193.117*) may be adequate to accommodate some or all of the seismic loading on outer shells.

(3) Additional design features above 59A requirements necessary to account for the proposed hydraulic testing of storage tanks may be adequate to accommodate some or all of the seismic design loads on hydraulically loaded tanks (assuming an earthquake does not occur during testing.)

(4) Using an underground cavern for storage would offset added seismic design costs since there would be no need to design for vertical or horizontal seismic motion.

Protection Against Other Natural Occurrences. Sections 193.113, 193.115, 193.117, and 193.119 would require that a facility be designed to protect against natural occurrences other than earthquakes. These sections have been included in this Notice because MTB believes the comparable NFPA 59A provision would not require a design adequate for safety and would not provide a uniform level of safety. NFPA 59A would require only that an operator consider the "degree to which a plant can, within the limits of practicality, be protected against forces of nature," without mentioning the type or magnitude of occurrence to be considered or the components that are to be protected.

Protection Against Other Natural Occurrences. Sections 193.113, 193.115, 193.117, and 193.119 dealing with natural occurrences were in the ANPRM and have been included in this Notice because MTB believes the present standards in NFPA 59A do not adequately address the requirements to protect an LNG facility against these events.

With regard to § *193.113*, Flooding, most commenters felt that the design frequency of flooding specified by the ANPRM would be an excessively stringent standard. Most of these commenters suggested that the design flood be based on that worst flood predictable in a 100-year period, which is generally accepted as a very conservative design basis. One commenter pointed out the 100-year flood level for a coastal area is based on a combination of worst possible conditions of storms, wind, tides, and surface drainage which makes this design basis sufficiently conservative. Some commenters suggested that the design flood be the worst anticipated flooding conditions. MTB has revised the flooding design proposed in this Notice to require that operators use a 100-year flood. In addition, MTB has made some editorial changes to clarify this Section.

The Draft Evaluation also identifies § *193.113* as a major cost item due to the cost of additional concrete and earthwork needed to protect a facility against the dynamic and flotation forces of flooding. MTB believes that except for marine terminals, careful site selection would minimize the impact on new facilities. Even where costs are high, MTB believes and the Evaluation shows that should a design flood occur, major benefits would accrue through prevention of catastrophic failure of critical components.

Some commenters to § *193.115*, Soil Characteristics, felt that a soil load bearing capacity safety factor of 1.3 would not be appropriate for all equipment located at all sites. They felt that such a safety factor should vary according to the site condition and the hazard associated with the component. A few commenters pointed out that in some cases, a higher safety factor may be appropriate. This provision has been revised to permit operators to use "appropriate" safety factors in determining load bearing capacities of soils. MTB has made editorial and drafting changes in § *193.115(b)* by consolidating the list of loads.

Most commenters to § *193.117*, Wind Forces, felt that critical components should be designed to withstand the wind loadings specified by the UBC rather than the comparatively high loading suggested by the ANPRM (wind with probability of being exceeded 0.5 percent in 50 years). They pointed out that the UBC had been developed utilizing many years of historical data. They further argued that the wind loading designs in the UBC had historically been proven to provide an adequate design basis since the procedures in that code include provisions for shape of structure, location, elevation, and horizontal and uplift wind pressures. Section *193.117(a)* is changed in accordance with these comments.

Most commenters to § *193.117(b)* took issue with the suggested tornado design loads (250 mph, if probability of occurrence is at least 0.5 percent in 50 years) for storage tanks and dikes. Many pointed out that a requirement to evaluate the effect of tornadoes and other severe weather conditions would be covered in § *193.117*. Many others felt that the suggested probability of occurrence would be too stringent, and the design wind loads of 250 mph too excessive. A few made the observation that it would be unreasonable to require design based on a probability of occurrence of tornadoes where such an occurrence cannot be accurately determined. MTB believes that tornado wind loads are so excessive that they should be specifically set forth in Part 193 as suggested in the ANPRM rather than cover these loadings under a general design requirement for other severe weather conditions in § *193.119*. While the probability of occurrence of a tornado specified in § *193.117(b)* may seem low for design purposes, the magnitude of wind loads in tornadoes of this frequency of occurrence is not very different from the wind loads in tornadoes which occur much more frequently. With regard to the comments that a 250 mph wind load from a tornado is excessive, MTB believes that many large tornadoes have had winds in excess of 250 mph. MTB acknowledges, however, that applying the suggested design requirement may be too stringent where the probability of tornadoes occurring cannot be quantitatively predicted. As pointed out by some commenters, the probability of tornadoes occurring cannot be predicted in some regions of the country because the occurrence of tornadoes in these regions is so infrequent that valid statistics have not been recorded. Under § *193.117(b)* in this Notice, if the probability of occurrence cannot be determined, only the UBC design criteria would have to be met.

The Draft Evaluation identifies § *193.117* as a proposal with major cost impacts primarily because of the high tornado design wind load and the low threshold probability of occurrence of tornadoes. MTB believes that cost savings can be obtained by selecting a site with low probability of tornadoes occurring or by using a below or partly below ground tank design. Also, design of foundations to meet the proposed test requirements for storage tanks (§ *193.1033*) or seismic design requirements (§ *193.111*) might be used to offset design for toe load due to wind, with a partial reduction in the cost of this Section. Considering these factors, together with the 33 percent allowable overstressing of materials and foundations, MTB believes that the costs would not be as high as projected.

The provision for wind load design is another proposal which MTB believes necessary to mitigate the likelihood of catastrophic failure of an LNG storage tank. If a dispersion exclusion zone is provided under § *193.109(a)*, the proposed wind load design would also assure that vapor dispersion can, in most cases, reliably be based on transfer line failure alone.

While most commenters did not suggest changes to § *193.119* regarding other severe wheather and natural conditions a few commenters felt that it would be unreasonable to expect a "worst combination of other weather and natural conditions" at the facility site in addition to those conditions specifically covered by §§ 193.111, 193.113, 193.115, and 193.117. This Section has been revised to permit operators to determine the worst "effect," rather than the worst "combination," of other wheather and natural conditions which may predictably occur at the facility.

Adjacent Activities. The need for taking into consideration man-made activities adjacent to an LNG facility as suggested in § *193.121* was addressed in the G.A.O. report on Liquefied Energy Gas Safety. This important subject is not specifically covered in the present NFPA standards. Most commenters to this Section felt that it was impossible for an operator to accurately predict the adjacent activities which will occur during the operating life of an LNG facility. These commenters pointed out that a site chosen in a remote location could initiate development and result in activities which were not predictable and would not be under the control of the LNG plant operator. Many of these commenters felt that an operator should, however, take reasonable precautions based on estimates of the area's development potential, this Section has been changed to permit the operator the flexibility of determining the "reasonably foreseeable," rather than the "predictable," activities adjacent to a facility.

Separation of Components. Under § *193.123* adequate clearance would have to be provided between critical components and between components and the site boundary to provide for the movement of personnel and equipment during normal operations and in an emergency and to minimize hazards to persons and property on and off the facility site.

A large number of commenters to § *193.123* suggested revising the Section to require operators to provide distances between critical components and specified in NFPA 59A. These commenters argued that the NFPA 59A requirements establish certain specific distances that through experience have proven adequate to minimize hazards from these components as well as permit movement of personnel and equipment around these components. In consideration of these views and until MTB develops a more complete performance standard on this subject, MTB believes that the public interest is better served by requiring operators to comply with Sections 213 through 216 of Chapter 2 of NFPA 59A.

SUBPART C—MATERIALS

This subpart would establish criteria for the use of materials for components at an LNG facility. The main objective of the proposed criteria is to ensure that materials are used which enable components to function over the expected range of high and low temperatures.

Most commenters to § *193.201, Scope*, pointed out that operators do not "design" material. Thus, the phrase, "selection and qualification" is now proposed.

With regard to § *193.203, General*, a majority of commenters agreed with the wording of the ANPRM. However, several commenters suggested replacing the word "predictable" with the word "design" in paragraph (a) to describe those loadings that material must withstand. This change was adopted to keep the material require-

ments consistent with the design required for components.

Temperature Ranges. Revisions were not made to the suggested language of § *193.205* regarding normal, extreme temperatures since there were no substantive objections to the wording used in the ANPRM.

In response to several comments about the lack of need to protect all components against the effects of unexpected contact with LNG or fire, in *193.207*, the term "critical" is inserted before the word "components" in paragraphs (a), (b), and (c). However, it is not considered appropriate to so limit the scope of paragraph (d) which is intended to preclude an uncontrollable emergency in the event of a small fire around a flammable fluid component. Paragraph (d) was revised in response to several comments pointing out that some fluid release may not be hazardous or detrimentally affect safety.

Insulation. In Section *193.209*, a new paragraph (a) is added to propose that insulation have thermal and mechanical load bearing capabilities during normal operation. This provision was recommended by commenters. To eliminate redundancy, the suggested provision of § *193.209* regarding outside insulation is combined with that of § *193.525(b)*, and the latter section is deleted. A further change also eliminates the problem several commenters pointed out that there are no insulating materials that would provide adequate insulating properties and also "not support combustion." In this notice, the term "self extinguishing" is used to describe materials with needed thermal properties that provide the needed safety as well.

Cold Boxes. Most comments to § *193.211* agreed with the suggestion in the ANPRM that cold boxes should be made of noncombustible materials. There were some commenters who pointed out that requirements for insulation should be covered in § *193.209* and need not be duplicated for "cold boxes" under § *193.211*. However, this comment was not adopted because of the need for special treatment of cold box insulation.

Piping. Most commenters were in agreement with the suggested prohibition in § *193.213* against use of cast, malleable, or ductile iron piping at low temperatures. However, a few comments pointed out that some other piping materials also develop undesirable characteristics at low temperatures. Other commenters were in favor of totally prohibiting the use of cast, malleable and ductile iron pipe, as in Section 6113 of NFPA 59A. In response to these issues, MTB has revised the wording of § *193.213* to propose that cast, malleable or ductile iron piping not be used to carry cold refrigerants and flammable fluids and that materials intended to operate at less than −28.9C (−20° F) be qualified by testing to determine that the materials meet the general requirements of § *193.203(b)*.

Concrete. With regard to § *193.215*, one commenter pointed out that there are other refrigerants than LNG in LNG facilities that could cause thermal shock to concrete and adversely affect the integrity of a structure. For that reason, the term "LNG" is changed to "cryogenic". Other commenters pointed out that concrete can have minor spalling occur that will not be detrimental to safety. Thus, in paragraph (a) the word "detrimental" is inserted before "spalling".

It is MTB's feeling that the performance language of § *193.215* would provide an acceptable concrete materials standard, which permits innovation, and that the specifications listed in 4230 of NFPA 59A should not be adopted as some commenters recommended. Meeting the NFPA specifications should suffice, however, to comply with the proposed § *193.215*. In this regard, interested persons should note that, in contrast to this section, the more detailed concrete specifications of Section 42 of NFPA 59A are proposed in § *193.527* for concrete storage tanks and containers because of the greater need for specificity in a standard regarding storage tanks and the associated hazards involved.

Use of Combustible Materials. Under § *193.217* an operator could not use combustible materials for buildings or equipment where ignition would worsen an emergency. Several comments emphasized that the class of materials that has "limited combustible" characteristics should be an allowable alternative to noncombustibles when the latter is not available. MTB concurs since the recommendation is consistent with the intent of the suggested rule, and § *193.219* is changed accordingly.

Records. The great majority of the commenters to § *193.219* indicated that records should be limited to "critical" components, to avoid unessential paper work. MTB believes that the compliance objective of this proposed requirement can be satisfied by limiting the required records to "critical components."

SUBPART D—DESIGN OF COMPONENTS AND BUILDINGS

The purpose of this subpart is to ensure that those parts of an LNG facility that are related to safety are designed to withstand anticipated loadings and to properly contain or control hazardous fluids. In addition, buildings would have to be designed to minimize the effects of explosion and be ventilated if used to handle flammable fluids.

General. With regard to § *193.303(a)*, several commenters suggested that the word "design" should replace "predictable" to describe the loadings that a component must withstand. MTB does not agree, however, because the purpose of § *193.303* is to set the standard for design loadings. Paragraph (b) in the ANPRM has been deleted as redundant with § *193.207*, and paragraph (c) has been redesignated as paragraph (b).

Personnel. In response to a number of comments, to § *193.303(c)*, the suggested qualifications for persons who design and fabricate components in an LNG facility are changed to permit qualification by either training or experience on LNG or other cryogenic facilities. Also, the proposed qualifications would only apply to persons involved with critical components. Although for clarity § *193.303(c)* in the ANPRM is restated as § *193.304*, it is anticipated that in the final rules this section would be transferred to the new subpart on personnel qualifications and training.

Valve. In § *193.305* of the ANPRM paragraph (a) is deleted as redundant with § *193.307(a)*, paragraph (b) is redesignated as paragraph (a), and paragraph (c) is redesignated as paragraph (b). In response to several comments, paragraph (b) has been changed to recognize that there are extended bonnet valves available that operate satisfactorily in cryogenic service with the valve stems in any position relative to horizontal. Paragraph (d) in the ANPRM which related to relief valves is incorporated in § *193.905*, which covers this topic.

Piping. In response to comments to § *193.307*, MTB changed the word "process" to "cryogenic" in paragraph (b) since the need for purge connections is important for piping carrying cryogenic or flammable fluids and the word "process" is more indefinite. The suggestion that each piping system be identified by color coding, painting, or labeling is now limited to aboveground cryogenic or flammable fluid piping to apply the requirement only to areas of greatest benefit. Paragraph (d) is revised to permit the use of pipe with a longitudinal seam that has a joint efficiency rating of 1.0 under ANSI B31.3 for handling LNG and other hazardous liquids rather than requiring that only seamless pipe be used. Several commenters pointed out that longitudinal weld seam pipe is more uniform in wall thickness than seamless pipe and, thus, often of a higher quality. MTB adopted this revision for this reason and because the 100 percent radiograph requirement of B31.3 assures the integrity of the longitudinal seam. In paragraph (e) the referenced paragraph number has been corrected to read 323.2.3 of ANSI B31.3. The sug-

gestion in paragraph (e) that threaded pipe be at least Schedule 80 was changed in response to several commenters who pointed out that such heavy wall pipe is only justified on cryogenic or flammable fluid service. Paragraph (g) is deleted as redundant because the difficulties with using furnace lap welded or butt welded pipe are covered by the revision of paragraph (d) of this section. Because paragraph (h) concerned pipe material, it is more appropriately covered by § *193.213*.

Pipe Supports and Attachments. Section *193.309(a)*, in the ANPRM is changed to refer to § *193.207*, which more appropriately covers the problem of pipe stability in the event of an LNG spill or fire. In paragraph (b) the word "supports" is replaced by "pipe attachments and supports" to clarify the intent of this proposal regarding the effects of heat transfer. In response to one commenter who pointed out that "unintentional" piping restraint is a safety problem with ice formation, the words "piping restraints" are replaced by "unintentional restraint of piping."

Buildings. Several commenters to § *193.311* argued that small quantities of flammable fluids in a building would not constitute a potential hazard justifying special design and construction to protect against the effects of explosion, as might be the case for shops, warehouses, and offices. MTB agrees that the suggested design requirement probably would not be reasonable for every building in which any amount of flammable fluid is handled. Thus, in this notice, only those buildings with "potentially hazardous quantities of" flammable fluids would have to meet the proposed requirements. The proposed rule also would require design and construction to minimize "potential fire hazards" in response to one commenter who pointed out that fire is more often the major hazard rather than explosion.

Commenters to § *193.313* also stressed that the suggested ventilation requirements of paragraph (a) would be inappropriate for buildings where small quantities of flammable fluids are handled because ventilation is intended to minimize the possibility of a hazardous accumulation of gas in air. MTB agrees, and the ventilation requirements are proposed for buildings with potentially hazardous quantities of hazardous fluids. With regard to the suggested gas concentration limit of 5 percent of the lower flammable limit (LFL), virtually all commenters argued the lack of instrument accuracy at such low levels. Thus, MTB has revised the limit for activation of the ventilation system to 15 percent LFL, a level lower than that which is proposed under § *193.605* for automatic shutdown of transfer piping. In paragraph (b), the second sentence is revised to propose that a proportional amount of air reach each level of buildings with two or more levels where vapors heavier than air can be present. This change is made in response to commenters who pointed out that the suggested requirement that one-half of the ventilation be from the lower level could lead to a situation of more ventilation than necessary in one area and insufficient ventilation in other areas.

Low Temperature Effects and Loadings. Paragraph (a) and (b) of § *193.315* in the ANPRM were deleted since they are duplicative of § *193.205* (a) and (b) regarding the effects of cryogenic temperatures on components. Paragraph (c) of this section concerning the separation of valves under icy conditions is moved to § 193.321(c).

There were no unfavorable comments regarding the substance of § *193.317* and it is unchanged in this notice.

Section *193.319* concerns the problem of frost heave, or ground uplift, due to freezing soil. In § *193.319* only minor changes are made in the wording used in the "temperatures of the component" that may cause frost heave. Paragraph (b) is changed in response to several comments that reliability, accuracy, and durability of sensing devices for detecting frost heave are questionable in some applications and that visual inspection is much more reliable when based on reference monuments. Upon further consideration of this issue, an alternative to instruments and alarms is added to paragraph (b) to allow monthly inspections using reference monuments and surveying instruments to detect changes in elevation of the facility.

Section *193.321*, regarding protection from ice and snow loads contains a clarifying change in paragraph (a). A new paragraph (c) is transferred to this section from § *193.315(c)*.

Electrical Systems. Regarding § *193.323*, two commenters pointed out that the suggested requirements of paragraph (a)(1) regarding areas where electrical ignition could occur is covered equally as well in NFPA 70 which is referenced in paragraph (a)(2). As a result, paragraph (a)(1) is deleted, and paragraph (a)(2) is revised for clarity. In response to several commenters who convincingly argued that more definitive requirements are needed for electrical grounding and bonding, paragraph (b) in the ANPRM is revised by referencing Sections 760 and 761 of NFPA 59A. Paragraph (c) has been revised for the same reason by referencing Section 762 of NFPA 59A. Paragraph (d) was deleted in response to several commenters indicating that paragraph (a)(2) of the ANPRM would require design and installation in accordance with NFPA 70 which covers the suggested subject of paragraph (d), ground fault detection devices.

Lightning Protection. Section *193.325* is changed to state that the purpose of rods, arrestors and grounds in protecting against lightning is to "minimize the hazard." This change is made in response to several commenters who argued it would be impossible for the devices to "protect" everything from lightning. MTB agrees that installation of lightning protection devices cannot provide a complete guarantee agsinst damage.

Boilers. Commenters to § *193.327* requested that Section IV of the ASME Boiler and Pressure Vessel Code be established as a design standard for boilers, as well as Section I. MTB concurs with this change since it permits the use of hot water boilers as well as steam boilers.

Combustion Engines. Section *193.329* is unchanged from the ANPRM in requiring that combustion engines and gas turbines meet the requirements of NFPA 37.

SUBPART E—IMPOUNDMENT DESIGN AND CAPACITY

The purpose of this subpart is to require the construction of a structurally sound, leak free impounding system (composed of dikes and floors) to catch and hold spills of LNG from storage tanks and other critical components. For large spills impounding systems also serve to retard the rate of vaporization of LNG and any subsequent downwind vapor travel.

Components Requiring Impoundment. The ANPRM would have made it mandatory to provide impoundment for each of the components and areas listed in § *193.403* to contain a potential spill of LNG or other hazardous liquid. Many commenters recommended deletion of various individual items in the list. Others suggested that each component or area be protected, but not necessarily by impoundment, arguing that less potentially hazardous leaks or spills could be handled more cost effectively by proper grading and drainage, or that impoundment is unnecessary because of rapid vaporization. MTB concedes that grading and drainage can be substituted for impoundment where the same degree of protection from a potential spill can be reasonably assured.

Under § *193.403(a)* impoundment would be required for three items: storage tanks, transfer piping above 4 inches in diameter, and tank car or tank truck loading or unloading areas. MTB believes that large diameter transfer lines should have impoundment because of the large volume that

could be spilled in the case of a line break. Using this guideline, piping in excess of 4 inches in diameter is proposed to require impoundment. An operator would have the option under paragraph (b) for smaller piping and the other items listed to provide safety by grading and drainage or impoundment. MTB welcomes comments on (1) the proposed diameter breakpoint for transfer piping with suitable backup for any differing views, and (2) whether some other criterion, such as pressure, should be used as a breakpoint. Because MTB believes it is more appropriate to apply the proposed new impounding design rules solely to the containment of LNG, a new paragraph (c) has been added to require that impounding systems for other hazardous liquids be built in accordance with NFPA 30, the standard followed by industry for these facilities.

General Features of Impoundment. The phrase "to the maximum extent possible" has been added to § *193.405* to modify the level of spill containment which an impounding system must provide, recognizing that absolute protection may not be possible. Many commenters objected to the provision that trajectory and splash of spilled liquid be contained. MTB believes, however that these are reasonably predictable ways by which LNG could escape impoundment and that dikes should be designed with sufficient shape and size to handle these factors. The trajectory issue is further discussed under § *193.419* in this preamble. Also, under § *193.405,* interested persons should note that if an underground cavern is used for LNG storage (see definition of "storage tank"), the cavern would be an "impounding system" and would have to be sealed against leakage.

The majority of the commenters recommended deletion of the suggested impounding system classifications under § *193.407* as they did not see any need for them. Classification of impounding systems is useful in § *193.439* for example, as well as in other sections of Subpart E and Subpart B so that requirements may vary according to system design. The Section has been simplified, however, by eliminating the types in each classification. MTB does not believe that the arguments that this Section would stand in the way of technological development or would not permit an operator to choose a system to achieve the design requirements are valid because of the general language used in the classification descriptions.

Structural Integrity. Many commenters were concerned that § *193.409(a)* in the ANPRM would require that all materials in an impounding system, including insulation be designed to meet structural requirements. The intent of this Section has been clarified by specifically referring to the design of structural parts. Insulation would be covered to the extent it serves some structural purpose. Also, in the lead-in to paragraph (a), the suggested requirement that surfaces of an impounded component which could be contacted by spilled liquid be designed to the same requirements as the impounding system has been deleted because design requirements for specific components are covered by other Sections.

Regarding protection against highway or rail traffic, there were comments that "adjacent" traffic in paragraph (a)(5)(ii) of the ANPRM would be ambiguous and the term has been changed to "adjoining" in this Notice. Commenters claimed highways or railways would not be permitted in the exclusion zone but such was not suggested under either § *193.107* or § *193.109.* There are existing LNG facilities where tank car or tank truck cargo transfer systems are adjacent to, or adjoin, impounding systems. Many commenters also objected to the suggested requirement that dikes withstand impact loadings from aircraft when they are near an airport. MTB has quantified this proposal by using the distance of 20,000 feet established by the Federal Aviation Regulations (14 CFR Part 77) to define a critical area surrounding a large airport. Under § *193.409(c),* a Class I dike would have to be designed to withstand the impact of the heaviest aircraft which can operate to or from the airport.

MTB concurs with the majority of commenters that "a sudden total release," from a storage tank, as used in § *193.409(b),* is not a credible design accident. Nevertheless, it is being retained in this Notice to provoke the development of a realistic, definable spill condition. Comments submitted on this point to the ANPRM do not fulfill this objective. Further comment in this regard is solicited. Absent any acceptable definitive alternative, MTB will develop its own design spill or adopt the proposed spill condition.

In § *193.409(c)(1)* the term "self-extinguishing" is being used instead of "must not support combustion."

As suggested, § *193.409(d)* in the ANPRM regarding insulation, sealants and other coatings has been combined with the suggested § *193.409(c)* and restated in a new § *193.410.*

Section *193.411* in the ANPRM regarding system surfaces has been deleted, as recommended by the majority of the commenters. Paragraph (a) duplicated § *193.405* with regard to leakage, paragraph (b) is considered impractical, and the problem of seepage is handled by § *193.431.*

Floors. There were varying objections to the suggested slope requirements in § *193.413* regarding the design of impounding system floors: that they were too specific, such as requiring a two percent slope, or unreasonable to meet. After reviewing suggested wording, MTB is proposing more performance oriented requirements consistent with the purpose of a sloped floor, which is to drain spilled LNG to a safe area and prevent water from collecting on the floor. Under this section, channels would be required to minimize the wetted floor area in the event of a spill.

Dikes. The majority of the commenters felt that compacted earth dikes would not be permitted under § *193.415(a)* in the ANPRM which suggested that dikes be "reinforced and contiguously interlocked." MTB is not proposing that such dikes be prohibited, and since the structural standards for dikes would be covered by § *193.409,* paragraph (a) of § *193.415* in the ANPRM is deleted in this Notice.

Many commenters to § *193.415(b)* in the ANPRM felt that properly designed penetrations should be permitted in dikes to accommodate piping or other purposes. MTB still feels it is in the interest of safety to prohibit them. Water drains from sumps would be particularly vulnerable. There are existing local ordinances that now prohibit such penetrations. Commenters also stated that dike penetrations would greatly simplify LNG pump installations. This could be true if bottom tank penetrations were permitted, but is not important with the proposed top penetrations under § *193.511.*

Section § *193.415(c)* in the ANPRM has been modified to permit a component wall to serve as a dike in a Class 1 impounding system that is designed to meet the requirements of § *193.409(c),* which applies to facilities near airports. MTB requests comments as to how this provision might be further modified to allow sufficiently strong walls of components to serve as dikes in the case of facilities not near airports. What should be the design standard for such walls? How should a modified standard apply to underground caverns?

A large number of commenters to § *193.417* questioned the need for "vapor barriers" if a dispersion exclusion zone, as calculated under § *193.109,* would eliminate the possibility of a flammable vapor cloud extending beyond the exclusion zone. Erected on top of dikes, vapor barriers can retard the rate at which vapor leaves an impounding system. Section *193.417* would not require the use of vapor barriers, but if they are used in conjunction with dikes as a means of reducing the extent of the exclusion

zone, such barriers would have to be designed in accordance with Part 193 is as a critical component and be cabable of entraining cold vapor.

The Draft Evaluation shows that § *193.417* would have a major cost impact if an operator chooses to install vapor barriers. However, costs attributed to the design of barriers should be offset somewhat by a reduction in land cost under § *193.109*. In any event, MTB believes the costs would be justified by the added assurance that a vapor dispersion zone designed on the basis of vapor barriers would not be exceeded in the event of a design spill.

The majority of comments to § *193.419* recommended that paragraph 2115 of NFPA 59A be used to determine dike dimensions and stated that some of the suggested requirementst were not feasible, particularly with regard to interception of jets of liquids from transfer lines. Notwithstanding the transfer line issue, MTB has determined that the formula $X \geq 0.6Y$ used in Figure 2-1 of NFPA 59A results in dike dimension which will not intercept all credible trajectories of discharged liquids. MTB believes, however, that increasing the constant factor from 0.6 to 1.0 would provide the needed protection in most cases, although operators would still have to make appropriate calculations to determine the dike dimensions and configuration necessary to prevent the escape of liqued by splash and other mechanisms described under § *193.405*, and to provide the necessary impoundment capacity.

Covered Impounding Systems. Most commenters recommended that § *193.421* concerning covered systems be deleted. Objections were not to the suggested requirements as much as to the implication of the suggested standard that covered impounding systems are practicable to design. They would be prohibitively expensive according to many commenters. It was also stated that such systems could be dangerous and detrimental to a safe LNG facility. Granting these arguments, MTB believes that by definition there are existing facilities that could fall into this category, and advances in technology could make such systems more feasible in the future. Accordingly, this Section, with clarifying revisions, is being retained.

Gas Detection. Section *193.423* proposes that impounding systems be continuously monitored for the presence of gas in order to assure that an LNG or gas leak will be detected quickly. Current standards are indefinite with respect to this safety feature. Section 92 of NFPA 59A states that, because of the wide differences in LNG facilities, fire and leak control measures shall be coordinated with the authority having jurisdiction, and local emergency agencies. This is not appropriate for a Federal safety standard since neither performance criteria nor control measures are stated.

There were a number of varied comments in regard to § *193.423* pertaining to detection of gas concentrations: that the number of sensors would be excessive; that they would be ineffective in some of the specified locations, such as the low point of an impounding space where a low temperature alarm would be more appropriate to detect presence of LNG; and that the alarm set point for gas concentrations should be 25 percent. MTB recognizes the validity of these arguments and has revised this Section to propose a more performance oriented requirement. There were some commenters who felt that mandatory gas detection systems were unwarranted, that they did not contribute to safety, and would create serious maintenance problems. MTB and the majority of the commenters do not agree with this reasoning. Leak detectors and alarm systems are needed to permit an operator time to correct a problem and prevent it from becoming an uncontrollable emergency.

The Draft Evaluation shows that this Section would have a major cost impact because of the instrumentation that would have to be provided to detect leaks. MTB believes that an operator could minimize this cost by using a design which reduces the amount of impounding space floor area and thus the amount of instrumentation. The added costs are justified by the early warning that would be provided should a leak occur. Even with a minor leak, the extreme cold of LNG could produce high thermal gradients and potentially excessive localized thermal stress in surfaces contacted. Resulting cracks could damage the structural integrity of a component making it susceptible to failure possibly of a catastrophic nature, from natural or other forces which it was initially designed to accommodate. With current designs of high dikes located closely adjacent to a component, a small leak of either LNG or cold gas could result in a combustible mixture forming between a component and its diking. If ignited, high overpressure might result either from deflagration or detonation depending on the mixture and degree of confinement. Many uncertainties remain regarding this hazard, but the potential for simultaneous failure of both the component and its diking is of such serious concern that it should not be overlooked.

Inerting Systems. All commenters indicated that the installation of a carbon dioxide inerting system as suggested by § *193.425* in the ANPRM should not be required. Most felt the suggested system could decrease safety and would be impractical to maintain. MTB concurs that charges generated by the system could ignite a gas-air mixture. The National Fire Council has warned against the use of carbon dioxide systems because of such static ignition. It was pointed out that such systems had been examined in the past and found of questionable benefit in open air conditions. For these reasons, this Section has been deleted.

Sump Basin. Many of the commenters objected to the suggested requirement under § *193.427* for sumps to collect small spills of LNG on grounds that pumping out such liquid as suggested by § *193.429* would be impractical. While MTB is proposing that a sump be required, its purpose would be for collection of rain water and small spills of LNG, rather than to provide for pumping out LNG. MTB believes that sumps provide an added safety benefit of preventing unnecessary spreading of small spills.

Removal of LNG spills from sump basins was suggested in the ANPRM by § *193.429*. The majority of commenters argued the impracticability of such removal. They pointed out that a slow cooldown of all components involved would be required and an adequate liquid pressure would be required to establish a suction. Spare storage capacity would be required to receive the pumped liquid, which would probably be contaminated and unusable. It is also questionable if pumping equipment and piping could be considered in a fail-safe mode, as § *193.429* would have required, since power is required for the pumps. MTB believes the many problems involved override the potential benefits and has deleted this Section.

The purpose of § *193.431* is to keep an impounding space as free of water as possible in order to maintain the space available for impounding LNG. Some commenters objected to the suggested requirement in § *193.431(a)* that piping for removal of water from sumps be installed over the dike. MTB's position on dike penetrations for piping is stated under § *193.415(b)* and it does not appear that an over-the-dike arrangement for water drain piping would be onerous, and, in fact, it could be more economical. Commenters also argued that the suggested requirement in paragraph (c)(2) for redundant shutdown capabilities when LNG is present in the sump would only add to the cost, without a commensurate safety benefit. MTB does not concur with this assessment and has retained the redundancy requirement.

Shared Impounding Systems. The ANPRM would have prohibited the use of a single impounding system to serve more than one component

(except when small capacities were involved) in order to minimize the chance that an emergency at one component might endanger another. Such a prohibition would require construction of more systems at each facility and would not allow operators to use design concepts or topography to mitigate the hazards involved.

MTB has therefore rewritten § *193.433* in performance language. Although it was suggested that Section 211 of NFPA 59A be used to govern shared impoundment, MTB does not agree with paragraph 2110(c) that would allow other components to be exposed to low temperature or heat if impoundment were provided for the contents of all of the containers.

Piping. Section *193.435* has been changed to remove the duplication of § *193.207* with respect to critical components inside an impounding system. Also, protection of piping would be required where failure would "worsen" an emergency in recognition of the fact that an emergency may already exist at the time of failure.

Impoundment Capacity. MTB has retained the basic concept suggested in the ANPRM under § *193.437* for general capacity requirements that allowance must be made for displacement by objects within an impounding system. A minor change is made in recognition of the fact that water would not be used to fight an LNG fire.

With respect to § *193.439,* the majority of the commenters felt that 100 percent of a storage tank's maximum liquid capacity would be adequate for impoundment capacity. This capacity would be consistent with the present NFPA 59A requirements. However, there were also many commenters who acknowledged that provision for additional capacity should be included to hold foaming or boiling LNG. MTB accepts this latter concept for Class 1 and covered impoundment systems serving a single tank, and accordingly is proposing a 110 percent requirement for such systems.

However, there are many more factors that must be considered in establishing capacity for Class 2 and Class 3 systems, such as jetting, splash, wave action and others. Additional capacity would also assist in the containment of the initial rapid generation of vapor inherent with spills into such systems. It is significant that all States which now have existing or proposed LNG regulations as well as local ordinances (such New York City) have a 150 percent requirement. MTB is proposing that this capacity be adopted for Class 2 and Class 3 systems which serve a single storage tank. The requirement should not be unduly onerous, considering the advantages derived.

In regard to § *193.441,* most commenters felt that a capacity equal to 150 percent impoundment of the volume of liquid in equipment and transfer systems "and" the liquid which would be discharged during twice the time period necessary for spill detection, instrument response, and sequenced shutdown by the automatic shutdown system would be too large. It was suggested that "or" be substituted for "and," but MTB does not agree because these two volumes are additive. However, it is proposed that the sum of 100 percent of the volume of liquid in the component served, plus that liquid which could be discharged before shutdown, would provide adequate impoundment capacity for equipment and transfer facilities.

Section *193.443,* concerning parking areas and portable vessels, has been revised to be consistent with § *193.403,* as impoundment would not be mandatory if grading and drainage are used to insure that critical components or adjoining property are not endangered.

Section *193.445,* concerning flow capacity to remote systems, has also been revised to be consistent with other changes made in this Subpart.

Many commenters argued that if § *193.429* Pertaining to LNG spill removal from sumps were deleted, § *193.447* covering sump capacity would no longer be relevant. MTB does not agree, however, because of the importance of a sump in preventing the spreading of a small spill across an impoundment system floor and thus reducing the time before vapor begins to overflow the dikes. MTB is proposing, therefore, that the suggested requirements of § *193.447* be adopted to govern sump basin capacity. While some commenters to the ANPRM argued that basins of the size suggested in the ANPRM would be too large, unnecessary, or difficult to manage in design, these commenters did not say what size basin would be appropriate. MTB invites comments on this point with the view that § *193.447* would be changed in the final rule, if comments show that sump basins of a different size than proposed would be more appropriate.

SUBPART F—LNG STORAGE

A storage tank is the most critical component of an LNG facility because of the large quantity of stored energy and the threat of catastrophy in the event of a failure. This subpart would establish additional design considerations to assure structural integrity and preclude accident causes such as overpressure or underpressure.

Scope. In regard to § *193.501,* a comment was made that the suggested requirements of Subpart F were essentially applicable only to LNG storage tanks. As this was the intent, the title of this Subpart and the scope have been changed accordingly.

Membrane Liners. Containers used to hold LNG in a storage tank must be strong enough to support operational and environmental loads. Thus, under § *193.503(b)* in the ANPRM, MTB suggested that a membrane liner, because of its doubtful reliability, not be permitted in a storage tank as an inner container. There were a number of varying comments to this Section. Commenters generally argued that such a prohibition would limit future technological development, that the provision should only be applicable to permanent land based LNG storage tanks, and that only nonmetallic liners or flammable liners should be banned. One commenter submitted a report to support the view that disallowing membrane liners would be too general and not reflect the present state of the art. Another commenter stated that although membrane liners may not be economically attractive at this time, their prohibition is not realistic. Based on these views, MTB has revised paragraph (b) to prohibit only flammable nonmetallic liners.

Design Loads. As recommended by many commenters, the word "maximum" has been deleted in § *193.505(a)* and "minimum" § *193.505(b)* as well as throughout this part, to be consistent with the terminology used in industry practice and standards regarding "design pressure." There were some comments that the suggested list of design forces for storage tanks be deleted and replaced by general language. Others stated the list did not include all possible forces or combinations of forces. While the latter comment is true, the list was not intended to be exhaustive, but only illustrative. Because of the significance of tank design, MTB feels it is necessary to supplement the general language used to refer to possible loadings in the lead-in to § *193.505* with examples. Also, at the suggestion of one commenter, the word "predictable" has been added to paragraph (f) (formerly paragraph (e)), as it was pointed out that some settlement may be unpredictable. A new paragraph (e) identifies the loads that would be caused by pressure testing under § *193.1033.*

Stratification. If LNG in a storage tank is allowed to stratify, or develop layers of different density, hazardous "rollover" and overpressure could result. The hazard occurs when the bottom layer rises to the top (rollover) and releases excess heat through rapid vaporization. The majority of comments to § *193.507* felt that suggested design requirements for protection against the effects of stratification would be too specific and should be written in performance language. They also stated that any one of the

methods listed would alone provide adequate protection and that requiring all of them would be unnecessary. A number thought the term "mixing devices" should be defined. One commenter thought that both top and bottom connections would be needed to comply, although the latter would be prohibited by § *193.511.* MTB's revised Section is more performance oriented. A choice of mitigating methods would be allowed, and reference to mixing. A choice of mitigating methods would be allowed, and reference to mixing devices has been deleted. It should be noted that the bottom of a tank can be reached through top connections.

Tank Movement. A safe tank design must consider the predictable movement of parts after construction. Section *193.509, Movement and Stress,* is unchanged in this Notice.

Penetrations. To preclude the possibility that any failure of piping that enters a tank would also cause a major spill from the tank, MTB believes that all piping should enter, or penetrate, the tank at the top. This design feature would place connections above the top liquid level in a tank and prevent gravity discharge of the liquid in the event of a piping failure. In addition, the integrity of the walls and bottom of a tank would be increased by the elimination of indeterminate stresses caused by connected piping. NFPA 59A does not contain any similar provision.

The majority of comments to § *193.511* objected to the suggested requirement that all tank penetrations be symmetrically located on top of the tank as close as possible to the center. They stated that locating penetrations at the center could cause structural, safety, and financial problems. It was argued that penetrations near the edge would be easier to support (structurally), and surveillance, protection, or fire control would be a greater problem with center penetrations. The Notice eliminates the suggested requirement in the ANPRM that penetrations be located as close as possible to the center, but retains the proposal that all tank penetrations be located on the top of the tank. A number of commenters agreed with MTB's view that top penetrations are inherently safer than those at the side or bottom because the potential for more hazardous side or bottom rupture would be removed in the event of a line break during severe environmental conditions. While the probability of such an event is reduced for lines designed as proposed by this Notice, MTB feels that the possible disadvantages and added costs of top connections are justified by the additional safety that would be provided.

The Draft Evaluation for this Notice assigns a major cost impact to the proposal to require top penetrations. Many existing facilities have piping connections of this type, and top penetrations would normally be selected if new storage tanks are designed with berms or high close-in dikes to satisfy other safety objectives. Since these designs may be the most reasonable choice for new facilities in mitigating such problems as thermal radiation, vapor dispersion, wind loading, and leak detection, the impact of this Section may not be as high as projected.

Design Pressure. Section *193.513* proposes that a storage tank's internal design pressure be no lower than the vapor pressure resulting from filling, rollover, atmospheric pressure change, heat input from insulation loss, or flash vaporization from pumping. Excessive internal pressure could result in catastrophic tank failure or a spill which could cause vapor dispersions to surpass design limits. The purpose of the proposal is to assure that factors particularly relating to low pressure storage of a cryogenic flammable fluid are included in design in order to reasonably assure that design pressure will not be exceeded during operation and to mitigate the possibility of a release of excessive volumes of LNG vapors. Existing standards do not specifically address these aspects of design.

Most of the comments in regard to § *193.513,* concerning storage tank design pressure, pertained to the ANPRM's use of terminology that is not generally accepted. MTB has revised the title of this Section as well as the wording in paragraphs (a) and (b) to be consistent with accepted terminolgy with regard to design pressure. Paragraph (c) regarding redundant relief devices, has been deleted from this Section and incorporated in § *193.905.*

The same general comments were made in respect to § *193.515* which also concerns design pressure and similar changes in the terminology have been made here. Paragraph (c) which suggested the use of redundant vacuum relief devices is deleted and incorporated in § *193.905.* Many commenters argued that the suggested 2 psi minimum design pressure in paragraph (b) would be contrary to accepted practice and would impose an unnecessary cost burden. In view of these comments, this suggested requirement has been deleted inasmuch as the remainder of paragraph (b) should provide an adequate design standard.

The Draft Evaluation states that § *193.513* would result in a major cost impact. The impact derives from the additional hoop strength that would be needed in the commonly used low pressure storage tanks, but the impact would not be as significant for high pressure tanks. While the impact of this Section alone may be high, since added tank strength would be needed as well to meet proposed wind and seismic load requirements, the combined impact of these proposals is probably not as high as projected.

Temperatures. Section *193.517,* concerning the effects of LNG spills on storage tanks, is deleted as redundant with §§ *193.205* and *193.107.*

In § *193.519,* by restricting the requirements of this Subpart to LNG storage tanks, MTB believes that the apparent misunderstanding by many of the commenters as to the wording in the ANPRM has been removed. Under this Section, a tank would have to withstand the lowest temperature of LNG which could occur under design conditions.

Foundation. Practically all commenters to § *193.521* objected to paragraph (d), which would have prohibited the use of piles to provide foundation support for a storage tank. The major argument advanced was that piling is an accepted structural engineering practice and as reliable as any other form of foundation. Test piles are used to verify load capacity and factor of safety. Commenters also stated that excluding piles would considerably reduce available sites for LNG facilities. Although one commenter felt that possibly this prohibition should be applied to areas of hish seismic loads, another commenter, the California Public Utilities Commission, stated that use of batter piles could provide acceptable lateral resistance to seismic design loads. In view of the weight of these comments, MTB has deleted paragraph (d).

The wide majority of commenters did not object to § *193.523,* which would require an alarm to warn of any malfunction in the heating system used to protect a foundation against frost heave. It is retained in this Notice, but modified consistent with the change to § *193.319.*

Insulation. Many commenters felt that § *193.525(a)* contradicted paragraph (b). Paragraph (a) has been reworded to clarify the intent that outside insulation may not be used on storage tanks for operational purposes. Also, paragraph (b) is deleted, as commenters suggested, and incorporated in § *193.209.* The provision in paragraph (c), suggesting a prohibition against flammable insulation has been changed to propose that insulation be "self extinguishing", since a nonflammability requirement would preclude the use of many insulating materials

Instrumentation. Concerning § *193.527,* commenters suggested various deletions of the instrumentation suggested by the ANPRM for monitor-

ing certain conditions to provide for the safe operation of storage tanks. By far, the largest number recommended that items (5), (6), (7), and (8) be deleted because of the high maintenance costs involved and disagreement over the need for such extensive monitoring. MTB has determined that since some of the instrumentation suggested is of the laboratory type, it would not be readily adaptable to continuous field use, making it unreliable and requiring extensive maintenance. Accordingly, items (5), (7), and (8) of the ANPRM have deleted in this Notice. Item (6) concerning excessive stress is restated to apply to thermal stress, and a new item (7) is added dealing with excessive relative movement determined under § *193.509*.

Metal and Concrete Tanks. Under §§ *193.529* and *193.531* both the inner container and outer shell of a metal or concrete storage tank would have to be designed and constructed according to applicable industry codes. A double-wall tank with different materials (concrete shell, metal container) would have to meet the applicable portions of the codes. Most of the commenters felt that § *193.531* in respect to a concrete storage tank was not comprehensive enough, and recommended that Section 42, of NFPA 59A-1975 be adopted. MTB, after a review of Section 42, finds that it more comprehensively covers the needed safety measures and provides detailed references. Consequently, Section 42 is proposed to be used instead of the requirements suggested by § *193.531* in the ANPRM. One commenter stated that there was no adequate standard available for concrete tanks in cryogenic service, and that consideration be given to incorporating ASME Section III, Division 2, to strengthen the requirements for concrete tanks. MTB will welcome any comments or elaboration in this regard.

Tank Support. All commenters recommended deletion of § *193.535(d)* in the ANPRM which suggested that installation of tank bottoms above grade (or ground) level be prohibited. Commenters argued that requiring the bottom of a storage tank to be at grade level would eliminate the use of foundations installed on top of elevated piles. With this type of foundation natural convection under the tank may be used rather than ground heaters to prevent frost heave. Other commenters misunderstood the intended meaning of "grade level." In a recent study, the General Accounting Office points to the potential hazards of ignition of an LNG spill which runs under a tank or enters the open space provided by an elevated, or above grade, foundation. If such a spill and ignition were to occur, a tank could fail catastrophically by overpressure or thermal stress due to heating the bottom of the tank or by the force of any explosion which might occur. While MTB has determined that the level of this potential hazard is uncertain, paragraph (d) was intended to preclude such eventualities for large tanks, and the provision is retained in this Notice. It is modified, however, for clarity.

While the Draft Evaluation shows a major cost impact for this Section, MTB believes the impact could be mitigated by selecting sites where piling is not needed for support or by using special fill material underneath a tank to minimize the use of ground heaters.

Piping. Most commenters questioned the suggested requirement for excess flow valves under § *193.537(b)*. Some stated that such valves did not exist for cryogenic service; others stated that large sizes were not available. Two commenters stated that the experience in the liquefied petroleum gas industry with such valves was decidedly mixed, and the current trend is to use other devices such as internal valves. As a pressure differential is required for the proper functioning of excess flow valves, it was suggested they only be used where pressures exceeds 15 psi. MTB has adopted this recommendation.

Tank Marking. All comments to § *193.539* pointed out that the referenced codes under § *193.529* and § *193.531* for design of metal and concrete tanks specify name plate data. It was said that all of the additional items listed in the ANPRM are not pertinent, serve no useful purpose, do not add to safety, and would be available in an operator's design file if it should be needed. MTB agrees that the items listed in the design codes provide sufficient name plate data and has so changed § *193.539*.

SUBPART G—DESIGN OF TRANSFER SYSTEMS

This subpart would prescribe additional design requirements for piping used to transfer hazardous fluids between containers or between containers and a tank car or tank truck. The subpart would assure structural integrity of the piping when it expands and contracts and require the use of operational devices to minimize the effects of line breaks or piping malfunctions.

Expansion and Contraction. With respect to § *193.603(b)* in the ANPRM, the majority of commenters objected to the suggested prohibition of the use of bellows-type expansion joints unless a transfer system is maintained at a temperature near its operating temperatures. The requirement was suggested because bellows could fail due to icing or fatigue cracking. Commenters pointed out that maintaining a piping system in a cooled-down condition would not be a practical alternative because of increased operating costs, and that it would not be possible or practical to use expansion loops as an alternative means of protection in all cases. In view of these problems and MTB's belief that bellows joints can be used safely if they are properly designed (taking into account the frequency of thermal cycling so as to avoid fatigue) and maintained free of ice. MTB has revised paragraph (b) to be more performance oriented and deleted reference to expansion and bellows joints. However, slip-type expansion joints would be prohibited because they are susceptible to failure, and packing-type joints would not be permitted under cryogenic temperatures because the packing materials could leak.

Shutdown. For the following reasons, many commenters objected to the suggested requirement in § *193.605* that redundant shutdown control systems be installed on transfer systems. Because of operational problems commenters said the suggested redundant mechanism would need an elaborate computer; it would not contribute substantially to reliability; it would not be economically justifiable; or it would cause problems in safe operation. After reviewing these considerations, MTB has deleted the redundancy requirement. However, a backup means for operation of the shutdown system would be required by § *193.921*. The gas concentration set forth in paragraph (e) has been changed to 25 percent. As many commenters pointed out, this level is more consistent with accepted practice. Editorial changes have also been made in paragraphs (a) and (b). Paragraphs (c) and (d) have been transferred to § *193.617*.

Backflow from a container in the event of a line break could increase the severity of a spill. Therefore, § *193.607(b)* has been added based on Section 812 of NFPA 59A, to propose that the means installed for protection against backflow be located near the receiving container, thus minimizing the volume of backflow.

Commenters to § *193.609(a)* regarding the possible overfilling of a container pointed out that manual shutdown is a more desirable method than relying on automatic shutdown to prevent overfilling. Commenters also said that prevention of overfilling by pumping predetermined amounts of liquid would be dependent on metering facilities, and it was stated such metering technology for large volume cryogenic installations is in its infancy. In the ANPRM, MTB did not intend that manual shutdown should be precluded, but that safe alternatives should be available. MTB believes this alternative would be provided by the

automatic shutdown proposed under § *193.605* and has rewritten § *193.609* to propose means for manual control.

As some commenters recommended, the term "design maximum liquid level" is proposed in §§ *193.605(b)* and *193.609* as more appropriate than "design load limit" to define the dangerous overfill level.

Design of Cargo Transfer Systems. The major comment in regard to § *193.611* was that the same design requirement should not apply to arms as well as hoses (devices used to transfer liquid between piping and tank cars or tank trucks). MTB concurs that a design burst pressure of not less than five times the operating pressure is only applicable to hoses. Similar changes are made to other provisions os § *193.611(b)*, based on Section 870 of NFPA 59A. It was further suggested that paragraph (a) be clarified to require venting of each cargo transfer system, such as a hose from a manifold valve to a tank truck valve. As this was the intent, wording has been changed accordingly for clarification under § *193.611(a)(1)*. Paragraph (a)(3), concerning protection barriers, which is similar to Section 843 of NFPA 59A, has been added, at it is felt this provision contributes to the safety at cargo transfer areas. Section § *193.613*, pertaining to marine transfer systems, has been deleted because of the memorandum of understanding between the U.S. Coast Guard and MTB, effective February 8, 1978 (43 FR 30381), which assigns regulatory responsibilities involving waterfront LNG facilities to the Coast Guard.

MTB agrees with the many commenters who stated that § *193.615(a)* and (c) in the ANPRM were more properly operational procedures than design consideratins. Both of these topics will be incorporated in the upcoming Notice of proposed rulemaking on Subpart L of the ANPRM.

Shutoff Valves. Section *193.617* has been retitled to cover all shutoff valves on transfer systems and combined with the suggested § *193.605(c)* and (d) to prescribe valve locations and design stress. Wording has also been changed to clarify, consistent with Section 845 of NFPA 59A, that valves would be required in transfer piping supplying cargo transfer systems where they can be readily operated in an emergency.

SUBPART H—VAPORIZATION EQUIPMENT

This subpart is intended to provide design and installation requirements needed to assure the safe operation of vaporization equipment. At LNG facilities vaporization equipment is used to convert LNG to natural gas to satisfy sudden or long term demands for gas. The process occurs when LNG is heated either directly by burning gas (fired) indirectly by steam, or by transferring heat from large quantities of air or water (ambient vaporizers).

Based on the views of the majority of the commenters, the terms "gasifier" and "gasification" have been changed throughout this subpart to "vaporizer" and "vaporization" respectively, because these terms are more commonly used in the LNG industry.

Design. Some commenters mentioned that "ambient vaporizers" should also be subject to the design requirements in § *193.705* suggested for "fired vaporizers." MTB believes that all vaporizers should be designed in accordance with the applicable provisions of Section VIII, Division 1 of the ASME Boiler and Pressure Vessel Code; and § *193.705* has been changed accordingly. Based on the recommendation of one commenter, paragraph (b) has been added to require a design for pressure based on the pump or container pressure supplying the vaporizer.

Overpressure and Temperature. Section *193.707* in the ANPRM concerning overpressure in vaporizers or downstream piping, has been deleted as redundant with §§ *193.913, 193.917,* and *193.1107.* Similarly, § *193.709* in the ANPRM concerning temperature is redundant with §§ *193.203* and *193.913,* and it has been deleted.

Controls for Operation. Monitoring devices, valves, and relief devices are needed for safe control of the vaporization process. In regard to § *193.711,* MTB agrees with the commenters who pointed out that paragraphs (b) and (c) in the ANPRM related to operational procedures, and, therefore, they will be incorporated in Subpart L. Paragraph (d) has been deleted as redundant with § *193.605.* As suggested, § *193.711(a)* is changed to require monitoring of "heating medium fluids". It is agreed, as suggested by commenters, that monitoring of the inlet and outlet temperatures and pressures is more meaningful than monitoring the temperature and pressures in the vaporizer as suggested in the ANPRM.

It was suggested that manifolded ambient vaporizers with inlets 2 inches or less in size be excepted from the two inlet valve proposal under § *193.711(e)* in the ANPRM (now § *193.711(b)* to be consistent with paragraph 5220 of NFPA 59A-1975. MTB believes this is not an onerous proposal and can see no valid justification for such an exception.

In regard to the design of shut off valves under § *193.713,* a number of commenters suggested that the minimum separation distances in paragraphs 524, 5240, and 525 of NFPA 59A-1975, would provide less chance of damage to valves by explosion or fire. MTB feels the performance type language in paragraph (a), as revised, is more appropriate. The ANPRM suggested that a valve be located near an "emergency exit". This provision has been deleted from § *193.713(a)(2)* because as a number of commenters stated, a building could have a number of exits, none of which would be designated as an emergency exit. Section *193.713(a)(3)* in the ANPRM regarding emergency shutdown has been deleted, as MTB believes these suggested requirements would be redundant with other provisions.

MTB concurs with the majority of the commenters on § *193.715* who pointed out that setting relief devices so that the pressure does not rise above the vaporizer's maximum allowable operating pressure (MAOP) would be impractical. If a vaporizer were operating at MAOP, the relief device would continuously chatter and would rapidly deteriorate. The revised Section is consistent with Section 53 of NFPA 59A-1975 and with the ASME Boiler and Pressure Vessel Code in permitting a 10 percent increase in pressure above the MAOP.

Section *193.717* has been deleted as redundant with § *193.911,* which would require warning devices to warn of potential or existing hazardous conditions detected by all sensing devices proposed by this Notice.

Combustion Air Intakes. In regard to § *193.719,* MTB agrees with the large number of commenters stating that combustion air intakes in themselves cannot prevent the induction of a flammable mixture. This Notice proposes a device to detect induction of a flammable vapor. However, MTB believes the device should detect the presence of any flammable vapors (or gases) rather than of a gas mixture which is in a flammable concentration.

SUBPART I—LIQUEFACTION EQUIPMENT

Liquefaction equipment is used to cool natural gas to the point it becomes a liquid. Some important safety features in the liquefaction area of an LNG facility are covered elsewhere in this notice (e.g., spill collection (§ *193.403*), leak detectors and alarms (§§ *193.909* and *193.911*), and fire resistant materials (§ *193.207*). This subpart covers additional design requirements specifically applicable to liquefaction equipment.

Shutoff Valve. An operator should be able to shut off gas entering a liquefaction process in the event of an emergency. In response to many comments, § *193.805* has been revised to propose that a shut-off valve be required for piping leading to each "liquefaction system" rather than "liquefaction equipment." This change is intended to clarify that a shut-off valve would not be required for each piece of equipment used in the liquefaction

process. Subparagraph (a) in the ANPRM has been changed to propose that shutdown begin when gas concentrations reach 40 percent of the lower flammable limit "in the area of liquefaction equipment" rather than "near liquefaction equipment." The suggested requirement for automatic shutdown at 30 percent of the lower flammable limit has been increased to 40 percent because MTB considers 30 percent to be unrealistic for mandatory shutdown in the case of liquefaction equipment. Several commenters also pointed out that automatic shutdown systems could not detect when a fire is uncontrollable, as would be necessary if Subparagraph (b) were proposed as suggested in the ANPRM. Therefore, the suggested requirements of subparagraph (b) have been changed to propose that shutdown be required when high or low temperature in the area of liquefaction equipment exceeds the limits determined under § *193.205.*

Contaminants. Commenters to § *193.807* pointed out that subparagraph (b), on monitoring the buildup of ice or other contaminants within liquefaction equipment, would not be needed for safety. It was argued that such buildup would be detected by normal pressure and temperature indicators long before it becomes dangerous. Since these plant operating characteristics are normally monitored to achieve efficient operation and such monitoring was suggested as a safety measure under § *193.1107* in the ANPRM, Subparagraph (b) is deleted.

Backflow. Section *193.809* has been revised to be consistent with the wording used elsewhere in the proposed Part 193, by replacing the term "reverse flow" with "backflow" both in the title and the text. In addition, the text in § *193.809* has been revised to clarify the level of protection required against backflow in a multiple parallel piping system.

Coldboxes. Section *193.811* has been revised for clarity and to respond to comments indicating that the insulation space surrounding liquefaction equipment may contain an atmosphere of air, natural gas, or inert gas. The intent of the proposed rule is to avoid explosions and fires by restricting the concentration of gas in air to ranges that are not flammable. The flammable range of natural gas in air varies slightly but is about 5 to 15 percent by volume. Commenters pointed out that the lack of instrument accuracy at low concentrations such as 5 percent of the lower flammable limit. Because of this and to be consistent with other revisions to this proposal, the lower limit for introduction of purge gas was raised to 25 percent lower flammable limit, which corresponds to 1.25 percent by volume.

There has been no established limit for avoiding the upper flammable limit of gas in air. Therefore, MTB has selected 30 percent by volume as the concentration for introduction of purge gas. Discussion of this upper limit is specifically requested from commenters to this Notice.

Air In Gas. No changes are proposed to § *193.813*, regarding the prevention of a flammable mixture in incoming gas, because many commenters agreed with the concept stated in the ANPRM.

Equipment Supports. Section *193.815* has been changed to clarify that equipment supports must comply with the material requirements of § *193.207* regarding high and low temperatures.

SUBPART J—CONTROL SYSTEMS

This subpart concerns significant design features such as backup power supplies, redundant relief capacity for LNG storage tanks failsafe design and central control for components used manually or automatically to control the operation of other components.

General. Section *193.903(c)* was revised to recognize the fact that it would not be reasonable to require that all control systems be accessible, as pointed out by some commenters. However, they should be maintained, and the design and installation should accommodate future inspection or testing. Separate routing of control lines is being proposed under § *193.903(d)* to avoid simultaneous damage in the event of an accident.

Relief Devices. Sections *193.905(a)* and *(b)* in the ANPRM, relating to relief valve capacity, are combined in Paragraph (a) in this Notice. Changes make this paragraph consistent with other changes to the proposed part, that relief devices should release fluid so as to prevent pressures from exceeding 110 percent of the maximum allowable operating pressure. The suggested redundancy of relief devices, suggested by Paragraph (b) in the ANPRM, has been deleted except for LNG storage tanks, but MTB is proposing under Paragraph (b) in this Notice that a separate manual means be provided to relieve pressure in an emergency. Over design of relief capacity in the case of LNG storage tanks would provide an added safeguard against unexpected events without much extra cost. The term "override" has been deleted with regard to manual controls to avoid the misunderstanding that they could be used to avert automatic pressure release.

Paragraph (c) (paragraph (d) in the ANPRM) is changed to eliminate the suggested requirements for vents on pressure relief devices to prevent harmful discharges of fluids. The proposed paragraph (c) is performance oriented and would permit any means of minimizing a discharge hazard. Paragraph (d) (paragraph (e) in the ANPRM), concerning the relief of vacuum conditions has also been modified to be more in keeping with Paragraph 335 of NFPA 59A.

As commenters noted, the means for adjusting the setpoint pressure of relief devices rather than the pressure, itself, should be sealed, and § *193.905(e)* in this Notice is changed accordingly. Section *193.905(f)* has been modified to prohibit the use of relief devices installed to limit maximum or minimum pressures to handle boiloff and flash gases. This changed is consistent with NFPA 59A, Paragraph 334. Section 193.905(h) in the ANPRM, regarding operating temperatures of relief devices has been deleted as redundant with § *193.205.*

Fluid Discharge. Section *193.907(a)* has been modified to propose that discharge of fluids be prohibited in condined spaces as well as in buildings. Paragraph (b) has been changed to apply only to boiloff vents, which is consistent with Paragraph 33, NFPA 59A.

Sensing and Warning Devices. As suggested by a number of commenters, tow changes were made in § *193.909.* The word "critical" was inserted before "component" in paragraph (a)(1) to limit the number of components that are monitored for malfunctions to those where serious hazards could result. To be consistent with accepted practices, "5 percent" was changed to "25 percent" in paragraph (b) as the warning level for hazardous gas concentrations.

Many commenters objected to the suggesed requirements that warning devices be installed at all locations frequently by personnel as proposed by § *193.911* in the AMPRM. MTB concurs that such a requirement would be unreasonable and is proposing that such devices be installed in the control center. However, under § *193.921(e)*, a means would have to be available for communicating hazardous conditions warnings from the control center to locations frequented by personnel.

The words "potential" or "existing" are not used to describe the hazard for which an alarm is sounded, because, as it was pointed out, a warning indicates an actual hazardous condition. MTB also agrees that sensing devices can only detect the nature of a hazard, not the cause as suggested in the ANPRM.

Section *193.913* has been deleted, as discharged pressure and temperatures are adequately covered by §§ *193.917, 193.205, 193.207,* and *193.709.*

Pump Controls. As suggested by some commenters, the word "idle" in § *193.915(a)(2)* has changed to "off" to clarify the intended meaning that a light show when a pump or compressor in service is not in operation. Para-

graph (3) in the ANPRM has been broken down to paragraph (a)(3) and (4) for clarify. Also, paragraph 820 of NFPA 59A has been used as basis for a new paragraph (b) to establish the location of controls for pumps or compressors used in loading or unloading operations.

Shutdown. As pointed out by many commenters, in *§193.917*, the term "shutoff valves" is adopted as more appropriate than "control valves" for the purpose of requirements related to safe valve closure. Also, Paragraph (a) in the ANPRM is deleted as duplicative of other proposed requirements in Part 193 regarding the control of fluid flow.

Section *193.919* has been redrafted for clarity and to propose in Paragraph (a) that all critical components have control systems to automatically shutdown the component in certain events. However, a provision for a reasonable delay between warning and the actuation of shutdown at a manned facility permits an operator to take appropriate action which could remove the hazard and consequently eliminate the need for a shutdown. This delay would not apply to unattended facilities, where no personnel would be available to take such action. In addition to automatic shutdown system for critical components, it is proposed that each LNG facility have a manual shutdown control system which can be actuated to shutdown all operations of the whole facility.

Control Center. As pointed out by some commenters, an LNG facility may have more than one centralized location for operating control systems, with specialists in attendance at each center. This is recognized in the Notice in the redrafted version of *§193.921*. Personnel would have to be in attendance at any center when critical components under its control are operational. Under paragraphs (b) and (c) requirements would be established for redundant means of communication between centers, and for means of communicating hazardous condition warnings from the control centers to other locations frequented by personnel at the LNG facility, only when critical components under its control are in operation. Under paragraphs (b) and (c) requirements would be established for redundant means of communication between centers, and for means of communicating hazardous condition warnings from the control centers to other locations frequented by personnel at the LNG facility.

Auxiliary Controls. Section *193.923*, which would have required auxiliary control devices in addition to those required by other Sections of Part 193, has been deleted. Some of the suggested requirements in this Section of the ANPRM were redundant with other sections (e.g., *§193.915(a)(1)* and MTB believes that a requirement for additional controls is not economically justified.

Failsafe Design. In *§193.925*, in response to some commenters, the words "liquefaction equipment, storage tanks, and gasification equipment" have been replaced by "critical components." Under this proposal and *§193.917(a)*, each control system for a critical component and each shutoff valve would have to be designed to provide a safe condition in the event of a malfunction or failure of either the power supply, the valve on the system, or the component being controlled.

Power Supply. Many commenters objected to the suggested requirement in *§193.927* for separate and redundant sources of electrical power, and pointed out that other types of power than electrical could be utilized, such as diesel or gas driven systems, as a second power source. Upon consideration of the comments, MTB believes that a requirement for backup power sources should be applied broadly and not just to electrical power. Wording is also changed to clarify the proposal regarding the intended separate and redundant power sources.

An additional proposed requirement would provide for the protection of auxiliary generators which may be installed to furnish a second source of electricity, and for the protection of the fuel supply to such units.

SUBPART K—CONSTRUCTION

Under this subpart MTB is proposing new requirements for reliable construction procedures, inspection of construction activities, personnel qualifications, and for field testing components. The objective of the subpart is to assure that components comply with design plans and material specifications and have sufficient structural integrity to operate safely when placed in service.

General. The text of *§193.1021* in the ANPRM titled "Testing acceptance" has been restate in *§193.1002* in this Notice and named "Construction acceptance." Section *193.1002* proposes a general requirement that a component must pass all applicable inspections and tests before it is placed in service. While most commenters agreed with the wording of this Section in the ANPRM, a few felt it should apply only to critical components and not to incidental parts of an LNG facility. The proposed definition of "component" in *§193.5* should alleviate this problem since the definition would only refer to parts of a facility that are related to safety.

Section *193.1003* in the ANPRM has been deleted, since it was essentially redundant with other suggested requirements and personnel qualifications are now addressed more effectively in *§193.1009*.

Construction Procedures. With respect to *§193.1005*, most commenters said that the suggested requirements that operators prepare and follow construction procedures for each component should apply only to critical components so as to limit the impact of the requirements to components whose failure could cause or worsen a hazard. The proposed definition of "component" should help alleviate this issue. Also, *§193.1005* is changed to apply only to "critical processes," or those processes of construction, installation, inspection or testing that are necessary to ensure the performance reliability or structural integrity of a component. The change to *§193.1005* also incorporates the views of a large number of commenters that construction be in accordance with written specifications and drawings. Two commenters pointed out that field changes are made in construction processes, and recommended that changes be promptly reflected in the records. On this point, *§193.1005* would require that comprehensive written procedures be followed for all critical processes, whether they are processes changed in the field or original ones. The last sentence of *§193.1005(a)* as stated in the ANPRM, requiring tests for joining procedures, has been restated and set forth as *§193.1005(b)* for greater clarity. The language has been revised to be consistent with *§193.1005(a)* and broadened to propose that all procedures be substantiated by testing or experience.

Section *193.1007*, in the ANPRM concerning the identification of construction processes that are critical to the safety of a facility has been deleted in this Notice. Instead, the term "critical process" is defined in *§193.5*. *This term forms the basis for several proposed requirements in Subpart K. The suggested requirement under §193.1007*, in the ANPRM, which would have allowed each operator to determine critical processes at an LNG facility, would not provide an adequate standard because of the potential variations in interpretation of the word "critical."

Personnel Qualifications. In order to eliminate redundant language and thereby simplify this Subpart, the suggested inspector qualifications in *§193.1013* of the ANPRM have been included in *§193.1009* regarding the qualification of personnel in general. Accordingly, *§193.1009* proposes qualifications for personnel used in all critical processes of construction, including inspection and testing.

The principal position of most commenters was that the suggested requirements of both *§193.1009* and

§ *193.1013* in the ANPRM would be too rigorous. Generally, commenters objected to the suggestion that personnel be qualified by both training (or experience) and testing and recommended that either one should satisfy the need for a qualification standard. This viewpoint has not been adopted since MTB believes that qualification either by testing and training or by testing and experience is necessary in critical processes for the safety and reliability of an LNG facility. MTB feels that testing is necessary to assure that a worker's prior training or experience can be applied in practice.

A number of commenters said that the suggested personnel qualifications requirements would conflict with "right to work" laws in certain States. Notwithstanding such conflict, if any, MTB believes it is empowered to establish reasonable qualifications for construction personnel working on an LNG facility.

Other commenters felt that it should not be the obligation of the operator to test and evaluate the competence of personnel involved in critical processes. Some commenters said that reliance on a third party's decision in testing would be desirable. MTB agrees that an operator need not be the one to give performance qualification tests; an appropriate test given by others should suffice. However, where a new employee, for example, has not yet demonstrated competency by testing, under § *193.1009* it would be the operator's obligation to see that such testing is performed. The language of § *193.1009(a)(2)* has therefore been modified to make clear that an operator must verify that qualification tests relevant to the assigned function are passed.

In the final rules, the provisions of § *193.1009* will be relocated to a separate Subpart on personnel training and qualifications.

Inspection. Section *193.1011*, relating to inspection of construction activities, is changed by incorporating the suggested material inspection requirements of § *193.1035*. Although many commenters agreed with the wording of § *193.1011(a)*, regarding inspection to assure compliance with Subpart K, some commented that inspection should be to verify compliance with specifications, industry codes, and drawings but not Federal regulations. While the language has been modified to clearly point out that inspection requirements apply to all construction activities required by Subpart K, including testing, MTB believes that in addition, an essential purpose of inspection should be to assure compliance with the other appicable Federal safety standards in Part 193. This concept has therefore been retained in the revision.

Provisions of other Sections (E.g., §§ *193.1023(b)* and *193.1035*) concerning the type and scope of insepctions and tests are restated in a new § *193.1014*, called "Inspection and testing methods". This new Section would establish a general requirement that each operator determine the nature and scope of tests and inspections performed under Subpart K (that are not otherwise specified) and the extent of inspection and testing procedures prepared under § *193.1005*.

Cleanup. Most commenters on § *193.1015* agreed with the concept that components should be cleaned after construction to remove potentially damaging contaminants. Therefore, this Section is retained in this Notice; and it is combined with several provisions from § *193.1417*, which also dealt with cleanup. Several commenters suggested that the clause "which could cause a hazard" be deleted, stating that all detrimental contaminants should be removed. MTB agrees that removal of all contaminants is good practice, but the purpose of this proposed requirement is to prevent hazards resulting from contaminants.

Pipe Welding. There were several minor modifications suggested by commenters for § *193.1017* which proposes standards for welding pipe. The following modifications have been made in accordance with applicable comments: In § *193.1017(a)(1)* a revision has been made to permit welding qualification under either ASME Section IX or API 1104 as applicable. Subsection *193.1017(a)(2)* has been modified slightly, only to clarify intent. Two commenters stated that in § *192.1017(d)*, prohibition of dye stamping should be based on wall thickness and temperature of pipe rather than nternal pressure. Since material must be selected to have adequate toughness at predictable operating temperature, MTB has not included temperature as a factor to consider in deciding whether to field dye stamp the pipe. Otherwise, MTB agrees that thickness should be the controlling factor and has revised § *193.1017(d)* accordingly. Also, a suggested welding provision regarding alloy welded joints is transferred to this section from § *193.1417(d)* in the ANPRM.

Pipe Connections. A large number of commenters recommended that the suggested piping connection requirements of § *193.1019* be limited to LNG and hazardous fluid piping, and the proposed definition of "piping" should satisfy this concern. A number of commenters to § *193.1019(a)* felt that nonwelded connections should be permitted for unusual situations where welding would not be practical. MTB agrees and a change has been made to propose that threaded or flanged connections be allowed for "special connections" such as those needed to attach instruments to pipe. Many commenters advocated the use of NFPA 59A as a basis for this Section. MTB has essentially followed this recommendation, expanding the Section to include most of the provisions of NFPA 59A, Paragraphs 6210 and 6211. Based on the views of one commenter that clearances in socket fittings must be assured, MTB has added a new paragraph (b) covering this topic.

Retesting. Section *193.1023(c)* in the ANPRM has been revised in response to a majority of commenters who argued that a component should not have to be retested in every case that welding is performed on the component after initial testing. MTB has reexamined potential harm that could be caused by welding after a component is tested and the need for such welding. Section *193.1023* now provides that retesting would be required only in the event of penetration welding (other than tie-in welds). In addition, MTB is proposing that retesting be required if the components structural integrity is disturbed in any way after an initial test.

Strength Tests. Many commenters objected to the suggestion under § *193.1025(a)* in the ANPRM that each component be tested for strength because as the term "component" was defined in the ANPRM, many needless tests would be run. MTB agrees and under this Notice only "piping systems and containers" would have to be tested. Components which do not contain a hazardous fluid, such as a control system, need not be strength tested to prove their design capabilities; and it would not be practical to strength test other components, such as dikes. Some commenters questioned how loading from ice or snow could be considered in tests as suggested in § *193.1025*. This may be accomplished by calculating deflection, settling, and movement due to thermal contraction and comparing the value with field measurements taken during testing. As another example, calculated toe loads due to wind or seismic motion might be correlated with settlement measurements during hydrostatic test to determine the effects of the projected loading.

A number of commenters on § *193.1025(b)* said that the suggested 1.5°C temperature limitation on pressure testing low alloy and carbon steel piping would not be practical since ambient temperatures could be lower and many steels retain adequate toughness at that temperature. Once commenter said there should be no low temperature limit, since testing at a low temperature would be more rigorous. Accordingly, the low temperature limit for testing has been deleted. A new clause proposing that test pressures

include a uniform safety factor, consistent with test requirements for ordinary gas piping and hydrostatic tests under B31.3, has been included for critical components.

Testing Welds. A wide range of viewpoints was expressed in comments to § *193.1027(a)* concerning the nondestructive testing of circumferential welds on piping to check for welding defects. Some felt that a requirement for testing all welds would be excessive; 59A requires that only 30 percent of the welds on piping be tested. On the other hand, many commenters indicated that a 100 percent testing requirement would be appropriate, or appropriate for certain temperature ranges or fluids. After further consideration, MTB believes that a higher level of testing should be required for critical piping, or piping whose failure could cause an emergency, in order to adequately assure weld acceptability. Assurance is most important in the case of cryogenic piping because of the unusual problems in welding the materials involved. Therefore, this Section has been revised to proposed that 100 percent of welds be nondestructively tested on critical piping and 30 percent on noncritical piping.

Most commenters agreed with the suggested requirement of § *193.1027(a)(3)* in the ANPRM for 100 percent testing of longitudinal seams in transfer piping. MTB believes this requirement would be appropriate, and it is proposed under § *193.1027(c)* along with 100 percent testing of spiral welds.

With respect to § *193.1027(d)*(§ *193.1027(b)* in the ANPRM) commenters opposed adopting a requirement for testing 100 percent of the welds in metal storage tanks with curved surfaces because of the low stress levels in some areas of most tanks and because pressure tests § *(193.1033)* assure quality of construction. A number of these commenters contended that testing should be no more stringent than currently required by the industry standard, API 620, since it has not been shown to be inadequate. However, other commenters indicated that a 100 percent requirement would be appropriate for LNG tanks or those operating at temperatures below −20°F. MTB has not adopted these comments because the 59A standard (and reference to API 620) appears ambiguous and does not impose any appreciably higher standard for LNG storage tanks than tanks holding any other fluid. Also, pressure testing may not be adequate to assure that joints meet the proposed design requirements for loading because under § *193.1033* some joints might not be tested to the stress level that would result from wind or seismic loads. MTB has revised this suggested requirement to make clear that it applies only to butt welds in hydraulic load bearing shells of tanks with curved surfaces that are to operate at cryogenic temperatures. In view of the potential for disaster in case a storage tank containing a flammable fluid fails and the level of difficulty associated with welding the curved surfaces and cryogenic metals involved, MTB believes that testing 100 percent of the welds is appropiate. In addition, testing to this degree is necessary to assure structural integrity so that a vapor dispersion distance under § *193.109* for an LNG tank justifiably be based, in most cases, on a piping failure and not on a total sudden release of the tank contents.

The Draft Evaluation has identified § *193.1027* as a provison with high cost impact. The additional testing that would be required would obviously have some additional cost. MTB believes this impact would not be harsh because the added testing could be done by personnel already at a job site to comply with any less stringent testing standard that might be adopted and during the same time period.

Leak Tests. Most commenters addressing § *193.1029(a)* on testing components for leaks after construction, objected to the suggested testing of all "components." The Section is modified to apply to containers and piping systems, those components which will contain hazardous fluids and would pose a hazard if a leak occurs.

In § *193.1029(b)* (paragraph (c) in the ANPRM) the words "design maximum pressure" have been revised to "design pressure."

Testing Control Systems. Section *193.1031*, concerning the testing of control systems to assure their performance, is unchanged from the ANPRM.

Pressure Tests for Storage Tanks. Many commenters strongly opposed the full hydrostatic test suggested by § *193.1033(a)* for storage tanks (filling the tank with water to its maximum liquid level) and recommended that the API 620, Appendix Q, test procedure be adopted without exceptions. In connection with the hydrostatic loading, most of these commenters objected particularly to paragraph (f) which would have prohibited overloading of the tank foundation during testing. Only one commenter advocated that the full hydrostatic test requirement be retained as suggested in the ANPRM, stating the API 620, Appendix Q, procedure is ambiguous. API 620, Appendix Q, provides that a tank be filled with water to the design liquid level, but then permits filling to a lower level if excessive overstressing or foundation overloading would result. As a consequence, load bearing surfaces of an LNG tank are usually not tested for even the static loads that will result when the tank is placed in service.

MTB believes, first, that a full hydrostatic test would be consistent with overpressure tests proposed or now required as a safety factor for less critical components. The test would assure that a tank is liquid and gas tight at all its level and that foundation bearing is adequate. In addition, MTB believes this more stringent test is needed as a safeguard against catastrophic failure of a tank by dynamic or other loads that, as allowed by design procedures would cause static loads to be exceeded. It also would provide justification for basing the vapor dispersion distance computed under § 193.109, in most cases, on piping failure rather than on a sudden total release of the tank contents. Accordingly, the suggested requirement for a full hydrostatic test has been retained in this Notice. However, subparagraph (f) in the ANPRM has been deleted in order to permit overloading of the foundation during testing (as permitted by API 620, Appendix Q), recognizing that lower profile tanks may be necessary for compliance in some cases. This deletion, together with the allowable overstressing of materials and design provisions for certain dynamic loading, should mitigate the onerous aspects of this test.

The Draft Evaluation shows that this provision would have a major cost impact mostly because of the extra cost of concrete and earthwork to support the added foundation loading for most tanks. MTB believes that this impact could be lessened by taking full advantages of the allowable overstressing of material and foundation, by careful site selection, and by using alternate tank designs. Also, any costs for added strength would, to some extent, be included in the costs associated with compliance with proposed Sections related to seismic design, wind load, and internal pressure.

A large number of commenters also opposed the relatively high pneumatic test pressure (1.5 times the design pressure) suggested by § *193.1033(b)* in the ANPRM. In view of the comments and other factors, the test pressure proposed in this Notice is reduced to 1.25 times the design pressure, the pressure provided by API 620, Appendix Q.

In accordance with the number of comments on § *193.1033(c)*, stating that thermal stabilization cannot be achieved, the wording "after thermal stabilization" has been deleted.

The majority of commenters recommended that § *193.1033(d)* in the ANPRM be deleted, stating that unsealed concrete shells should be tested in the same manner as other tank parts. Although the suggested require-

ment for an additional test on unsealed surfaces was not intended to supplant other requirements, it does not appear to add to safety and has been deleted.

Based on the views of many commenters, § *193.1033(e)* in the ANPRM has been changed using more performance type language, and incorporated in § *193.1033(c)* along with § *193.1033(g)* of the ANPRM.

The majority of comments on § *193.1033(g)* in the ANPRM agreed with the need to use reference measurements to detect tank motion during testing. MTB believes this suggested requirement is appropriate for safety, and it is, therefore, retained under § *193.1033(c)*.

Records. Although a number of commenters to § *193.1037* agreed with the need to keep construction records, some felt that retention of a record of each personnel test and each component inspection would be excessive. Commenters argued that only the results of such tests and inspections should be kept. MTB agrees and has revised § *193.1037* accordingly.

In consideration of the foregoing, MTB proposes to amend Title 49 of the Code of Federal Regulations by establishing Subparts A-K of a new Part 193 as set forth below.

Issued in Washington, D.C. on February 5, 1979.

CESAR DE LEON,
Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

PART 193—LIQUEFIED NATURAL GAS FACILITIES: FEDERAL SAFETY STANDARDS

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Appendix A—Incorporation by Reference

AUTHORITY: Sec. 3, Pub. L. 90-481, 82 Stat. 721 (49 USC 1672); 49 CFR 1.53, Appendix A of Part 1, and Appendix A of Part 106.

Subpart A—General

§ 193.1 Scope of part.

(a) This part prescribes safety standards for LNG facilities used in the transportation of gas by pipeline that is subject to the Natural Gas Pipeline Safety Act of 1968 and Part 192 of this chapter.

(b) This part does not apply to—

(1) LNG facilities used by ultimate consumers of LNG or natural gas.

(2) LNG facilities used in the course of natural gas treatment or hydrocarbon extraction which do not store LNG.

(3) In the case of a waterfront LNG facility engaged in marine transfer, any matter pertaining to the facility between the marine vessel and the last manifold (or in the absence of a manifold, the last valve) on transfer piping located immediately before a storage tank.

§ 193.2 Offshore facilities.

An offshore LNG facility need not comply with any requirement of this part which the Secretary finds impractical or unnecessary because of the offshore location. In making such a finding, the Secretary may impose appropriate alternative safety conditions.

§ 193.3 Applicability.

(a) No person may operate an LNG facility that does not meet the applicable requirements of this part governing operation, maintenance, personnel qualifications and training, fire protection, and security.

(b) No person may operate any component of an LNG facility upon which construction, installation, replacement, relocation, or significant alteration was begun after (date Part 193—Design and Construction is issued) unless that component meets the applicable requirements of this part governing siting, design, installation, and construction.

§ 193.5 Definitions.

As used in this part—

"Ambient vaporizer" means a vaporizer which derives heat from naturally occurring heat sources, such as the atmosphere, sea water, surface waters, or geothermal waters.

"Cargo transfer system" means a component or system of components for transferring hazardous fluids in bulk between the closest inline valve on transfer piping and a tank car, or tank truck, including connections, arms, hoses, and associated area.

"Component" means any part or system of parts functioning as a unit that is used in an LNG facility for controlling, processing, or confining hazardous fluids or to provide safety.

"Container" means a component other than piping which confines a hazardous fluid.

"Control system" means a component or system of components functioning as a unit, including control valves, and sensing, warning, relief, shutdown and failsafe devices, which is activated either manually or automatically to establish or maintain the performance of another component.

"Controllable emergency" means an emergency where reasonable and prudent action can prevent harm to persons or property.

"Critical component" means a component which may cause, fail to prevent, or increase an emergency if operational capability is impaired or malfunction occurs.

"Critical process" means a process of construction, installation, inspection, or testing that is necessary to ensure the performance reliability and structural integrity of a component.

"Cubic metre" means a volumetric unit which is 6.2898 barrels, 35.3147 feet^3, or 264.1720 U.S. gallons, each volume being considered as equal to the other.

"Determine" means make an appropriate investigation using scientific methods, reach a decision based on sound engineering judgment, and record the decision and its basis.

"Dike" means a structural arrangement, which may be of natural geological formation, compacted earth, concrete, or other material, forming an impermeable barrier to prevent liquid from flowing in an unintended direction.

"Emergency" means a deviation from normal operation, a structural failure, or severe environmental conditions that probably would cause harm to persons or property.

"Exclusion zone" means an area surrounding an LNG facility in which an operator or government agency legally controls all activities in accordance with §§ 193.107 and 193.109 for as long as the facility is in operation.

"Failsafe" means a design feature which will maintain or result in a safe condition in the event of malfunction or failure of a power supply, component, or component part.

"G" or "g" means the standard acceleration of gravity of 9.806 metre per second^2 (32.17 feet per second^2).

"Gas," except when designated as inert, means natural gas, flammable gas, or gas which is toxic or corrosive.

"Hazardous fluid" means gas or any liquid that is subject to Parts 172 and 173 of this Chapter.

"Heated vaporizer" means a vaporizer which derives heat from other than naturally occurring heat sources.

"Impounding space" means a volume of space formed by dikes and floors which is designed to hold a spill of LNG or other hazardous liquid.

"Impounding system" includes an impounding space and dikes and floors, including those for conducting the flow of spilled hazardous liquids to an impounding space.

"Liquefied natural gas" or "LNG" means natural or synthetic gas having methane (CH_4) as its major constituent which has been changed to a liquid by reduction in temperature.

"LNG facility" means a facility for liquefying natural gas or transferring, storing, or vaporizing liquefied natural gas, including rights-of-way, buildings, equipment, piping, and associated facilities, but not including tank cars, tank trucks, marine vessels, fuel systems for motor vehicles, or portable dewar vessels.

"Maximum allowable operating pressure" means the maximum pressure at which a component may be operated under this part.

"Normal operation" means functioning within design ranges of pressure, temperature, flow, or other operating criteria withour malfunction or personnel error which results in the activation of any safety control system.

"Operator" means a person who owns or operates an LNG facility.

"Person" means any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association, or joint stock association and includes any trustee, receiver, assignee, or personal representative thereof.

"Piping" or "piping system" means all pipe, tubing hoses, fittings, valves, pumps, connections, safety devices or related components for containing the flow of hazardous fluids.

"Secretary" means the Secretary of Transportation or any person to whom authority in the matter concerned has been delegated.

"Storage tank" means a container for storing a hazardous fluid, including an underground cavern.

"Transfer piping" means all permanent and temporary piping, supports, and associated area used for transferring hazardous fluids between containers, and between a container and a cargo transfer system.

"Transfer system" includes transfer piping and cargo transfer system.

"Vaporization" means an addition of thermal energy changing a liquid medium to a vapor or gaseous state.

"Vaporizer" means a heat transfer facility designed to introduce thermal energy in a controlled manner for changing a liquid medium to a vapor or gaseous state.

"Waterfront LNG facility" means an LNG facility located on or immediately adjacent to a navigable waterway of the United States.

§ 193.7 Rules of regulatory construction.

(a) As used in this part—

(1) "Includes" means including but not limited to;

(2) "May" means is permitted to or is authorized to;

(3) "May not" means is not permitted to or is not authorized to; and

(4) "Shall" or "must" is used in the mandatory and imperative sense.

(b) In this part—

(1) Words importing the singular include the plural; and

(2) Words importing the plural include the singular.

§ 193.10 Reporting.

Leaks and spills of LNG must be reported in accordance with the requirements of Part 191 of this chapter.

§ 193.11 Incorporation by reference.

(a) Any documents or parts thereof incorporated by reference in this part are a part of this regulation as though set out in full.

(b) All incorporated documents are available for inspection in Docket Room 6500, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590. In addition, the documents are available at the addresses provided in Appendix A to this part.

(c) The titles and applicable editions for the publications incorporated by reference in this part are provided in Appendix A to this part.

Subpart B—Site Related Design Requirements

§ 193.101 Scope.

This subpart prescribes site related requirements for the design of a new LNG facility or an existing critical component which is replaced, relocated, or significantly altered.

§ 193.103 Acceptable site.

A site may not be used for an LNG facility or critical component unless it is investigated in accordance with the requirements of this subpart.

§ 193.105 General.

An LNG facility must be located at a site of suitable size, topography, and configuration so that the facility can be designed to minimize the hazards to persons and property resulting from leaks and spills of LNG and other hazardous liquids at the site. In selecting a site, each operator shall determine all site related characteristics which could jeopardize the integrity and security of the facility. A site must provide ease of access so that personnel, equipment, and materials from offsite locations can reach the site for fire fighting or controlling spill associated hazards or to evacuate personnel.

§ 193.107 Thermal radiation protection.

(a) *Thermal exclusion zone.* Each LNG facility must have a thermal exclusion zone. Within the thermal exclusion zone an impounding system for LNG may not be located closer to targets listed in paragraph (d) of this section than the exclusion distance "d" determined according to this section unless the target is part of an LNG facility. If grading and drainage are used under § 193.403(b), operators must comply with the requirements of this section by assuming the space needed for drainage and collection of spilled liquid is an impounding system.

(b) *Measurement.* The exclusion distance "d" is measured as shown in the following diagram along the line (PT) in a vertical plane defined by the points (T) and (D) where—

(T) is a point at the top of the target;

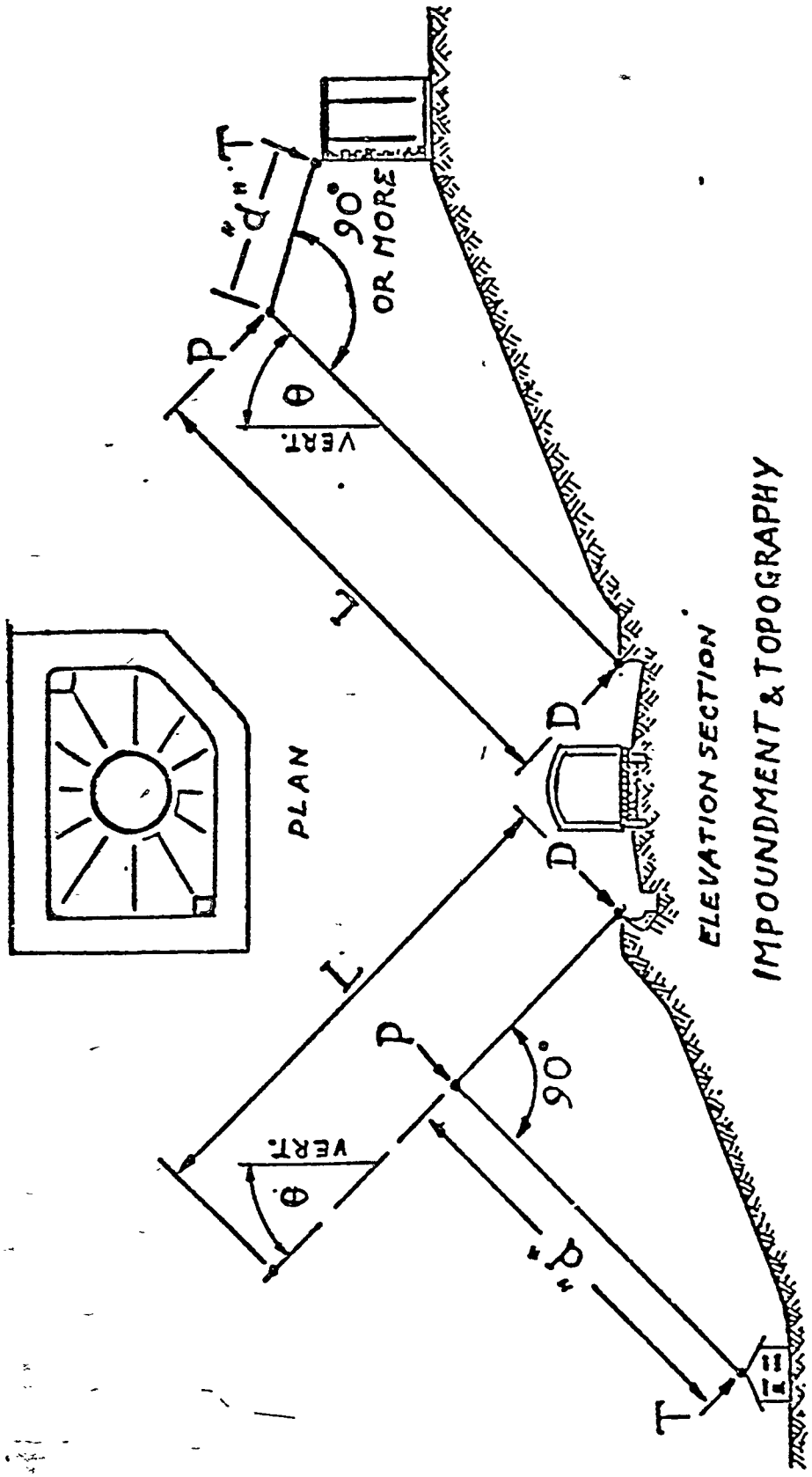
(D) is a point closest to (T) on the top inside edge of the innermost dike;

( ) is the flame tilt angle measured from the vertical as calculated from Equation G-4 of AGA IS-3-1, using the maximum wind speed that is exceeded less than 5 percent of the time based on recorded data for the area.

(L) is the flame length as calculated from Equation G-7 or G-8 of AGA IS-3-1;

(PD) is a line in the vertical plane which intersects (D) at an angle with the vertical;

(P) is located where (PT) and (PD) intersect at an angle of 90° or more, or where (PD) equals (L), whichever results in the shortest length of (PD).


PLAN
ELEVATION SECTION
IMPOUNDMENT & TOPOGRAPHY
VERT.
VERT.
90° OR MORE
90°
P
"d"
T
L
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D
P
"P"
T
θ
θ

(c) *Exclusion distance length.* The length of an exclusion distance in feet for each impounding space may not be less than the distance "d" determined in accordance with one of the following:

$$(1)\ d=(qA/4\pi q'')^{1/2}$$

(1) Where—

A=Area measured across the top of the impounding space in square feet.

q"=Radiation flux level for the target prescribed by paragraph (d) of this section.

q=Emissive power of LNG fire equals 45,000 Btu/ft.^{2}hr.

(2) Determine "d" from a detailed analysis of the radiation from LNG fires, using the model beginning on Page G-40 of AGA IS-3-1, making certain the analysis accounts for:

(i) Transmissivity of the atmosphere based on the minimum daily relative humidity that is exceeded at least 95 percent of the time based on recorded data for the area;

(ii) Emissivity of the flame;

(iii) Geometric view factor between the flame and the target;

(iv) Emissive power of LNG fire equals 45,000 Btu/ft.^{2}hr.; and

(v) Radiation flux level for the target is as prescribed by paragraph (d) of this section.

NOTE.—In the case of an impounding space with base dimensions in a ratio of more than 2, the distance "d" must be calculated by assuming simultaneous radiation from a series of impounding spaces each with base dimensions in a ratio of 2 or less and taking into account the combination of radiation flux.

(d) *Permissible thermal flux on targets.* Thermal radiation from an impounding space may not result in more than the following thermal flux at a target:

Targets	Maximum Incident Radiation Flux (Btu/ft.^{2}hr.)
(1) Places of outdoor assembly, including beaches, parks, playgrounds, and outdoor theaters	1,600
(2) Structures made of cellulose or metal which—(i) Are frequently occupied by humans; (ii) Contain flammable or toxic materials; (iii) Have exceptional value or contain objects of exceptional value, or (iv) Could result in additional hazard if damaged by thermal radiation	4,000
(3) Public streets, highways, and main lines of railroads	4,000
(4) Structures made of brick, stone, or other masonry materials, which are fire resistant and have not more than 10 percent window area	10,000
(5) Other structures made of cellulose, metal or masonry materials	6,700

§ 193.109 Flammable vapor-gas dispersion protection.

(a) *Dispersion exclusion zone.* Except as provided by paragraph (e) of this section, each LNG facility must have a dispersion exclusion zone with a boundary described by the minimum dispersion distance computed in accordance with this section. The following are prohibited in a dispersion exclusion zone unless it is part of an LNG facility.

(1) Places of outdoor assembly; and

(2) Structures which—

(i) Are frequently occupied by humans;

(ii) Contain flammable or toxic materials;

(iii) Have exceptional value or contain objects of exceptional value; or

(iv) Could result in additional hazard if damaged by concussion or fire.

(b) *Measuring dispersion distance.* The dispersion distance is measured radially from the inside edge of an impounding system along the ground contour to the exclusion zone boundary.

(c) *Computing Dispersion distance.* A minimum dispersion distance must be computed for each impounding system which serves components containing LNG. Computing dispersion distance in accordance with applicable parts of the mathematical model in Appendix B in the report, "Evaluation of LNG Vapor Control Methods" prepared for the American Gas Association by A. D. Little, Inc. If grading and drainage are used under § 193.403(b), operators must comply with the requirements of this section by assuming the space needed for drainage and collection of spilled liquid is an impounding system. Computation of dispersion distance is subject to the following and paragraph (d) of this section:

(1) Average gas concentration in air = 2.5 percent.

(2) Weather conditions are those which result in longer predicted downwind dispersion distances than 95 percent of other weather conditions occurring at the site based on U.S. Government weather data.

(3) Dispersion parameters y, z, and H=O.

(d) *Vaporization design rate.* In computing dispersion distance under paragraph (c) of this section, the following applies:

(1) For sites not subject to paragraph (d)(2) of this section, dispersion distance is based on the following conditions:

(i) Vaporization equals the maximum constant rate of discharge by failed transfer piping which has the greatest overall flow capacity durng the time necessary to wet 100 percent of the impounding floor area as determined by equation C-9 in the report, "Evaluation of LNG Vapor Control Methods, prepared for the American Gas Association by A. D. Little, Inc., plus the flash vaporization from the assumed piping failure.

(ii) After the time required to wet the impounding floor has been exceeded, the vaporization rate is a decreasing function of time and spill surface properties.

(iii) Vapor detention space is all space provided for liquid impoundment and vapor detention outside the component served, less the valume occupied by the spilled liquid at the time the vapor escapes the vapor detention space.

(2) For sites located in active seismic areas having a potential for ground rupture or seismic accelerations in excess of 0.4G as determined under § 193.111, or where other surrounding conditions exist such that structural integrity of the vessel served cannot be assured with a high degree of certainty (e.g., high density commercial or military air traffic, and military test sites for aircraft and missiles), and for areas under § 193.403(b)(4) and (5), dispersion distance is based on the following conditions, as applicable:

(i) For Class 2 and Class 3 impounding systems—

(A) Vaporization results from a release of the maximum contents of the largest vessel impounded, timed in accordance with paragraph (d)(3) of this section, which contacts all exposed surfaces of the impounding system and outer vessel surfaces, plus flash vaporization from the contents of the vessel served; and

(B) Vapor detention space is all space provided for liquid impoundment and vapor detention outside the vessel served less the volume occupied by the spilled liquid at the time the vapor escapes the vapor detention space.

(ii) For Class 1 impounding systems, vaporiztion results from a volume discharged from transfer piping equal to the impoundment capacity required by § 193.441 for transfer piping, which contacts all exposed surfaces of the impounding system, heat transfer to the liquid from any collapsed component roof, plus flash vaporization from the maximum contents of the component served or from the liquid discharged by transfer piping, whichever is greater.

(3) For sites subject to paragraph (d)(2) of this section, the assumed maximum time (t) required for the release of liquid from a vessel served is determined in accordance with the following equation:

$$t=\frac{2A(h_1)^{0.5}-(h_2)^{0.5}}{c\,a\,(2g)^{0.5}}$$

where:

A = cross-sectional area of vessel in feet.

a = area of credible spill opening in feet but not less than 5 percent of the nonhorizontal wetted surface of the vessel.

c = coefficient of discharge = 0.75.

h_1 = original height of contained liquid in feet.
h_2 = equilibrium height of impounded liquid in feet.

(4) Unless the requirements of paragraph (d)(5) of this section are met, the boiling rate of LNG on which dispersion distance is based is determined using the weighted average value of the thermal properties of the soil, sealant, and other contact surfaces in the impounding space determined from eight representative experimental tests on the materials involved.

(5) If impounidng surfaces are insulated and the insulation is designed, installed and maintained so that it will retain its performance characteristics under spill conditions, the boiling rate of LNG is determined in accordacne with paragraph (d)(4) of this section both with and without the insulation system in place, using a value of not less than the average of the weighted average value without insulation and the weighted average value with insulation.

(e) *Planned ignition.* An LNG facility need not have a dispersion exclusion zone if the Secretary finds that compliance with paragraph (a) of this section would be impractical and the operator prepares and follows a plan for igniting LNG that is found acceptable by the Secretary. The plan must include circumstances under which LNG vapor is ignited to preclude the dispersion of a flammable mixture from the LNG facility under all predictable environmental conditions that could adversely affect ignition. The reliability of the method of ignition must be demonstrated by testing or experience with LNG spills.

§ 193.111 Seismic investigation and design.

(a) At the site of each of the following LNG facilities each operator shall conduct a detailed geotechnical investigation and determine proximity to faults, the seismic response spectra, potential for motion amplification, potential for soil liquefaction, and potential for surface rupture:

(1) A facility which is located in Zone 2, 3, or Zone 4 of the "Seismic Risk Map of the United States," UBC, or in Puerto Rico, not including a facility with total LNG storage capacity provided by one or more horizontal cylindrical double wall metal storage tanks of less than 100,000 gallon capacity each, mounted within 2 feet of the ground.

(2) A facility located where there is evidence indicating a potential for surface faulting.

(b) In the case of LNG facilities not listed in paragraph (a) of this section, the critical components listed in paragraph (c) of this section must be designed and built to withstand—

(1) The horizontal seismic acceleration and other applicable factors set forth in the UBC, Volume 1, corresponding to the zone of the "Seismic Risk Map of the United States" in which the facility is located; and

(2) A vertical seismic acceleration equal to the horizontal acceleration and the associated applicable factors.

(c) In the case of LNG facilities listed in paragraph (a) of § 193.111, the critical components set forth below must be designed and built to withstand the most critical maximum horizontal and vertical response spectra (with respect to the natural period of the structure) determined to have occurred at the site as a result of an earthquake or determined to have the following probability of not being exceeded at the site in 50 years, whichever is larger, considering motion amplication and symmetric and asymmetric reaction forces resulting from hydrodynamic pressure and motion of contained liquid in interaction with the component structure:

Critical Component	Probability of response spectra not being exceeded
Storage tanks and their impounding systems	99.5%
Transfer piping, shutdown control systems, other flammable fluid containers	90.0%

(d) An LNG facility is prohibited in the following locations:

(1) A location where surface faulting within one mile of a critical component is determined by the seismic investigation under paragraph (a) of this section to have more than a 0.5 percent probability of occurring within 50 years.

(2) A location where the maximum horizontal or vertical seismic acceleration, or any combined vector thereof, at the foundation of the following critical components is determined to have more than the indicated percent probability of exceeding 80 percent (g) in 50 years:

Component	Probability
Storage tanks and their impounding systems	0.5%
Transfer piping, shutdown control system, other flammable fluid containers	10.0%

(3) A location where soil liquefaction or landslide has more than 0.5 percent probability of occurring in 50 years.

(e) If the maximum horizontal or vertical seismic acceleration at a site is determined to have more than a 0.5 percent probability of exceeding 40 percent (g) in 50 years, the following applies:

(1) Foundations of LNG storage tanks must be a monolithic structure on bedrock.

(2) Impounding systems must be designed and installed so that surrounding dike elevation is not below the level of stored liquid for a distance from the inner edge of the dike equal to $4(A)^{0.5}$, where A is the inside area across the top of the impounding space.

(f) Each container which does not have a structurally sound, liquid-tight cover, must have sufficient freeboard with an appropriate configuration to prevent the escape of liquid due to sloshing, wave action, and vertical liquid displacement caused by seismic motion.

§ 193.113 Flooding.

(a) Each operator shall determine the effects of flooding on an LNG facility site based on the worst occurrence in a 100-year period. The determination must take into account:

(1) Volume and velocity of the floodwater;

(2) Tsunamis;

(3) Potential failure of dams;

(4) Predictable land developments which would affect runoff accumulation of water; and

(5) Tidal action.

(b) Each LNG facility must be located and designed so that the effect of the flooding determined under paragraph (a) of this section cannot reasonably be expected to result in a hazardous condition involving—

(1) Foundations, impounding systems, and other critical components;

(2) Access from outside the facility or movement of personnel and equipment about the LNG facility site for the control of fires and other emergencies;

(3) Power supply to the facility;

(4) Operational capability of control systems, whether electrical, pneumatic, or otherwise powered; or

(5) Structural integrity of critical components and their support systems.

§ 193.115 Soil characteristics.

(a) Soil investigations including borings and other appropriate tests must be made at the site of an LNG facility to determine bearing capacity, settlement characteristics, potential for erosion, and other soil characteristics applicable to the integrity of an LNG facility.

(b) The soil characteristics at each LNG facility site must provide load bearing capacities, using appropriate safety factors, which can support, without excessive lateral or vertical movement, all loads resulting from:

(1) Static loading caused by components and their contents and hydrostatic testing of components; and

(2) Dynamic loading caused by movement of contents of components including flow, sloshing, and rollover.

§ 193.117 Wind forces.

(a) All critical components must be designed to withstand wind forces in accordance with the UBC.

(b) In addition to the requirements of paragraph (a) of this section, each operator shall determine the probability of occurrence of tornadoes in the area in which the LNG facility is located. If tornadoes are determined to have at least a 0.5 percent probability of occurring within a 50-year period, storage tanks and dikes must be designed to withstand loading from sustained wind speeds of not less than 250 miles per hour, plus stress or impact which could result from the failure and collapse of all connected transfer piping and other appurtenances unless the connected transfer piping and appurtenances also are designed to withstand a wind speed of 250 miles per hour.

§ 193.119 Other severe weather and natural conditions.

(a) In addition to the requirements of §§ 193.111, 193.113, 193.115, and 193.117, each operator shall determine from historical records and engineering studies the worst effect of other weather and natural conditions which may predictably occur at an LNG facility site.

(b) The facility must be located and designed so that such severe conditions cannot reasonably be expected to result in a hazard involving the factors listed in § 193.113(b).

§ 193.121 Adjacent activities.

(a) Each operator shall determine the present and reasonably foreseeable activities adjacent to an LNG facility site that could adversely affect the operation of the LNG facility or the safety of persons or property located off the site if damage to the facility occurs.

(b) An LNG facility must not be located where present or projected offsite activities would be reasonably expected to—

(1) Adversely affect the operation of control systems;

(2) Cause failure of critical components; or

(3) Cause the LNG facility not to meet the requirements of this part.

§ 193.123 Separation of components.

Each LNG facility site must be large enough to provide for minimum separations between critical components and between components and the site boundary to—

(a) Permit movement of personnel, maintenance equipment, and emergency equipment within and around the facility;

(b) Minimize spill and collapse hazards to persons and property on and off the site, unless protection comparable to separation is provided; and

(c) Comply with distances between the critical components specified in Section 213 through 216 of NFPA 59A.

Subpart C—Materials

§ 193.201 Scope.

This subpart prescribes requirements for the selection and qualification of materials for new components or any portion of an existing component which is replaced, relocated, or significantly altered.

§ 193.203 General.

Materials for all components must be—

(a) Able to maintain their structural integrity under all design loadings, including applicable environmental design forces under Subpart B of this part;

(b) Physically, chemically, and thermally compatible with any fluid or other materials with which they are in contact; and

(c) Qualified in accordance with the applicable requirements of this subpart.

§ 193.205 Extreme temperatures; normal operations.

Each operator shall—

(a) Determine the range of temperatures to which components will be subjected during normal operations, including required testing, initial startup, cooldown operations and shutdown conditions; and

(b) Use component materials that meet the design standards of this part for strength, ductility, and other properties throughout the entire range of temperatures to which the component will be subjected in normal operations.

§ 193.207 Extreme temperatures; emergency conditions.

(a) Each operator shall determine the effects on critical components which are not normally exposed to extreme cold of a spill or other operational error which could cause LNG or cold refrigerant to contact the component.

(b) Each operator shall determine the effects on critical components of the extreme heat which will result if a spill of LNG or other flammable fluid were ignited.

(c) If an operator determines that a critical component would fail due to extreme high or low temperature, the component may not be used unless it is made of suitable materials, or is protected, to prevent failure from at least two hours' exposure to the extreme temperatures to which the component may be subjected.

(d) If a material that has low resistance to flame temperatures is used in any component containing a flammable fluid, the material must be protected so that any heat resulting from a controllable emergency does not cause the release of fluid that would result in an uncontrollable emergency.

§ 193.209 Insulation.

(a) During normal operations, insulation materials must—

(1) Maintain insulating values; and

(2) Withstand thermal and mechanical design loads.

(b) Insulation used on the outside of a component to protect it against temperature extremes must be covered, must provide a vapor barrier, and maintain insulating properties if exposed to water.

The insulation and covering must be self-extinguishing. The covering must also have a melting point above 1500° F, not be subject to ultraviolet decay, withstand wind in accordance with UBC, and withstand anticipated impact loading which could occur in a controlled emergency, including the force of fire hose streams.

§ 193.211 Cold boxes.

All cold boxes and their insulation must be made of materials which do not support combustion in the installed condition.

§ 193.213 Piping.

(a) Piping made of cast iron, malleable iron, or ductile iron may not be used to carry any cold refrigerants or hazardous fluid.

(b) Piping materials intended for use at temperatures below (−28.9° C) −20° F must be qualified by testing in accordance with ANSI B31.3 to comply with § 193.203(b).

§ 193.215 Concrete material subject to cryogenic temperatures.

Concrete subject to cryogenic temperatures may not be used unless—

(a) Materials, measurements, mixing, placing, prestressing, and poststressing of concrete meets generally accepted engineering practices;

(b) Metallic reinforcing, prestressing wire, structural and nonstructural members used in concrete are acceptable in the installed condition for the temperature and stress levels encountered at design loading conditions; and

(c) Tests for the compressive strength, the coefficient of contraction, an acceptable thermal gradient, and, if applicable, acceptable surface loading to prevent detrimental spalling are performed on the concrete at the lowest predictable service tempera-

ture or similar test data on these properties are available.

§ 193.217 Combustible materials.

Combustible materials are not permitted for the construction of buildings, plant equipment, and the foundations and supports of buildings and plant equipment in areas where ignition of the material would worsen an emergency. However, limited combustible materials may be used when an operator determines that noncombustile materials are not commercially available.

§ 193.219 Records.

Each operator shall keep a record of all critical components and their materials as necessary to verify that the requirements of this subpart and design requirements of this part are complied with. These records must be maintained for the life of the component.

Subpart D—Design of Components and Buildings

§ 193.301 Scope.

This subpart prescribes requirements for the design and installation of new components and buildings or any portion of existing components and buildings which is replaced, relocated, or significantly altered.

§ 193.303 General.

The components of each LNG facility must be designed, fabricated and installed to withstand predictable loadings including applicable environmental design forces under Subpart B of this part.

§ 193.304 Personnel.

For the design and fabrication of critical components, each operator shall use—

(a) With respect to design, persons who have demonstrated competence by training or experience in the design of critical components for use in an LNG facility or other cryogenic facility; and

(b) With respect to fabrication, persons who have demonstrated competence by training or experience in the fabrication of critical components for use in an LNG facility or other cryogenic facility.

§ 193.305 Control valves.

(a) Each oerator shall—

(1) Determine appropriate locations for, and install, control valves which are necessary for operation in a controllable emergency; and

(2) Equip those valves for local manual operation and both local and remote power operation.

(b) Control valves used for cryogenic liquid service must be designed to operate in the position in which they are to be installed.

§ 193.307 Piping.

(a) Piping must be designed, manufactured, and tested according to written specifications based on generally accepted engineering practices to function under the full range of operating conditions, including pressure and temperature, that are predictable for the piping's use.

(b) All cryogenic and flammable fluid piping must have connections to facilitate blowdown and purge.

(c) Each cryogenic or flammable fluid piping system that is above ground must be identified by color coding, painting, or labeling.

(d) Seamless pipe or pipe with a longitudinal joint efficiency of 1.0 determined in accordance with ANSI B31.3 must be used for process and transfer piping handling cryogenic or other hazardous liquids.

(e) For longitudinal or spiral weld pipe handling LNG or flammable refrigerants—

(1) The design maximum pressure must result in stresses less than 50 percent of the maximum allowable stress set forth in Appendix, Table 1 of ANSI B31.3, unless the weld is subjected to 100 percent radiographic or ultrasonic inspection to indicate any defects which could adversely affect the integrity of the weld or pipe; and

(2) The heat affected zone of the weld must comply with Section 323.2.3 of ANSI B31.3.

(f) Threaded piping used in cryogenic or flammable fluid service must be at least Schedule 80.

(g) Delete.

(h) Delete.

§ 193.309 Pipe attachments and supports.

(a) Pipe supports must be designed to comply with § 193.207.

(b) Pipe attachments and supports for LNG or refrigerant piping must be designed to prevent excessive heat transfer which can result in either unintentional restraint of piping caused by ice formations or the embrittlement of supporting steel.

§ 193.311 Buildings; design.

Each building or structural enclosure in which potentially hazardous quantities of flammable fluids are handled must be designed and constructed to minimize—

(a) Potential fire hazards; and

(b) The probability of an explosion within the structure initiating—

(1) A blast wave by pressure containment;

(2) Collapse of support members; or

(3) Shrapnel-like fragmentation.

§ 193.313 Buildings; ventilation.

(a) Each building in which potentially hazardous quantities of flammable fluids are handled must be ventilated to minimize the possibility, during normal operation, of hazardous accumulation of a flammable gas and air mixture, hazardous products of combustion, and other hazardous vapors in enclosed process areas by one of the following means:

(1) A continuously operating mechanical ventilation system;

(2) A combination gravity ventilation system and normally off mechanical ventilation system which is activated by suitable flammable gas detectors at a concentration not exceeding 15 percent of the lower flammable limit of the gas;

(3) A dual rate mechanical ventilation system with the high rate activated by suitable flammable gas detectors at a concentration not exceeding 15 percent of the lower flammable limit of the gas; or

(4) A gravity ventilation system composed of a combination of wall openings, roof ventilators, and if there are basements or depressed floor levels, a supplemental mechanical ventilation system.

(b) The ventilation rate must be at least one cubic foot per minute of air per square foot of floor area. If vapors heavier than air can be present, the ventilation must be proportioned according to the area of each level.

§ 193.317 Expansion and contraction.

Each operator shall determine the amount of contraction and expansion of each component during operating and enviornmental thermal cycling and shall—

(a) Provide components that operate without deterimental stress or restriction of movement, within each component and between components, caused by contraction and expansion; and

(b) Prevent ice buildup from detrimentally restricting the movement of components caused by contraction and expansion.

§ 193.319 Frost heave.

(a) Each operator shall—

(1) Determine which critical components and their foundations could be endangered by frost heave from ambient temperatures or operating temperatures of the component; and

(2) Provide protection against frost heave which might impair their structural integrity.

(b) For each critical component and foundation determined under paragraph (a) of this section, instrumentation and alarm systems must be installed to warn of potential structural impairment due to frost heaving unless the component is inspected monthly using reference monuments

and surveying instruments to detect changes in elevation of the facility.

§ 193.321 Ice and snow.

(a) Components must be designed to support the weight of ice and snow which could normally collect or form on them.

(b) Each operator shall provide protection for components from falling ice or snow which may accumulate on structures.

(c) Valves under § 193.302(a) and moving critical components must not become inoperative due to ice formation on the component.

§ 193.323 Electrical systems.

(a) Each operator shall select and install electrical equipment and wiring for components in accordance with NFPA-70 and, where applicable, Section 751 of NFPA-59A.

(b) Electrical grounding and bonding must be in accordance with Section 760 and Section 761 of NFPA-59A.

(c) Protective measures for stray or impressed currents must be provided in accordance with Section 762 of NFPA-59A.

(d) DELETE

§ 193.325 Lightning.

Each operator shall install lightening rods, arrestors, and grounds as necessary to minimize the hazard to plant personnel and critical components, including all electrical circuits, from damage as a result of lightning.

§ 193.327 Boilers.

Boilers must be designed and fabricated in accordance with section I or Section IV of the ASME Boiler and Pressure Vessel Code. Other pressure vessels subject to that Code must be designed and fabricated in accordance with Division 1 or Division 2 of Section VIII.

§ 193.329 Combustion engines and turbines.

Combustion engines and gas turbines must be installed in accordance with NFPA-37.

Subpart E—Impoundment Design and Capacity

§ 193.401 Scope.

This subpart prescribes requirements for the design and construction of new impounding systems or any portion of an existing impounding system that is replaced, relocated, or significantly altered.

§ 193.403 Impoundment required.

(a) An impounding system must be provided for the following components and areas to contain a potential spill of LNG or other flammable liquid:

(1) Storage tanks;

(2) Transfer piping in excess of 4 inches in diameter; and

(3) Cargo transfer systems.

(b) Grading and drainage or an impounding system must be provided to insure that accidental spills or leaks from the following components and areas do not endanger critical components or adjoining property or enter navigable waterways:

(1) Liquefaction and other process equipment;

(2) Vaporization equipment;

(3) Transfer piping four inches or less in diameter;

(4) Parking areas for tank cars or tank trucks; and

(5) Areas for loading, unloading, or storing portable containers and dewar vessels.

(c) Impounding systems must be designed and constructed in accordance with this subpart except that impounding systems intended for containment of flammable liquids other than LNG must conform to NFPA 30.

§ 193.405. General design characteristics.

(a) An impounding system must have a configuration or design which, to the maximum extent possible, will prevent liquid from escaping inpoundment under the worst predicatable spill condition by leakage, splash from collapse of a structure or part thereof, momentum and low surface friction, foaming, failure of pressurized piping, and accidental pumping.

(b) The basic form of an impounding system may be excavation, a natural geological formation, manufactured diking, such as berms or walls, or any combination thereof.

§ 193.407 Classes of impounding systems.

(a) For the purpose of this part, impounding systems are classified as follows:

Class 1. A system which surrounds the component served with the inner surface of the dike constructed against the outer surface of the component.

Class 2. A system which surrounds the component or area served with the dike located a distance away from the component or at the periphery of the area.

Class 3. A system which conducts a spill by dikes and floors to a remote impounding space which does not surround the component or area served.

(b) In the case of an impounding system consisting of a combination of classes, requirements of this part regarding a single class apply according to the percentage of impoundment provided by each class.

§ 193.409 Structural requirements.

(a) Subject to paragraph (b) of this section, the structural parts of an impounding system must be designed and constructed to prevent impairment of the system's performance reliability and structural integrity as a result of the following:

(1) The imposed loading from—

(i) Full hydrostatic head of impounded LNG;

(ii) Hydrodynamic action, including the effect of any material injected into the system for spill control;

(iii) The impingement of the trajectory of an LNG jet discharged at any predictable angle; and

(iv) Anticipated hydralic forces from a rupture in the component or iten served, assuming that the discharge pressure equals design pressure.

(2) The erosive action form a spill, including jetting of spilling LNG, and any other anticipated erosive action including surface water runoff, ice formation, dislodgement of ice formation, and snow removal.

(3) The effect of the temperature, any thermal gradient, and any other anticipated degradation resulting from sudden or localized contact with LNG.

(4) Exposure to fire from impounded LNG or from sources other than impounded LNG.

(5) If applicable, the potential impact and loading on the dike due to—

(i) Collapse of the component or item served or adjacent components; and

(ii) If the LNG facility adjoins the right-of-way of any highway or railroad, collision by or explosion of a land vehicle that could cause the most severe loading.

(b) For spills from LNG storage tanks, imposed loading and surging flow characteristics must be based on a sudden total release of the full contents of the tank. For other spills, imposed loading and surging flow characteristics from the volume to be impounded must be based on the impounding capacities and conditions of discharge set forth in this subpart.

(c) If an LNG storage tank is located within a horizontal distance of 6,100 meters (20,000 feet) from the nearest point of the nearest runway of any airport, a Class 1 impounding system must be used which is designed to withstand collision by, or explosion of, the heaviest aircraft which can take off or land at the airport.

§ 193.410 Coatings and coverings.

Insulation, sealants, or other coatings and coverings which are part of an impounding system—

(a) Must be self-extinguishing when exposed to fire in an installed condition;

(b) Must withstand exposure to fire from sources other than impounded LNG for a period of time until fire protective or fire extinguishing action is taken;

(c) Where such materials might be consumed during combustion of the

impounded LNG, must not release toxic fumes that would be hazardous to personnel; and

(d) Must withstand thermal shock from LNG.

§ 193.413 Floors.

Floors of Class 2 and Class 3 impounding systems must—

(a) Slope away from the component or item impounded and to a sump basin installed under § 193.427;

(b) Slope to the extent feasible away from the nearest adjacent critical component;

(c) Drain surface waters from the floor at rates based on predictable rainfall and other water sources; and

(d) Contain channels designed to minimize the wetted floor area.

§ 193.415 Dikes; general.

(a) Penetrations in dikes to accommodate piping or any other purpose are prohibited.

(b) An outer wall of a component served by an impounding system may not be used as a dike except for a concrete wall designed to comply with the requirements of § 193.409(c).

§ 193.417 Vapor barriers.

If vapor barriers are installed to meet the requirements of § 193.109, they must be designed and constructed—

(a) As a critical component; and

(b) To entrain cold vapor.

§ 193.419 Dike dimensions.

In addition to dike dimensions needed to comply with other requirements of this subpart, to minimize the possibility that a trajectory of accidentally discharged liquid would pass over the top of a dike, the distance from the inner wall of the vessel served to the closest inside edge of the top of the dike must at least equal the vertical distance from the maximum liquid level in the vessel served to the inside edge of the top of the dike.

§ 193.421 Covered systems.

(a) A covered impounding system is prohibited unless it is—

(1) Sealed from the atmosphere and filled with an inert gas; or

(2) Permanently interconnected with the vapor space of the component served.

(b) Membraneous covering is prohibited in a covered system.

(c) For systems to which paragraph (a)(2) of this section does not apply, instrumentation and controls must be provided to—

(1) Maintain pressures at a safe level; and

(2) Monitor gas concentrations.

(d) Dikes must have adequate structural strength to assure that they can withstand impact from a collapsed cover and all anticipated conditions which could cause a failure of the impounding space cover.

§ 193.423 Gas leak detection.

Appropriate areas within an impounding system where collection or passage of LNG or gas could be expected must be equipped with sensing and warning devices to continuously monitor for the presence of LNG or gas and to warn before gas concentration levels exceed 25 percent of the lower flammable limit.

§ 193.427 Sump basins.

Except for Class I impounding systems, a sump basin must be located in each impounding system for collection of water and small spills of LNG.

§ 193.431 Water removal.

(a) *Except* for Class 1 systems, impounding systems must have sump pumps and piping running over the dike to remove water collecting in the sump basin.

(b) The water removal system must have adequate capacity to remove water at rates which equal the maximum predictable collection rate from rainfall and other natural causes.

(c) Sump pumps for water removal must—

(1) Automatically operate as necessary to keep the impounding space as dry as practical; and

(2) Have controls for operation and redundant automatic shutdown controls to prevent operation when LNG is present.

§ 193.433 Shared impoundment.

When an impounding system serves more than one component, tank car, tank truck, or dewar vessels, a means must be provided to prevent low temperature of fire resulting from leakage from any one of the items served causing any other item to leak. If § 193.109(a) applies, the means must not result in a vapor dispersion distance which exceeds the exclusion zone.

§ 193.435 Piping.

Piping and piping supports located within an impounding system must be protected against failure due to fire, contact with spilled liquids, or predictable impact by falling objects that could result in or worsen an emergency.

§ 193.437 Impoundment capacity; general.

(a) For covered impounding systems, space between the outer wall of the component served and the dike may not be used to provide the capacity required by this subpart which exceeds the component's maximum liquid capacity unless the imponding space and the component are covered by a roof that is separate and independent from the component.

(b) In addition to capacities otherwise required by this subpart, an impounding system must have sufficient volumetric capacity to provide for—

(1) Displacement by the component tank car, tank truck, or dewar vessel served; and

(2) Where applicable, displacement which could occur when a higher density substance than the liquid to be impounded enters the system, considering all relevant means of assuring capacity.

§ 193.439 Impoundment capacity, LNG storage tanks.

Each impounding system serving an LNG storage tank must have a munimum volumetric liquid impoundment capacity as follows:

Number of tanks in system	Class or type of system	System capacity in percent of LNG tanks' maximum liquid capacity
1	Class 1 and covered systems.	110 percent.
	Class 2 and 3	150 percent.
More than 1	Class 2 and 3	100 percent of all tanks or 150 percent of largest tank, whichever is greater.

§ 193.441 Impoundment capacity; equipment and transfer facilities.

Each impounding system serving a component under § 193.403(a)(2) and (3) and, when applicable, under § 193.403(b)(1)-(3), must have a minimum volumetric liquid impoundment capacity equal to the sum of—

(a) 100 percent of the volume of liquid that could be contained in the component and, where applicable, tank car of tank truck served; and

(b) The maximum volume of liquid which could discharge into the impounding space from any single failure of equipment or piping during the time period necessary for spill detection, instrument response, and sequenced shutdown by the automatic shutdown system under § 193.605.

§ 193.443 Impoundment capacity; parking areas; portable vessels.

If an impounding system is used to serve an area listed under §§ 193.403(b)(4) or (5), it must have a mumimum volumetric liquid impoundment capacity which complies with the requirements or § 193.439, assuming each tank car, tank truck, portable container, or dewar vessel to be a storage tank.

§ 193.445 Flow capacity in Class 3 impounding systems.

(a) Each spill conducting space in a Class 3 impounding system must have adequate flow capacity for the following volumes and flow rates of a potential spill at all points along its traverse:

(1) For storage tanks, the worst combination of flow rates and 150 percent of the volume from a sudden and complete release of the largest above grade maximum liquid capacity of any single tank served, plus the discharge from all transfer piping which could be loading that tank, assuming the loading transfer piping is discharging at maximum potential open end capacity during the time period set forth by § 193.441(b), and less any upstream or intermediate capacity.

(2) For components listed under § 193.403(a)(2) and (3), and, when applicable, under §§ 193.403(b)(1)-(3), the worst combination of flow rates and volumes determined in accordance with § 193.441, less any upstream or intermediate impounding capacity.

(3) For areas listed under § 193.403(b)(4) and (5), the requirements of paragraph (a)(1) of this section apply, assuming each tank car, tank truck, portable container, or dewar vessel to be a storage tank.

(b) When intermediate impounding space is used to provide the capacity of conducting space required by this section, the capacity of the intermediate space must be based on the combination of applicable volumes and flow rates set forth in paragraph (a) of this section to assure adequate capacity of the conducting space.

§ 193.447 Sump basin capacity.

(a) Sump basins in impounding systems for LNG storage tanks must have a mumimum volumetric capacity equal to the discharge from relevant connected sections of transfer piping which can operate simultaneously, assuming the transfer piping discharges at maximum potential open end capacity for the time period necessary for spill detection, instrument response, and sequenced shutdown by the automatic shutdown system.

(b) Sump basins in impounding systems for components listed in §§ 193.403(a)(2) and (3) and, if applicable, §§ 193.403(b)(1)-(3), must have a minimum volumetric capacity equal to half of the lesser of—

(1) The volume of liquid which could discharge into the impounding system from any single failure of equipment or piping during the time period necessary for spill detection, instrument response, and sequenced shutdown by the automatic shutdown system; or

(2) The volume of liquid that could be contained in the component served.

(c) Sump basins in impounding systems for areas listed in §§ 193.403(b)(4) and (5) and must have a minimum volumetric liquid capacity which meets the requirements of paragragh (a) of this section, assuming each tank car, tank truck, portable container, or dewar vessel to be a storage tank.

Subpart F—LNG Storage Tanks

§ 193.501 Scope.

This subpart prescribes requirements for the design and construction of new LNG storage tanks or any portion of an existing LNG storage tank that is replaced, relocated, or significantly altered.

§ 193.503 General.

(a) LNG storage tanks must comply with the requirements of this subpart and the other applicable requirements of this part.

(b) A flammable nonmetallic membrane liner may not be used as an inner container in a storage tank.

§ 193.505 Loading forces.

Each part of an LNG storage tank must be designed to withstand any predictable combination of forces which would result in the highest stress to the part, including the following:

(a) Internal design pressure determined under § 193.513.

(b) External design pressure determined under § 193.515.

(c) Weight of the structure.

(d) Weight of LNG to be stored determined at its highest density and at the level creating the highest stress.

(e) Loads due to testing required by § 193.1033.

(f) Nonuniform reaction forces on the foundation due to predictable settling and other movement.

(g) Superimposed forces from piping, stairways, and other connected appurtenances.

(h) Predictable snow and ice loads.

(i) The loading of internal insulation on the inner container and outer shell due to weight and movement of the container and shell over the design life of the insulation.

(j) In the case of vacuum insulation, the forces due to the vacuum.

(k) In the case of a positive pressure purge, the forces due to the maximum positive pressure of the purge gas.

§ 193.507 Stratification.

LNG storage tanks with a capacity of 5,000 barrels or more must be equipped with means to mitigate a potential for rollover and overpressure by:

(a) Selective filling at the top and bottom of the tank;

(b) Circulating liquid from the bottom to the top of the same tank; or

(c) Transferring liquid selectively from the bottom of the tank to the bottom or top of any adjacent storage tank.

§ 193.509 Movement and stress.

(a) Each operator shall determine for normal operations of each LNG storage tank—

(1) The amount and pattern of predictable movement of components, including transfer piping, and the foundation, which could result from thermal cycling, loading forces, and ambient air changes; and

(2) For a storage tank with an inner container, the predictable movement of the inner container and the outer shell in relation to each other.

(b) Storage tanks must be designed to provide adequate allowance for stress due to movement determined under paragraph (a) of this section, including provisions that—

(1) Backfill does not cause excessive stresses on the tank structure due to expansion of the storage tank during warmup;

(2) Insulation does not settle to a damaging degree or unsafe condition during thermal cyclying; and

(3) Expansion bends and other expansion or contraction devices are adequate to prevent excessive stress on tank penetrations, especially during cooldown from ambient temperatures.

§ 193.511 Penetrations.

(a) All penetrations in an LNG storage tank must be located on the top of the tank.

(b) Penetrations must be designed to ensure that any failure of the penetrating component does not result in hazardous structural damage to the tank.

§ 193.513 Internal design pressure.

(a) Each operator shall determine the internal design pressure at the top of each LNG storage tank.

(b) The internal design pressure of a storage tank may not be lower than the highest vapor pressure resulting from each of the following events or combination thereof that predictably might occur:

(1) Filling the tank with LNG including effects of increased vaporization rate due to superheat and sensible heat of the added liquid;

(2) Rollover resulting from adding LNG which has a different density than liquid already in the tank, or from weathering in storage;

(3) Fall in barometric pressure, using the worst combination of amount of fall and rate of fall which might credibly occur;

(4) Loss of effective insulation that may result from an adjacent fire, leak of liquid into the intertank space, or other predictable accident; and

(5) Flash vaporization resulting from pump recirculation.

§ 193.515 External design pressure.

(a) Each operator shall determine the external design pressure at the top of each LNG storage tank.

(b) The external design pressure may not be higher than the lowest vapor pressure resulting from each of the following events or combinations thereof that predictably might occur:

(1) Withdrawing liquid from the tank;

(2) Withdrawing gas from the tank;

(3) Adding subcooled LNG to the tank; and

(4) Rise in barometric pressure, based on the worst combination of amount of rise and rate of rise which predictably might occur.

§ 193.519 Internal temperature.

LNG storage tanks must be designed to withstand the minimum temperature of the LNG Liquid to be stored at the external design pressure determined in § 193.515(b).

§ 193.521 Foundation.

(a) Each LNG storage tank must have a stable foundation designed in accordance with generally accepted structural engineering practices. The design must take into account the forces which may exist due to the difference in density between the contained liquid and the displaced ground.

(b) Each foundation must support design loading forces without detrimental settling that could impair the structural integrity of the tank.

(c) When the location of an LNG storage tank foundation is subject to flooding or is near the natural water table, each operator shall determine the weight of the foundation and the empty tank and shall anchor the tank so that the buoyant water forces will not float the tank or impair the structural integrity of the tank.

§ 193.523 Frost heave.

If the protection provided for LNG storage tank foundations from frost heave under § 193.319(a) includes heating the foundation area—

(a) An instrumentation and alarm system must be provided to warn of malfunction of the heating system; and

(b) A means to correct the malfunction must be provided.

§ 193.525 Insulation.

(a) Insulation on the outside of an LNG storage tank may not be used to maintain stored LNG at an operating temperature.

(b) Insulation between an inner container and the outer shell of an LNG storage tank must—

(1) Be compatible with the contained liquid and its vapor;

(2) In its installed condition, be self extinguishing; and

(3) Not significantly lose insulating properties by melting, settling, or other means if a fire occurs outside the outer shell.

§ 193.527 Instrumentation for LNG storage tanks.

(a) Each storage tank must be equipped with redundant sensing devices and personnel warning devices, as prescribed, which operate continuously while the tank is in operation to assure that each of the following conditions is not a potential hazard to the structural integrity or safety of the tank.

Condition	*Instrumentation*
(1) Amount of liquid in the tank.	Liquid level gauges and recorders with top fill alarms and a separate overfill alarm.
(2) Vapor pressure within the tank.	Pressure gauges and recorders with high and low pressure alarms.
(3) Temperatures at representative critical points in the foundation.	Temperature indicating and recording devices with alarm.
(4) Temperature of contained liquid at various vertical intervals.	Temperature recorders.
(5) Excessive thermal stress in tank structure.	Thermocouples located at representative critical points with recorders.
(6) Excessive relative movement of inner container and outer shell.	Linear and rotational movement indicators located between inner container and outer shell with recorders.

(b) Each storage tank must be designed as appropriate to provide for compliance with the inspection requirements of this part.

§ 193.529 Metal storage tanks.

(a) Metal storage tanks with internal design pressures of not more than 15 psig must be designed and constructed in accordance with API Standard 620 and, where applicable, Appendix Q of that standard.

(b) Metal storage tanks with internal design pressures above 15 psig must be designed in accordance with the applicable division of Section VIII of the ASME Boiler and Pressure Vessel Code.

§ 193.531 Concrete storage tanks.

Concrete storage tanks must be designed and constructed in accordance with Section 42 of NFPA 59A.

§ 193.533 Thermal barriers.

Thermal barriers must be provided between piping and an outer shell when necessary to prevent the outer shell from being exposed to temperatures lower than the design temperature.

§ 193.535 Support system.

(a) Saddles and legs must be designed in accordance with generally accepted structural enginering practices, taking into account loads during transportation, erection loads, and thermal loads.

(b) Storage tank stress concentrations from support systems must be minimized by distribution of loads using pads, load rings, or other means.

(c) For a storage tank with an inner container, support systems must be designed to—

(1) Minimize thermal stresses imparted to the inner container and outer shell from expansion and contraction; and

(2) Sustain the maximum applicable loading from shipping an operating conditions.

(d) The bottom of a storage tank with a capacity of more than 15,000 barrels or its foundation may not be installed over an air space.

§ 193.537 Internal piping.

(a) Piping connected to an inner container that is located in the space between the inner container and outer shell must be designed for not less than the pressure rating of the inner container. The piping must contain expansion loops where necessary to protect against thermal and other secondary streeses created by operation of the tank. Bellows may not be used within the space between the inner container and outer shell.

(b) Storage tanks with a design pressure above 15 psig must be equipped with internal excess flow valves.

§ 193.539 Marking.

(a) Each operator shall install and maintain a name plate in an accessible place on each storage tank and mark it in accordance with the applicable code or standard incorporated by reference in § 193.529 or § 193.531.

(b) Each penetration in a storage tank must be marked indicating the function of the penetration.

(c) Marking required by this section must not be obscured by frosting.

Supbpart G—Design of Transfer Systems

§ 193.601 Scope.

This subpart prescribes requirements for the design and installation of new transfer systems or any portion of an existing transfer system that is replaced, relocated, or significantly altered.

§ 193.603 General.

(a) Transfer systems must comply with the requirments of this subpart

and other applicable requirements of this part.

(b) The design of transfer systems must provide for stress due to the frequency of thermal cycling and intermittent use to which the transfer system may be subjected.

(c) Slip type expansion joints are prohibited and packing-type joints may not be used at cryogenic temperatures.

(d) A suitable means must be provided to precool the piping in a manner that prevents excessive stress before transferring cold fluids.

(e) Stresses due to thermal and hydraulic shock in the piping system must be determined and accommodated by design to avoid damage to piping.

§ 193.605 Shut down control system.

Each transfer system must be equipped with a shutdown control system. The control system must automatically actuate the shutdown of appropriate valves and pumping equipment and provide pressure relief as necessary for trapped fluids when any of the following occurs:

(a) Transfer piping failure;

(b) Liquid in the receiving vessel reaches design maximum liquid level;

(c) Pressure outside the limits of the maximum and minimum allowable operating pressure;

(d) Temperature outside the range determined under § 193.205;

(e) Gas concentrations in the atmosphere exceeding 25 percent of the lower flammable limit; or

(f) A sudden flow change, pressure loss, or other condition indicating an accidental spill or potential spill.

§ 193.607 Backflow.

(a) Each transfer system must operate with a means to—

(1) Prevent backflow of liquid from a receiving container, tank car, or tank truck from causing a hazardous condition; and

(2) Maintain one-way flow where necessary for the integrity or safe operation of the LNG facility.

(b) The means provided under paragraph (a)(1) of this section must be located as close as practical to the point of connection of the transfer system and the receiving container, tank car, or tank truck.

§ 193.609 Overfilling.

Each transfer system must be equipped with sensing devices and a means which alerts personnel when the amount of liquid in a receiving vessel approaches the design maximum liquid level. The alert must be given in time for the safe termination of the transfer.

§ 193.611 Cargo transfer systems.

(a) Each cargo transfer sytem must have—

(1) A means of safely depressurizing and venting that system before disconnection;

(2) A means to provide for safe vapor displacement during transfer;

(3) Transfer piping, pumps, and compressors located or protected by suitable barriers so that they are safe from damage by tank car or tank truck movements;

(4) A signal light at each control location of remotely located pumps or compressors used for transfer which indicates whether the pump or compressor is idle or in operation; and

(5) A means of communication between loading or unloading areas and other areas in which personnel are associated with the transfer operations.

(b) Hoses and arms must be designed as follows—

(1) The design must accommodate operating pressures and temperatures encountered during the transfers;

(2) Hoses must have a bursting pressure of not less than five times the operating pressure.

(3) Arms must meet the requirements of ANSI B31.3.

(4) Adequate support must be provided, taking into account ice formation.

(5) Couplings must be designed for the frequency of any coupling or uncoupling.

§ 193.615 Cargo transfer area.

The transfer area of a cargo transfer system must be designed—

(a) To accommodate tank cars and tank trucks without excessive maneuvering; and

(b) To permit tank trucks to enter or exit the transfer area without backing.

§ 193.617 Shutoff valves.

(a) Shutoff valves on transfer systems must be located:

(1) At the inlet of each vaporizer;

(2) On return lines and on manifolds used in cargo transfer;

(3) At the connection of a transfer system with a pipeline; and

(4) To provide for proper operation and maintenance of each transfer system.

(b) Transfer system shutoff valves must be power and manually operable at the valve and power operable at a remote location at least 50 feet from the valve.

(c) In addition to valves required by paragraph (a)(2) of this section, transfer piping supplying a cargo transfer system must be equipped with a shutoff valve for each liquid and each vapor line, including a common line to multiple transfer areas, where it can be operated readily during a controllable emergency.

(d) Shutoff valves must be designed and installed so that excessive strain in the piping system does not excessively stress the shutoff seats of the valves.

Subpart H—Vaporization Equipment

§ 193.701 Scope.

This subpart prescribes requirements for the design, fabrication, and installation of new vaporization equipment or any portion of existing vaporization equipment that is replaced, relocated, or significantly altered.

§ 193.703 General.

Vaporizers must comply with the requirements of this subpart and the other applicable requirements of this part.

§ 193.705 Vaporizer design.

(a) Vaporizers must be designed and fabricated in accordance with applicable provisions of Section VIII, Division 1 of the ASME Boiler and Pressure Vessel Code.

(b) Each vaporizer must be designed for a maximum allowable operating pressure at least equal to the maximum discharge pressure of the pump or pressurized container system supplying it, whichever is greater.

§ 193.711 Operational control.

(a) Vaporizers must be equipped with devices which monitor the inlet and outlet temperature and pressure of the LNG, natural gas, and heating medium fluids.

(b) Manifolded vaporizers must be equipped with:

(1) Two inlet valves in series to prevent LNG from entering an idle vaporizer; and

(2) A means to remove LNG or gas which accumulates between the valves.

§ 193.713 Shutoff valves.

(a) Each shutoff valve located on transfer piping supplying LNG to a vaporizer must meet the following applicable requirements—

(1) A shutoff valve must be located at a sufficient distance from the vaporizer to minimize potential for damage from explosion or fire at the vaporizer.

(2) If the vaporizer is installed in a building, the valve must be located outside the building.

(b) A shutoff valve must be located on each outlet of a vaporizer.

(c) For vaporizers designed to use a flammable intermediate fluid, a shutoff valve must be located on the inlet and outlet line of the intermediate fluid piping system where they will be operable during a controllable emergency involving the vaporizer.

§ 193.715 Relief devices.

The capacity of pressure relief devices required for vaporizers by § 193.905(b) is governed by the following:

(a) For heated vaporizers, the capacity must be at least 110 percent of rated natural gas flow capacity without allowing the pressure to rise more than 10 percent above the vaporizer maximum allowable operating pressure.

(b) For ambient vaporizers, the capacity must be at least 150 percent of rated natural gas flow capacity without allowing the pressure to rise more than 10 percent above the vaporizer maximum allowable operating pressure.

§ 193.719 Combustion air intakes.

(a) Combustion air intakes to vaporizers must be equipped with sensing devices to detect the induction of a flammable vapor.

(b) If a heated vaporizer or vaporizer heater is located in a building, the combustion air intake must be located outside the building.

Subpart I—Liquefaction Equipment

§ 193.801 Scope of part.

This subpart prescribes requirements for the design of new natural gas liquefaction equipment or any portion of existing natural gas liquefaction equipment that is replaced, relocated, or significantly altered.

§ 193.803 General

Liquefaction equipment must comply with the requirements of this subpart and the other applicable requirements of this part.

§ 193.805 Control of incoming gas.

(a) A shut-off valve must be located on piping delivering natural gas to each liquefaction system; and

(b) The valve must be actuated automatically by a shut-down control system when any of the following occurs:

(1) Gas concentrations in the area of liquefaction equipment exceed 40 percent of the lower flammable limit; or

(2) Temperatures exceed the limits determined under § 193.205.

§ 193.807 Contaminants.

Each operator shall provide a means of monitoring the incoming gas to liquefaction equipment to ensure that detrimental contaminants are removed.

§ 193.809 Backflow.

Each multiple parallel piping system connected to liquefaction equipment must have devices to prevent backflow from causing a hazardous condition.

§ 193.811 Cold boxes.

Each cold box in liquefaction equipment must be equipped with a means of:

(a) Detecting a concentration of natural gas in the insulation space; and

(b) Introducing a purge gas to reduce the possibility of a gas in air concentration between 25 percent lower flammable limit and 30 percent by volume.

§ 193.813 Air in gas.

Where incoming gas to liquefaction equipment contains air, each operator shall provide a means of preventing a flammable mixture from occurring under any operating condition.

§ 193.815 Equipment supports.

Supports for liquefaction equipment must comply with the requirements of § 193.207.

Subpart J—Control Systems

§ 193.901 Scope

This subpart prescribes requirements for the design and installation of new control systems or any portion of an existing control system that is replaced, relocated, or significantly altered.

§ 193.903 General.

(a) Control systems must comply with the requirements of this subpart and other applicable requirements of this part.

(b) Each control system must be capable of performing its design function under normal operating conditions and in a controllable emergency.

(c) Control systems must be designed and installed in a manner to permit maintenance, including inspection or testing, in accordance with this part.

(d) Local, remote, and redundant signal lines installed for control systems must be routed separately.

§ 193.905 Relief devices.

(a) Each component containing a hazardous fluid must be equipped with a system of automatic relief devices which will release the contained fluid at a rate sufficient to prevent pressures from exceeding 110 percent of the maximum allowable operating pressure. In addition, each LNG storage tank must be equipped with a redundant system of automatic relief devices. In establishing relief capacity, each operator shall consider trapping of fluid between valves; the maximum rates of boiloff and expansion of fluid which may occur during normal operation, particularly cooldown; and controllable emergencies.

(b) In addition to the automatic relief devices, a manual means must be provided to relieve pressure in an emergency.

(c) Relief devices must be installed in a manner to minimize the possibility that release of fluid could—

(1) Cause an emergency; or

(2) Worsen a controllable emergency.

(d) A component in which internal vacuum conditions can occur must be equipped with a system of relief devices or other control system to prevent development in the component of a vacuum that might create a hazardous condition. LNG storage tanks must be equipped with a redundant relief system. Introduction of air or gas into a component must not create a flammable mixture within the component.

(e) The means for adjusting the setpoint pressure of all adjustable relief devices must be sealed.

(f) Relief devices which are installed to limit minimum or maximum pressure may not be used to handle boiloff and flash gases.

§ 193.907 Vents.

(a) Flammable fluids may not be relieved into the atmosphere of a building or other confined space.

(b) Boiloff vents for flammable fluids may not draw in air during operation.

§ 193.909 Sensing devices.

(a) Each operator shall determine the appropriate location for and install sensing devices as necessary to—

(1) Monitor the operation of critical components to detect a malfunction which could cause a hazardous condition if permitted to continue; and

(2) Detect the presence of fire or combustible gas in areas determined in accordance with Section 500-4 of NFPA 70 to have a potential for the presence of flammable fluids.

(b) Buildings in which potentially hazardous quantities of flammable fluids are used or handled must be continuously monitored by gas sensing devices set to activate audible and visual alarms in the building and at the control center when the concentration of the fluid in air is not more than 25 percent of the lower flammable limit.

§ 193.911 Warning devices.

Each operator shall install warning devices in the control center to warn of hazardous conditions detected by all sensing devices required by this part. Warnings must be given both audibly and visibly and must be designed to gain the attention of personnel. Warnings must indicate the location and nature of the existing or potential hazard.

§ 193.915 Pump and compressor control.

(a) Each pump and compressor for flammable fluids must be equipped with—

(1) A control system, operable locally and remotely, to shut down the pump or compressor in a controllable emergency;

(2) A signal light at the pump or compressor and the remote control location which indicates whether the pump or compressor is in operation or off;

(3) Adequate valving to insure that the pump or compressor can be isolated for maintenance; and

(4) A check valve on each discharge line where pumps or compressors operate in parallel.

(b) Pumps or compressors in a cargo transfer system must have controls at the loading or unloading area and at the pump or compressor site.

§ 193.917 Shutoff valves.

Each shutoff valve or combination of valves must—

(a) Have a failsafe design;

(b) Operate to stop fluid flow which would endanger the operational integrity of plant equipment; and

(c) Close at a rate to avoid fluid hammer which would endanger the operational integrity of a critical component.

§ 193.919 Shutdown control systems.

(a) Each critical component other than a control center must be equipped with an automatic shutdown control system. The control system must automatically actuate the shutdown of the critical component when any of the following occurs:

(1) Temperatures in the area of the component exceed the limits determined under § 193.205;

(2) Relief valves open;

(3) Gas concentrations in the area of the component exceed 25 percent of the lower flammable limit; and

(4) Failure of the component.

(b) Except for critical components other than the control center that are designed to operate unattended, a reasonable delay may be programmed in automatic shutdown control systems required by this part between warning and automated shutdown to provide for manual response.

(c) Each LNG facility must have a shutdown control system to safely shut down all operations of the facility. The system must be operable at—

(1) The control center; and

(2) In the case of a facility where critical components other than the control center are designed to operate unattended, at the site of the critical components.

§ 193.921 Control center.

(11) Each LNG facility must have a control center from which operations and warning devices are monitored as required by this part. A control center must have the following capabilities and characteristics—

(a) It must be located apart or protected from other critical components so that it is operational during a controllable emergency.

(b) Each remotely actuated control system and each automatic shutdown control system required by this part must be operable from the control center.

(c) Each control center must have personnel in continuous attendance while any of the critical components under its control are in operation, unless the control is being performed from another control center which has personnel in continuous attendance.

(d) If more than one control center is located at a facility, each control center must have more than one means of communication with each other center.

(e) Each control center must have a means of communicating a warning of hazardous conditions to other locations within the facility frequented by personnel.

§ 193.925 Failsafe control.

Control systems for critical components must have a failsafe design. A safe condition must be maintained until personnel take appropriate action either to reactivate the component served or to prevent a hazard from occuring.

§ 193.927 Sources of power.

(a) Electrical control systems, means of communication, lighting, and fire fighting systems must have at least two sources of power which function so that failure of one source does not affect the capability of the other source.

(b) Where auxiliary generators are used as a second source of electrical power—

(1) They must be located apart or protected from critical components so that they are not unusable during a controllable emergency; and

(2) Fuel supply must be protected from hazards.

Subpart K—Construction

§ 193.1001 Scope.

This subpart prescribes requirements for the construction or installation of a new component or any portion of an existing component which is replaced, relocated, or significantly altered.

§ 193.1002 Construction acceptance.

No person may place in service any component until it passes all applicable inspections and tests prescribed by this subpart.

§ 193.1005 Procedures.

(a) In performing a critical process, an operator must follow comprehensive written specifications, procedures, and drawings, as appropriate, that are consistent with this part, taking into account relevant mechanical, chemical, and thermal properties, component functions, and environmental effects that are involved.

(b) All procedures must be substantiated by testing or experience to produce a component that is reliable and complies with the design and installation requirements of this part.

§ 193.1009 Qualification of personnel.

(a) Supervisors and other personnel utilized for critical processes must have demonstrated their capability to perform satisfactorily the assigned function by—

(1) Appropriate training in the methods and equipment to be used or related experience and accomplishments; and

(2) Performance on any generally accepted qualification test relevant to the assigned function.

(b) Each operator must periodically determine whether inspectors performing duties under § 193.1011 are satisfactorily performing their assigned function.

§ 193.1011 Inspection.

(a) All construction, installation, and testing activities must be inspected as frequently as necessary in accordance with a written plan to assure that—

(1) Activities are in compliance with all applicable requirements of this subpart; and

(2) Components comply with the applicable material, design, fabrication, installation, and construction requirements of this part.

(b) In addition to the requirements of paragraph (a) of this section, the construction of concrete storage tanks must be inspected in accordance with ACI-311-75.

(c) Each operator shall inspect component materials to verify that they comply with the design specifications and are free of detrimental defects.

§ 193.1014 Inspection and testing methods.

Except as otherwise provided by this subpart, each operator shall determine, commensurate with the hazard that would result from failure of the component concerned, the scope and nature of

(a) Inspections and tests required by this subpart; and

(b) Inspection and testing procedures required by § 193.1005.

§ 193.1015 Cleanup.

After construction or installation, as the case may be, all components must be cleaned to remove all detrimental contaminants which could cause a hazard during operation, including the following:

(a) All flux residues used in brazing or soldering must be removed from the joints and the base metal to prevent corrosive solutions from being formed.

(b) All solvent type cleaners must be tested to ensure that they will not damage equipment integrity or reliability.

(c) Incompatible chemicals must be removed.

(d) All contaminants must be captured and disposed of in a manner that does not reduce the effectiveness of corrosion protection and monitoring provided as required by this part.

§ 193.1017 Pipe welding.

(a) Each operator shall provide the following for welding on pressurized piping for LNG and other flammable fluids:

(1) Welding procedures and welders qualified in accordance with Section IX of the ASME Boiler and Pressure Vessel Code or API 1104, as applicable.

(2) When welding materials which are qualified by impact testing, welding procedures selected to minimize degradation of low temperature properties of the pipe material; and

(3) When welding attachment to pipe, procedures and techniques selected to minimize the danger of burn throughs and stress intensification.

(b) Oxygen fuel gas welding is not permitted on flammable fluid piping with a service temperature below −20°C (−22°F).

(c) Marking materials for identifying welds on pipe must compatible with the basic pipe material.

(d) Surfaces of components that are less than 6.35 mm (0.25 in.) thick may not be field die stamped.

(e) Where die stamping is permitted, any identification marks must be made with a die having blunt edges to minimize stress concentration.

(f) All contaminants must be captured and disposed of in a manner that does not reduce the effectiveness of corrosion protection and monitoring provided as required by this part.

§ 193.1019 Piping connections.

(a) Piping more than two inches nominal diameter must be joined by welding, except that—

(1) Threaded or flanged connections may be used where necessary for special connections, including connections for material transitions, instrument connections, testing, and maintenance;

(2) Copper piping in cryogenic service may be joined by silver brazing; and

(3) Material transitions may be made by any joining technique proven reliable under § 193.1005(b).

(b) If socket fittings are used, a clearance of 1.6 to 3.2 mm (0.63 to 0.126 in.) between the pipe end and the bottom of the socket recess must be provided and appropriate measurement reference marks made on the piping for the purpose of inspection.

(c) Threaded joints must be—

(1) Free of stress from external loading; and

(2) Seal welded, or sealed by other means which have been tested and proven reliable.

(d) Compression type couplings must—

(1) Not be larger than 12.7 mm (0.50 in.) nominal pipe size for service temperatures below −30°C (−22°F); and

(2) Meet the requirements of Section 318 of ANSI B31.3.

§ 193.1023 Retesting.

After testing required by this subpart is completed on a component to contain a hazardous fluid, the component must be retested:

(a) Penetration welding other than tie-in welding is performed; or

(b) The structural integrity of the component is disturbed.

§ 193.1025 Strength tests.

(a) A strength test must be performed on each piping system and container to determine whether the component is capable of performing its design function, taking into account—

(1) The maximum allowable operating pressure;

(2) The maximum weight of product which the component may contain or support;

(3) The weight of ice and snow which may reasonably accumulate on the component resulting from weather and from conduction on cold from LNG or refrigerants; and

(4) Other applicable environmental design forces under Subpart B of this part.

(b) For piping, the test required by paragraph (a) of this section must include a pressure test conducted in accordance with Section 337 of ANSI B31.3, except that test pressures for piping that is a critical component must not be less than prescribed by Subsection 337.4.2 of ANSI B31.3.

(c) All shells and internal parts of heat exchangers to which Section VIII, Division 1 or Division 2 of the ASME Boiler and Pressure Vessel Code, applies must be pressure tested, inspected, and stamped in accordance therewith.

§ 193.1027 Nondestructive tests.

(a) The following percentages of each day's circumferentially welded pipe joints for flammable fluid piping, selected at random, must be nondestructively tested over the entire circumference to indicated any defects which could adversely affect the integrity of the weld or pipe:

Weld type	Critical Component	Other	Test method
Butt welds more than 2 inches in nominal size.	100	30	Radiographic or ultrasonic.
Butt welds 2 inches or less in nominal size.	100	30	Radiographic, ultrasonic, liquid penetrant, or magnetic particle.
Fillet and socket welds.	100	30	Liquid penetrant or magnetic particle.

(b) Evaluation of weld tests and repair of defects must be in accordance with the requirements of ANSI B31.3 or API 1104, as applicable.

(c) Where longitudinally or spiral welded pipe is used in transfer systems, 100 percent of the seam weld must be examined by radiographic or ultrasonic inspection.

(d) The butt welds in metal shells of storage tanks must be radiographically tested in accordance with Section 0.7.6, API 620, Appendix Q, except that for hydraulic load bearing shells with curved surfaces that are subject to cryogenic temperatures, 100 percent of both longitudinal (or meridional) and circumferential (or latitudinal) welds must be radiographically tested.

§ 193.1029 Leak tests.

(a) Each container and piping system must be initially tested to assure that the component will contain the product for which it is designed without leakage.

(b) Shop fabricated containers and all flammable fluid piping must be leak tested to a minimum of the design pressure after installation but before placing it in service.

(c) For a storage tank with vacuum insulation, the inner container, outer shell, and all internal piping must be tested for vacuum leaks in accordance with an appropriate procedure.

§ 193.1031 Testing control systems.

Each control system must be tested before being placed in service to assure that it has been installed properly and will function as required by this part.

§ 193.1033 Storage tank tests.

In addition to other applicable requirements of this subpart, low pressure tanks for cryogenic flammable fluids must be tested in accordance

with Section Q.8 and Q.9 of API 620, Appendix Q, as applicable except that—

(a) For the hydrostatic test, each tank must be filled with water to its maximum liquid level, and reduction of this water level in accordance with Section Q.9.1 is prohibited;

(b) The hydrostatic and pneumatic pressure tests must be maintained for a period of 36 hours; and

(c) Reference measurements must be made with appropriate precise instruments to assure that the tank is gas tight and lateral and vertical movement of the storage tank does not exceed predetermined design tolerances.

§ 193.1037 Construction records.

For the service life of the component concerned, each operator shall retain appropriate records of the following:

(a) Specifications, procedures, and drawings prepared for critical processes; and

(b) Results of tests and inspections required by this subpart.

APPENDIX A—INCORPORATION BY REFERENCE

I. LIST OF ORGANIZATIONS AND ADDRESSES

A. American Concrete Institute (ACI), P.O. Box 19150, Redford Station, Detroit, Michigan 48219.

B. American Gas Association (AGA), 1515 Wilson Boulevard, Arlington, Virginia 22209.

C. American Petroleum Institute (API), 2101 L Street N.W., Washington, D.C. 20037.

D. American Society of Mechanical Engineers (AMSE), United Engineering Center, 345 East 47th Street, New York, New York 10017.

E. International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

F. National Fire Protection Association (NFPA), 470 Atlantic Avenue, Boston, Massachusetts 02210.

II. DOCUMENTS INCORPORATED BY REFERENCE

A. American Concrete Institute (ACI)

1. ACI Standard 311-75 "Recommended Practice for Concrete Inspection," 1975 edition (ANSI A188.2).

B. American Gas Association (AGA)

1. American Gas Association Project IS-3-1, LNG Safety Program Interim Report of Phase II work, July 1974.

2. Evaluation of LNG Vapor Control Methods, October 1974.

C. American Petroleum Institute (API)

1. API Standard 620 Recommended Rules for Design and Construction of Large, Welded, Low Pressure Storage Tanks, sixth edition, July 15, 1977.

D. American Society of Mechanical Engineers (ASME)

1. ANSI B31.3 Chemical and Plant Petroleum Refinery Piping, 1976 edition.

2. ASME Boiler and Pressure Vessel Code Section 1, Power Boilers, 1977 edition.

3. ASME Boiler and Pressure Vessel Code, Section VIII Division 1, Pressure Vessels; Division 2, Alternative Rules, Pressure Vessels 1977 edition.

4. ASME Boiler and Pressure Vessel Code, Section IX, Welding and Brazing Qualifications, 1977 edition.

E. International Conference of Building Officials

1. UBC, Uniform Building Code, 1976 edition.

F. National Fire Protection Association (NFPA)

1. NFPA No. 10, Portable Fire Extinguishers, 1978.

2. NFPA No. 37, Stationary Combustion Engineers and Gas Turbines, 1975.

3. NFPA No. 51B, Cutting and Welding Processes, 1977.

4. NFPA No. 59A, Storage and Handling Liquifed Natural Gas, 1975.

5. NFPA No. 70, National Electrical Code, 1978.

6. NFPA No. 77, Static Electricity, 1977.

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THURSDAY, FEBRUARY 8, 1979

PART III

DEPARTMENT OF DEFENSE

Department of the Army

REAL ESTATE HANDBOOK

Acquisition of Real Estate Interests Through Condemnation Proceedings

[3710-08-M]

Title 32—National Defense

CHAPTER V—DEPARTMENT OF THE ARMY

[EP 405-1-2]

PART 644—REAL ESTATE HANDBOOK

Acquisition of Real Estate Interests Through Condemnation Proceedings

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: This amendment describes the existing procedures of the U.S. Army Corps of Engineers relating to the acquisition of real estate and interests therein by condemnation proceedings. It is included in the Real Estate Handbook (Engineer Pamphlet 405-1-2) and replaces Engineer Regulation 405-1-640.

EFFECTIVE DATE: February 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Leslie L. Pitchford, Jr., Chief, Programs Division, Real Estate Directorate, Office of the Chief of Engineers, Washington, DC 20314 (202-693-6285).

SUPPLEMENTARY INFORMATION: On January 15, 1979, a final rule was published in the FEDERAL REGISTER (44 FR 3168) to describe existing procedures pertinent to certain other real estate activities of the Corps of Engineers. Further amendments will be published as existing Engineer Regulations are changed to the new format of the Real Estate Handbook.

Since this handbook only provides procedural guidance to personnel of the Office of the Chief of Engineers and Corps of Engineers field operating agencies having real estate responsibilities, notice of proposed rulemaking and the procedures thereto are considered unnecessary.

The Chief of Engineers has determined that this rule does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 19, 1979.

THORWALD R. PETERSON,
Colonel, Corps of Engineers,
Executive Director, Engineer Staff.

In consideration of the above Part 644 is amended by adding §§ 644.111 through 644.121 to Subpart C and changing the Table of Sections to read as follows:

ACQUISITION BY CONDEMNATION PROCEEDINGS

644.111 General
644.112 Applicable statutes in condemnation proceedings
644.113 Filing of complaint without declaration of taking
644.114 Acquisition by declaration of taking
644.115 Revestment of title by stipulation
644.116 Distribution, reservations, and title evidence
644.117 Procedure prior to trial
644.118 Awards
644.119 Procedure after final judgment
644.120 Condemnation for local cooperation projects
644.121 Leasehold condemnation requirements

AUTHORITY: 5 U.S.C. 301.

ACQUISITION BY CONDEMNATION PROCEEDINGS

§ 644.111 General.

Section 644.111 through 644.121 describe the procedures of the Corps of Engineers relating to the acquisition of real estate and interests therein by condemnation proceedings. It is applicable to the Office of the Chief of Engineers (OCE) and to all Division and District Engineers having real estate responsibilities.

§ 644.112 Applicable statutes in condemnation proceedings.

A complaint in condemnation, and any declaration of taking filed in conjunction therewith, will contain a citation of the congressional authorization and appropriation acts for the particular project, and any other applicable acts of Congress. Existing acts of Congress authorizing the acquisition of land and interests therein are outlined in AR 405-10 and Subpart A. Acts of Congress applicable, generally, to condemnation proceedings are outlined below.

(a) *Military projects.* (1) Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257) authorizes the head of any Government department or agency to acquire real estate, otherwise authorized for acquisition, by condemnation proceedings.

(2) Section 2663 of Title 10, United States Code, authorizes the Secretary of a military department to acquire by condemnation any interest in land, including temporary use of the site, construction, or operation of fortifications, coast defenses, or military training camps.

(3) Section 9773 of Title 10, United States Code, authorizes the Secretary of the Air Force to acquire by condemnation additional permanent air bases and depots, enlarge existing air bases and depots, bombing and machine gun ranges, and areas for the training of tactical units.

(4) Section 2233 of Title 10, United States Code, authorizes the Secretary of Defense (with authority to delegate) to acquire by purchase, lease, or transfer, facilities necessary for the Reserve Components. The authority to acquire by purchase has been held to include the authority to condemn. Therefore, this section authorizes condemnation for both Army and Air Force Reserve Training Sites.

(b) *Civil works projects*—(1) *Rivers and harbors.* (i) Act of Congress approved April 24, 1888 (25 Stat. 94, 33 U.S.C. 591) authorizes the Secretary of the Army to cause proceedings to be instituted for the acquisition by condemnation of any land, right of way, or material needed to maintain, operate, or prosecute works for the improvement of rivers and harbors for which provision has been made by law.

(ii) Section 5 of the Act of Congress approved July 18, 1918 (40 Stat. 911, 33 U.S.C. 594) provides that possession of lands being acquired by condemnation proceedings for river and harbor works may be taken, provided adequate provision shall have been made for payment of just compensation.

(2) *Flood control.* (i) Act of Congress approved March 1, 1917 (39 Stat. 950, 33 U.S.C. 701) makes the provisions of the Act of Congress approved April 24, 1888 (paragraph (b)(1)(i) of this section) applicable to flood control works.

(ii) Section 6 of the Act of Congress approved August 18, 1941 (55 Stat. 650, 33 U.S.C. 701c-2) makes the provisions of Section 5 of the Act of Congress approved July 18, 1918 (paragraph (b)(1)(ii) of this section) applicable to flood control works.

(3) *Local cooperation.* Acts of Congress approved June 29, 1906 (34 Stat. 632, 33 U.S.C. 592) and August 8, 1917 (40 Stat. 267, 33 U.S.C. 593) provide that the Secretary of the Army may institute condemnation proceedings for the acquisition of land or easement therein for river and harbor works which local interests undertake to furnish free of cost to the United States. The provisions of these Acts were made applicable to flood control works by the Acts of Congress approved March 1, 1917 and August 18, 1941 (paragraphs (b)(2)(i) and (ii) of this section).

(c) *Other pertinent statutes.* (1) Act of Congress approved July 18, 1918 (40 Stat. 911, 33 U.S.C. 594) provides that the United States shall have the right to take immediate possession of land to the extent of the interest condemned. The exercise of this right is subject, however, to the policy considerations set forth in the Act of Congress appoved January 2, 1971, Pub. L. 91-646 (84 stat. 1894).

(2) Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a) makes provision for the filing of a declaration of taking in conjunction with condemnation proceedings and provides that title to the land or inter-

ests in land included in the declaration of taking vests in the United States upon filing with the court and deposit of the estimated compensation in the registry of the court.

(3) Title III of the Act of Congress approved January 2, 1971 (Pub. L. 91-646, 84 Stat. 1894) contains policies and guidelines for acquisition of land.

§ 644.113 Filing of complaint without declaration of taking.

(a) Only in exceptional cases will the Chief of Engineers give favorable consideration to the filing of a complaint in condemnation, and the request for an order of possession, without the concurrent filing of a declaration of taking and deposit of estimated compensation in the registry of the court. Examples of situations in which complaints may be used are as follows:

(1) Immediate possession is required for some essential military need and time does not permit preparation of an appraisal, title work, or negotiations.

(2) Condemnation proceedings are necessary in connection with a cemetery, in order to secure court approval of the relocation and reinterment plan in accordance with the procedure outlined in ER 1180-1-1.

(3) Where right of entry for survey and exploration, appraisal purposes, or other similar need is required, and there is no material interference with the owner's possession. However, where there is material interference with the owner's possession, or it is considered there will be significant damage to the land, a deposit of estimated compensation may be necessary.

(b) *Approval required.* Prior to submission of a complaint assembly, except in cemetery cases, all pertinent facts justifying the need for such action will be submitted to the Division Engineer for approval. If the proposed action is approved, the Division or District Engineer will inform all affected landowners and tenants of the action being taken, the necessity therefor, and the subsequent procedure to be followed by the Government in conducting negotiations to acquire the land after the filing of the complaint.

(c) *Complaint assembly.* The following assembly will be submitted to HQDA (DAEN-REA-C) WASH DC 20314 where only a complaint is to be filed:

(1) Five copies of individual tract descriptions identified as *Exhibit "A"*. (Reproduced copies will be accepted if clear and legible.)

(2) Five copies of segment or project maps, showing each tract or area to be acquired shaded or outlined in red and identified as *Exhibit "B"*.

(3) Five copies of a list of the names and addresses of the persons purporting to own the tracts or having an interest therein, identified as *Exhibit "C"*.

(4) Five copies of the exact estate or interest to be acquired, identified as *Exhibit "D"*.

(5) In Air Force projects and acquisitions for other agencies, one additional copy of each exhibit will be required.

(6) In Air Force project acquisitions, the additional information set out in § 644.114(f) will be submitted, in duplicate.

(7) In those jurisdictions that adopt the alternate form declaration of taking, complaint assemblies should be similiar to the schedules submitted for the declaration of taking assembly.

(d) *Letter of transmittal.* Where a complaint assembly is submitted, the letter of transmittal should include the following information:

(1) A statement indicating the date of approval of the Real Estate Design Memorandum in civil works projects or the date of the Real Estate Directive for other projects, and whether the land included in the complaint assembly is within the approved project boundary line, together with the citations of the authorization and appropriation acts which cover the acquisition.

(2) The approved appraised valuation and date of appraisal of the interest to be acquired or, if appraisals have not been prepared, the estimated value with a statement indicating the basis of the estimate.

(3) Information as to whether the land included in the complaint assembly is vacant or occupied, together with the date any occupants will be required to vacate the premises.

(4) If possession is required, an explanation of the need therefor and the reasons why the normal land acquisition schedule was not met.

(5) Results of contacts with the landowners and tenants and their views with respect to the filing of condemnation proceedings.

(6) A statement as to the plan and schedule to acquire such land after filing of the complaint in order to make funds available to the landowners and tenants.

(7) In assemblies concerning land for other than civil works projects, a statement indicating whether all of the land authorized in the Real Estate Directive is included in the assembly. Any variance between the area or estate authorized in the directive and those in the assembly should be fully explained.

(8) In military assemblies, a statement of expected local resistance to the proposed acquisition and efforts made to adjust military requirements to the local situation.

(9) Whether there have been any Congressional inquiries regarding the acquisition.

(e) *Action after filing complaint.* After filing of a complaint proceeding, action to acquire the land involved, either by direct purchase or by the filing of a declaration of taking, will be completed as soon as possible.

(1) Where a satisfactory Offer to Sell is obtained and accepted, the transaction will proceed through the stages of title clearance, payment and closing. Upon final approval of title, the Division or District Engineer will recommend to the Chief of Engineers that the Department of Justice be requested to dismiss the tract from the proceeding.

(2) Where a satisfactory lease of the premises included in a leasehold condemnation proceeding is obtained and accepted, the Division or District Engineer will recommend to the Chief of Engineers that the Department of Justice be requested to dismiss the tract from the proceeding.

(3) The recommendation of the Division or District Engineer for dismissal of a tract from condemnation will include the following information:

(i) Name of project.

(ii) Caption of the complaint and civil action number assigned thereto.

(iii) The date the final title approval was rendered; on lease cases, the date the lease was accepted.

(iv) A statement as to whether the particular deed or lease includes the same land described in the complaint under the same tract number.

(v) A statement as to whether the particular deed or lease includes all outstanding interests involved in the complaint insofar as the specific parcel of land is concerned. If all outstanding interests are not covered by the deed or lease instrument, a statement of the proposed method of acquiring those interests which remain outstanding, either by filing a declaration of taking or by direct purchase, or a recommendation that they be left outstanding permanently.

§ 644.114 Acquisition by declaration of taking.

If it has been determined that acquisition of a tract cannot be accomplished by purchase due to failure to reach an agreement with the owners as to value, inability to contact the owners, title defects, or for other reasons, acquisition will be completed by the filing of a declaration of taking in a condemnation proceeding and the concurrent deposit of the estimated compensation in the registry of the court. The requirements for a declaration of taking are set forth in 40 U.S.C. 258a.

(a) *Declaration of taking assembly.* The assembly to be submitted by the

Division or District Engineer to the Chief of Engineers, with a recommendation for the filing of a declaration of taking, will contain the following:

(1) Seven copies of the declaration of taking. (Reproduced copies will be accepted if clear and legible). The copy to be executed and filed in court must be free of errors and erasures.

(2) Seven copies of tract descriptions and names and addresses of purported owners, identified as Schedule "A" to the declaration of taking.

(3) Seven copies of a segment or project map, showing the individual tracts outlined in red, or shaded in such a way as to identify them, constituting Schedule "B" to the declaration of taking.

(4) In acquisitions for Air Force and other agencies, one additional copy of each of the above is required.

(5) As to tracts which are appraised at $50,000 or more, it is necessary to have a least two appraisals for each such tract in condemnation. One copy of each appraisal will be forwarded with the assembly for those tracts valued less than $100,000, and two copies where the value is $100,000 or more. Also, a copy of the appraisal should be forwarded when there is a counteroffer of $50,000 or more, no matter what the appraisal is. In all cases where two appraisals are necessary, at least one will be by a contract appraiser approved in advance by the United States Attorney in whose jurisdiction the case will be filed.

(6) Appraisals must be on a current basis so that at the time of submission of the assembly, the review certificates should indicate that the review has been made within thirty days prior to submission of the assembly.

(7) Guides in preparing declarations of taking for acquisitions for the Departments of the Army (Military and Civil) and Air Force are contained in Figure 5-5 in EP 405-1-2.

(8) Each case where there is an accepted Offer to Sell on which we will ask the Department of Justice to obtain judgment should be submitted as a separate Declaration of Taking.

(b) *Negotiator's report.* Each declaration of taking assembly should be accompanied by a separate Negotiator's Report, ENG Form 3423 (Parts I and II), in duplicate, for each tract of land included in the assembly. The Negotiator's Report should be current, i.e., it should indicate a contact with the landowner, or his representative, at a time reasonably close to the date of submittal of the assembly, and should reflect that actual, practical and realistic negotiations were conducted in accordance with the procedure set forth in § 644.83. The Negotiator's Report should be complete, but should be concise and not made unduly lengthy by extraneous material. It should contain so much of the following information as may be pertinent:

(1) A brief physical description of the property, including its present use and highest and best use claimed by both the Government and the landowner.

(2) Number of discussions and date and place of each discussion, and a statement that the landowner was furnished a summary of the basis for the Government's valuation prior to negotiations.

(3) Statement of each offer made by the negotiator, any counteroffer received from the landowner, and any figures suggested by the negotiator in an effort to obtain a reasonable counteroffer above the Government's estimate of value.

(4) Where the discussions reveal that further negotiations would not be productive, a statement that the real estate representative explained that it was necessary that the interests be obtained through condemnation, not in the sense of a threat, but as an effort on behalf of the Government to secure an impartial determination by the court of the differences of opinion as to value, and in order to make funds available to the landowner.

(5) If the owner cannot be contacted for the purpose of conducting negotiations, a full explanation of the circumstances and the efforts made to contact the owner should be set forth in the Negotiator's Report.

(6) A statement that any remaining property of the owner enjoys access and is an economic unit, or if it is an uneconomic remainder, that the Government has offered to acquire the remainder.

(7) Where there is an Offer to Sell, the Negotiator's Report should include a statement that no separate representations were made in order to obtain the offer, if this was the case. If any such representations were made, they should be fully explained. The report should also include the negotiator's telephone number.

(c) *Letter of transmittal.* The letter of transmittal to be submitted with a declaration of taking assembly will contain the following:

(1) The date of the real estate directive or the date of approval of the real estate design memorandum which includes the land to be condemned, a statement that the land is within the approved project boundary line, and the date of approval of the boundary line.

(2) A statement concerning the availability of funds.

(3) A list of the dates of the appraisals of the tracts in the assembly and the dates of the last review thereof. If more than one approved appraisal exists for any tract, the deposit will be in the amount of the highest approved appraisal. If the value of growing crops has been included in the appraisal, a statement concerning same is required in the transmittal letter pursuant to paragraph (h)(3) of this section.

(4) A statement that all owners of land included in the assembly, whose addresses are known, have been notified in writing that condemnation will be recommended and the reason therefor. The information furnished to the owners should include the name and address of the United States Attorney who will advise and assist them in applying for withdrawal of the funds deposited in the registry of the court. The notice to the owners should also state the date on which possession of their property will be required.

(5) A statement concerning the date when possession of each tract included in the assembly should be obtained. This should include information as to when the 90-day notice was given, as required by Sec. 301(5) of Public Law 91-646 (84 Stat. 1894), or if not required, an explanation as to why not.

(6) In assemblies involving other than civil works projects, a statement as to whether or not all of the land authorized in the real estate directive is included in the proposed declaration of taking. Any variance that may exist between the acreage in the directive and the acreage in the declaration of taking should be fully explained.

(7) For military projects, a statement of the expected local resistance to the proposed acquisition by condemnation, and the efforts which have been made to adjust requirements to the local situation.

(8) For those assemblies involving the first case in a particular project, information as to:

(i) When the initial land acquisition for the project took place.

(ii) The total acreage for the project and the estimate of the cost thereof; if available, two copies of the project brochure furnished to landowners should be forwarded.

(iii) Whether or not an environmental impact statement has been filed, and, if not, when it is expected to be filed.

(9) Two copies of each accepted Offer to Sell covering any of the tracts included in the declaration of taking will be submitted with the assembly.

(10) A statement as to whether there have been any Congressional inquiries regarding the acquisition.

(d) *Title defects.* If a tract is recommended for condemnation due to title defects, three copies of the title opinion will be submitted with the assembly.

(e) *Deposit of funds.* Two copies of the declaration of taking, as finally approved and signed, will be transmitted by the Chief of Engineers to the Division and District Engineer. Procure-

ment and delivery of a check to the United States Attorney for deposit in the registry of the court will be authorized, subject to the availability of funds.

(f) *Additional information to accompany Air Force acquisitions.* Each condemnation assembly (complaint or declaration of taking) covering the acquisition of land for an Air Force project will include the following information and material, in duplicate:

(1) A map showing the base boundaries, outlining in red all land included in the applicable real estate directive, and showing the land included in the condemnation assembly hachured in red. In the case of an off-base facility, the map will show the nearest boundary of the main base with relation to the off-base facility, outlining in red all land in the appplicable real estate directive, with the land covered by the condemnation assembly hachured in red.

(2) On the same map or a larger scale map, the following information on each tract in the applicable real estate directive:

(i) Tract number.

(ii) Acreage.

(iii) Ownership.

(iv) Contours.

(v) Existing improvements.

(vi) Proposed construction, including utilities, drainage ditches, and other supporting facilities.

(3) Summary of status of acquisition of all land included in the applicable real estate directive. ENG Form 3905-R will be used for this purpose. All discrepancies in figures for acreages and costs should be fully explained.

(4) If any of the land included in the applicable real estate directive is held under voluntary lease or leasehold condemnation, report for each such tract the annual rental, the period of time the leasehold interest has been held, and whether it is a voluntary lease or a condemnation leasehold. If the land is not under lease, this fact should be reported.

(5) If the United States has previously acquired an easement interest (clearance easement, safety area easement, etc.) in any of the land included in the condemnation assembly, identify the real estate directive which authorized the previous acquisition by number, date, interest acquired, acres, cost and method of acquisition (including lease number, tract number, caption with civil action number as applicable). A negative report is required.

(6) If severance damage is involved in any of the land included in the condemnation assembly, include a detailed statement of the facts and justification for the severance allowed, unless the severance damage has been adequately explained in a Real Estate Planning Report or a Real Estate Requirements Estimate, in which case such Report or Estimate should be identified for reference.

(7) A copy of the appraisal report on which the deposit in a declaration of taking is based, irrespective of value.

(g) *Interests included in declaration of taking.* (1) The estate recommended for use in a declaration of taking should conform to the estate approved by the Chief of Engineers in Civil Works projects and to the applicable directive in military and other agency projects. Any deviation should be fully explained and justified in the transmittal letter. Examples of estates which have been approved for use in declarations of taking are contained in Figure 5-6 in EP 405-1-2. A condemnation proceeding is an in rem action. The definition of "property" and what constitutes property is generally determined by reference to State law. Therefore, full consideration should be given to the applicable State law in connection with requests for deviations from the standard approved estates.

(2) Normally, under the "unit" rule a condemnation proceeding should include all interests in a given tract authorized for acquisition even though an Offer to Sell may have been obtained and accepted from the surface owner with an outstanding interest in the subsurface estate recited in the "Subject to" paragraph. In such a case, if it is necessary to condemn due to title difficulties or failure of the owner to carry out the terms of the Offer to Sell, the deposit will be increased by the appraised value of the outstanding subsurface interest. The only exception to including subsurface interests outstanding in third parties is in the case of block ownership of subsurface interests; i.e., where a person, corporation, or other entity owns subsurface interests under more than one surface tract and in sufficient amount for the entire interest holding to have added value, for operational or other reasons, because it is in a block ownership. In other words, block ownership exists when the acquisition of a part of the block would require the assessment of severance damage, even if the value of the interest or the amount of the severance damage would be in a nominal amount. On this basis, subsurface interests need not be contiguous to constitute a block ownership.

(3) If future negotiations to acquire or subordinate the subsurface interests left outstanding under paragraph (g)(2) of this section (or any non-block subsurface interests "excepted" from direct purchase cases) are unsuccessful, and the outstanding interest cannot be waived under the provisions of § 644.86, then acquisition or subordination of the outstanding interest should be accomplished by condemnation proceedings. In so doing, block ownerships should be condemned as a unit rather than on a piecemeal basis. Full information should be submitted with such assemblies as to the method of acquisition of each surface ownership affected by the subsurface acquisition.

(h) *Payment for crops.* At the time the declaration of taking assembly is prepared, it will be necessary that a determination be made as to whether the value of growing crops should be added to the value of the land improvements in determining the amount to be deposited as estimated compensation. The determination will be made as follows:

(1) If the crops have been harvested, or it is known or highly probable that the crops will be harvested by the landowner or tenant, no deposit will be made for the crops.

(2) The approved appraised value of crops will be included in the amounts to be deposited in all other cases.

(3) The letter forwarding the declaration of taking to the Chief of Engineers will state whether the value of growing crops has been included in the amount recommended for deposit, and will set forth a statement of the facts upon which the action is based.

(i) *Filing and possession.* Upon the filing of a complaint, accompanied by a declaration of taking, the court has the power to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the United States (40 U.S.C. 258a). Requests for orders of possession should be made only after all requirements of Pub. L. 91-646 (84 Stat. 1894) regarding possession have been satisfied.

(1) The Division or District Engineer will ascertain from the United States Attorney the date on which the condemnation proceeding with declaration of taking is filed and the date on which possession is available. The using service of the Army and Air Force or the local representative of other agencies will be informed of the date on which possession of the land is available.

(2) The above information, together with the civil number assigned to the case, and a copy of the complaint and order of possession will be furnished to HQDA (DAEN-REA-C) WASH DC 20314 within six weeks after the date the case was forwarded by the Chief of Engineers to the Department of Justice. If this cannot be accomplished, an explanation will be furnished by such date.

(3) Where an Order of Possession is obtained but the landowner refuses to comply, it may be necessary to obtain a Writ of Assistance from the court. Prior to requesting the United States

Attorney to obtain such a Writ, all pertinent facts should be reported to DAEN-REA-C.

(4) The United States Attorney should be requested to have judgment entered in accordance with the terms of any accepted Offers to Sell immediately after the filing of the case, since delay in taking such action works to the disadvantage of the Government. Any difficulty in securing prompt action by the United States Attorney in this matter should be reported to DAEN-REA-C.

(j) *Amendments.* (1) If at any time it becomes necessary to amend a complaint or declaration of taking previously filed, an amendment assembly will be submitted to DAEN-REA-C together with a full statement of the facts requiring the amendment. The letter of transmittal should certify that the tracts affected by the amendment have not been adjudicated.

(2) No amendment should be submitted which will result in a revestment of an interest in property, unless a stipulation for revestment has been obtained from the former owner in accordance with § 644.115.

(3) If, after the filing of a declaration of taking, a substantially higher appraisal is approved for any reason, and a settlement does not appear imminent, an amendment will be submitted promptly to increase the amount of the deposit.

(k) *Alternate form declaration of taking.* An alternate form of Declaration of Taking has been approved by the Judicial Conference on an optional basis, and must be used where the local District Court requires. Under this form a Declaration of Taking may have up to 15 ownerships, but each ownership will be set up separately so that it may be included in a separate civil action. In other words, there may be up to 15 separate civil actions which are keyed in to one Declaration of Taking. An example of this type of Declaration is included in Figure 5-5 in EP405-1-2. In this form, Schedule "A" will include the authority and public uses. Schedule "B" will include the description, the estimated compensation, and the estate to be acquired. Schedule "C" will be the plan showing the land to be acquired. It will be noted that there will be a separate Schedule "A", "B", and "C" for each ownership. The schedules may include more than one tract where the ownership is unified and is an economic unit. All of the civil actions will be keyed in to the Declaration of Taking by a Master File number. The Master File number must be used on all correspondence pertaining to tracts in this type of an assembly.

§ 644.115 Revestment of title by stipulation.

When fee title or an interest in property has been acquired by the United States by declaration of taking in a condemnation proceeding and it is determined to be in the best interest of the Government to wholly or partially exclude said property or interests therein, or to acquire a lesser estate, such exclusion or diminution in the estate can be accomplished by stipulation with the former owner under the provisions of the Act of Congress approved October 21, 1942 (40 U.S.C. 258f).

(a) *Required approval.* All stipulations involving a revestment of title must be forwarded to DAEN-REA-C for approval with a full statement of the facts, related data and recommendations. Approval of the revestment action must be obtained from the appropriate using agency. Such stipulations will not be filed in the condemnation proceedings by the United States Attorney until the specific approval of the Chief of Engineers is obtained and the matter coordinated by the Chief of Engineers with the Department of Justice. It should be stressed in negotiations that final approval of the stipulation is under the judrisdiction of the Attorney General, based on the recommendation of the Chief of Engineers.

(b) *Reduction of price.* A stipulation for revestment should provide for a deduction from the agreed price or from the ultimate award of an amount equal to the difference between the value of the property originally taken and the value of said property after the proposed exclusion of a part thereof or acquisition of a lesser interest therein, i.e., the stipulation should be an over-all settlement of the case whenever possible. If it is impossible to reach an amicable agreement for complete settlement for the Government's acquisition of the tract, an agreement as to the area and estate, leaving final determination as to compensation with the court, may be submitted with facts showing that the proposed action is in the best interest of the Government. The stipulation should also include a release concerning any benefits under Sec. 304, Pub. L. 91-646 (84 Stat. 1894), because of the revestment, particularly when no agreement is reached concerning compensation.

(c) *Required information.* A sample stipulation for revestment is contained in Figure 5-8 in EP405-1-2 which may be adapted to fit the particular project and tract involved. In this connection, the following requirements should be observed:

(1) The stipulation will not provide for any change in the amount of the deposit unless the stipulation provides for an overall settlement of the case or the entire tract is to be excluded from the acquisition.

(2) The areas in which the Government has acquired an interest and those in which an interest will be retained after the revestment will be fully described.

(3) The estates to be retained by the Government after the revestment will be accurately described; where the owner reserves mineral or other interests or use, appropriate restriction of exploration and subordination to the paramount right of the Government to use the property for the required purpose will be included.

(4) The stipulation should include, as part of the consideration:

(i) Consent by the former owner to the Government's acquisition of the revised area and the estates therein in the event the stipulation is approved.

(ii) Withdrawal of any answer contesting the Government's right to acquire the property and any interrogatories theretofore filed.

(iii) A waiver of any and all claims by the former owner, his heirs and assigns, against the United States, the State, County and political subdivisions thereof for loss of access to the land (where applicable).

(5) The stipulation will include, as an exhibit, maps delineating the fee area in red, the easement area in blue, and the area to be revested in yellow.

(6) The letter of transmittal in connection with any revestment in Civil Works projects should include information as to whether the area in which title is to be revested has a potential for recreational use without regard to the currently established public access areas.

(d) *Application.* The foregoing procedure applies only to instances where a declaration of taking has been filed. Where only a complaint has been filed, the necessary revisions may be made by securing a satisfactory Offer to Sell and deeds to the United States, or by amending the complaint and filing a declaration of taking containing the revised descriptions or estates.

§ 644.116 Distribution, reservations, and title evidence.

Distribution of the estimated compensation deposited in the registry of the court is the responsibility of the United States District Court. However, the Division or District Engineer will assist the United States Attorney in arranging for the distribution of funds deposited with a declaration of taking in order that landowners may receive either partial or total payment as soon as possible.

(a) *Distribution.* Partial or total distribution may be made upon a showing to the court that the claimant is the proper person to receive the money on

deposit (40 U.S.C. 258a). An examination of the title evidence by the United States Attorney, together with a physical inspection of the premises, is usually sufficient to enable the United States Attorney to ascertain the proper claimants so that he may consent to the entry of an order of distribution. Distribution may be made without prejudice to the owner's right to contest for a higher award than the sum deposited by the United States.

(b) *Inspection and title evidence.* As soon as a condemnation proceeding is filed, a physical inspection of the premises will be made and the United States Attorney will be furnished the following:

(1) ENG Form 798, Certificate of Inspection and Possession, or such other similar form as may be requested.

(2) ENG Form 1567, Report on Vacation of Property.

(3) Title evidence and all available curative material covering the tracts of land included in the declaration of taking.

(4) Copies of all offers to Sell, leases, relocation agreements, etc., which are pertinent to the case and would be useful in making distribution.

(c) *Reservations.* If the landowners are to be permitted to remove crops, timber, buildings or other improvements from land acquired in the declaration of taking (by approval of the Division or District Engineer), a stipulation for reservation of these items may be obtained at this time. The stipulation should be in a form acceptable to the United States Attorney, should specify the date on or before which the reserved items are to be removed, and should provide that if the reserved items are not removed on or before said date, the right of removal shall terminate automatically and the United States shall have a good and indefeasible title to these items without further notice. The consideration to the Government for the reservation will be in an amount not less than the appraised value of the crops, or not less than the appraised salvage value of the timber, buildings or other improvements which are reserved, and the stipulation should provide that such amount shall be deducted from the amount of the final award.

(d) *Continuation of title evidence.* A continuation of the existing title evidence will be obtained to include a search of the records to a date subsequent to the date of filing of the Notice of Lis Pendens, the Judgment on Declaration of Taking, or the filing of the complaint in those states where such filing constitutes notice. The additional title evidence will be furnished to the United States Attorney as soon as possible after filing of the case.

§ 644.117 Procedure prior to trial.

(a) *General.* After filing of condemnation proceedings, the Division or District Engineer will maintain close liaison with the United States Attorneys and will render all possible assistance to the United States Attorneys in negotiating settlements, preparing cases for trial, and in conducting such trials. When the Division or District Engineer is informed that a case has been set for trial involving an unusual or novel issue of fact or law, or where the Government testimony will be $100,000 or more, he will promptly furnish this information to DAEN-REA-C. In addition, the Division or District Engineer should:

(1) In coordination with the United States Attorney, conduct discussions for settlement with landowners and other interested parties defendant. When a satisfactory agreement has been reached, an executed stipulation in a form satisfactory to the United States Attorney will be obtained. A suggested form of stipulation as to just compensation is contained in Figure 5-8 in EP 405-1-2. In this connection, the closest cooperation and collaboration must exist between representatives of the Department of the Army and the Department of Justice; no settlement negotiations should be conducted by Corps personnel without the knowledge and consent of the United States Attorney. If the property owner is unwilling to execute a stipulation until assured that the amount of the settlement will be accepted by the Government, formal execution of the stipulation may, in such instances, be delayed. However, the offer will be processed in accordance with the applicable provisions of paragraph b below.

(2) Furnish maps, photographs and other necessary exhibits for trial.

(3) Assist in preparing expert witnesses for trial.

(4) Take necessary action to assure the presence of witnesses at the trial. District personnel who qualify as expert witnesses will be made available.

(5) Be represented at the trial by an attorney thoroughly familiar with Federal court procedures, condemnation law, and the details of the project affected by the condemnation proceedings.

(b) *Stipulated settlements.* (1) Where the amount of the stipulation obtained in accordance with paragraph (a)(1) of this section does not exceed the high, approved appraisal prepared by an appraiser employed by, or under contract with, the Corps of Engineers, and the proposed settlement will completely dispose of the issue of compensation for all interests acquired in the tract in the proceeding, approval of the settlement will be recommended by the Division or District Engineer or the Chief of the Real Estate Division directly to the United States Attorney. The Division or District Engineer will inform DAEN-REA-C of the action taken, either by sending a copy of the letter addressed to the United States Attorney of by separate correspondence.

(2) Where the total settlement for all interests acquired in a given tract does not exceed $40,000 and the proposed settlement will completely dispose of the issue of compensation for all interests acquired in the tract in the proceeding, Division and District Engineers and the Chiefs of the Real Estate Divisions are also authorized to recommend approval of settlements directly to the United States Attorney. In leasehold condemnation cases the monetary limitation includes the full lease term and not merely the per annum rental. DAEN-REA-C will be informed of the action taken in the same manner as in paragraph (b)(1) of this section. Even though the total settlement for all interests acquired in a given tract does not exceed $40,000, the proposed settlement will be submitted to DAEN-REA-C for consideration in the following instances:

(i) If the United States Attorney and the Division or District Engineer cannot agree as to whether a particular settlement should be consummated.

(ii) If the stipulation involves a novel issue of law or question of policy which would adversely affect the disposition of other tracts in a project.

(iii) If revestment of any land or interests therein or change in estate is involved.

(3) All proposed settlements not covered by paragraphs (b) (1) and (2) of this section will be forwarded to DAEN-REA-C, together with specific recommendations of the Division and District Engineers and a full statement of the facts. Three copies of the signed stipulation will be forwarded to DAEN-REA-C with the report in those situations where the stipulation contains any unusual conditions or terms. The report should contain the following:

(i) The amount of the deposit and the amount of the proposed settlement.

(ii) The amounts and dates of all Government appraisals. Where the Department of Justice appraisal is substantially above or below the Corps of Engineers' appraisals, the Division and District reviewing appraisers should carefully examine the appraisals and ascertain whether the facts in the case and the appraisal techniques have been consistently applied, and should prepare a comparative analysis.

(iii) The appraisal valuations by the property owners, their appraisers, or

other witnesses who may testify for the owners, if such can be ascertained.

(iv) A statement of the recommendation of the United States Attorney as to the proposed settlement.

(v) Such other matters as should be considered by the Chief of Engineers in determining whether the proposed settlement is satisfactory; e.g., any pattern of awards which has been established as the result of other trials concerning land at the same project, or in the same Federal judicial district, disposition of any accepted Offer to Sell, any unusual legal or factual issues involved, any unusual factors which would increase the hazard of proceeding to trial, or the anticipated effect of the settlement on remaining acquisition in the project.

(vi) Whether or not funds are available to satisfy any deficiency.

(vii) The report should contain the required information in tabulated form. For each item the statement should be short and concise; lengthy reports are not required.

(4) A copy of the report and recommendation sent to the Chief of Engineers will be immediately transmitted to the United States Attorney. If the settlement is satisfactory, the Chief of Engineers will forward a letter of approval to the Department of Justice, recommending that the stipulation be approved, filed and judgment entered thereon. A copy of the letter of approval will be sent to the Division or District Engineer. Receipt of such copy is authority to satisfy the judgment when entered, provided funds are available.

(5) If a stipulation is obtained by a United States Attorney in excess of their authority, they will forward the proposed settlement to the Department of Justice. Simultaneously, in accordance with procedures agreed upon by the Chief of Engineers and the Department of Justice, the United States Attorney will transmit copies of the transmittal letter and of the proposed stipulation to the Division or District. The Division or District Engineer will immediately forward the letter outlined in paragraph (b)(3) of this section to the Chief of Engineers.

(6) All settlements negotiated for interests acquired in condemnation proceedings will be inclusive of interest and will include all claims of any nature arising as a result of the taking of the estate recited in the complaint or declaration of taking, with the exception of benefits to which the landowner be may be entitled under Public Law 91-646 (84 Stat. 1894). In leasehold condemnation cases, all proposed settlements should include not only an agreement as to compensation for the period of the leasehold but also an agreement as to any and all claims arising from restoration of the premises, if known (§ 644.121(b)).

(7) Where surface and subsurface interests are acquired in a single condemnation proceeding, it is desirable to settle by stipulation, or to go to trial, on the "unit" basis. Many United States Attorneys insists on this course of action. However, Division or District Engineer should cooperate with United States Attorneys who wish to negotiate for stipulated settlements which may not include all of the interests acquired in a given proceeding as to a specific tract or tracts, provided appraisal reports have been prepared in such a manner as to make the appraised value of the several interests ascertainable.

(8) If an offer of settlement is not intended to include the full interest which was condemned in a particular tract, the letter transmitting the settlement offer will specifically identify the interests included in the settlement, the interests which remain unsettled, and the amount of estimated compensation remaining on deposit for the unsettled interests. The amounts remaining on deposit for the unsettled interests should be the appraised valuation of such interests.

(9) Landowners will be advised during negotiations for settlement that offers to settle are not binding on the United States until accepted by a duly authorized representative of the Department of Justice.

(10) In cases where tracts which are covered by accepted Offers to Sell are acquired by declaration of taking because of title defects or the failure of the landowner to carry out the terms of the Offer to Sell, the United States Attorney will be informed by letter and furnished copies of the Offer to Sell. The consideration contained in the Offer to Sell is considered binding upon the landowner despite the fact that condemnation is used to acquire title to the land. No settlement will be approved by the Division or District Engineer in an amount exceeding the amount contained in the Offer to Sell unless the Offer has been set aside by court order. Reports submitted in accordance with paragraph (b)(3) of this section will contain a statement as to the status of any Offer to Sell which may have been accepted.

(c) *Appraisal Review.* Land and Natural Resources Division Directive No. 11-68, dated 22 November 1968, provides that where two or more appraisals for a particular property have a valuation spread in excess of 10 percent of the high appraisal figure, the United States Attorney should submit such appraisals to the local representative of the Corps for approval. Every effort should be taken to see that this policy is followed so that the Corps has full knowledge of the appraisal reports on which settlement negotiations or trial preparation is based. In those instances where the United States Attorney and the Division or District Engineer cannot agree as to whether an appraisal or appraiser should be used at trial or in connection with settlement negotiations, copies of all appraisals, together with the analysis of the reviewing appraiser, should be submitted to HQDA (DAEN-REE) WASH DC 20314 for further consideration and possible discussion with the Department of Justice.

§ 644.118 Awards.

(a) *Approval by Division or District.* Division or District Engineers and the Chiefs of the Real Estate Divisions have been authorized to approve court awards (including jury or commission awards) where such awards do not exceed the highest testimony presented at the trial by a qualified appraiser employed by the Government. In such cases, the United States Attorney will be notified that the award is approved and the Chief of Engineers will be notified of such action.

(b) *Approval by Chief of Engineers.* (1) If the award is in excess of the highest testimony presented at the trial by a qualified appraiser employed by the Government, or involves a matter of a doubtful or controversial nature, a report concerning the trial will be forwarded by the Division or District Engineer to DAEN-REA-C. The report should contain, but not be limited to, the following information:

(i) The amount of the verdict or award.

(ii) The appraisal valuations given in testimony by all witnesses, including any pertinent comments on the effectiveness of the witnesses, as appropriate.

(iii) A statement of the recommendations of the United States Attorney as to the acceptance of the verdict or award, if available without causing a delay in submittal of the report.

(iv) Where the trial concerned less than all interests acquired in a given tract, the report should state the precise interests adjudicated at the trial, the other interests which remain unadjudicated, the proposed disposition of the unadjudicated interests and the amount of the deposit allocated to the unadjudicated interests.

(v) Whether or not funds are available to satisfy any deficiency plus interest.

(2) Long narrative reports of the events at the trial or hearing are not necessary except in unusual cases. A brief, but complete, statement of the pertinent facts will be adequate in most cases. A form for use in connection with submission of trial reports is included in Figure 5-9 in EP 405-1-2;

however, it is not intended that this form constitute the entire report. Where the case was tried by a Commission, copies of the Commissioners' Report will be submitted with each copy of the trial report. Close liaison must be maintained with the United States Attorney's Office in order that these reports will be received promptly after they are filed in the case.

(3) The report outlined above should be accompanied by the recommendation of the Division or District Engineer as to what action should be taken with respect to the Commissioner's Report, court award or jury verdict. This recommendation should include a discussion of any matters which should be considered by the Chief of Engineers in determining whether the award is satisfactory, e.g., the history of past awards at this project or in the same judicial district, the basis used by the commission in arriving at its determination of value, whether enhancement from the project or a second taking was an issue, the disposition of any accepted Offer to Sell on any tract involved in the trial, etc. (The basis of findings of value to be included in the report of a commission appointed under Rule 71A(h) was considered by the Supreme Court in *United States* v. *Merz*, 376 U.S. 192). Where the recommendation is to reject the award, specific reasons with supporting legal analysis should be given. The fact, standing alone, that an award is considered excessive is not sufficient reason upon which to base an appeal.

(4) The report and recommendation should be received by the Chief of Engineers within five working days after the Commissioners' Report has been filed or the trial concluded. In order to accomplish reporting within the prescribed time limits, District Engineers will forward reports and recommendations direct to DAEN-REA-C, with a copy to the appropriate Division Engineer. The Division Engineer will submit comments and recommendations to DAEN-REA-C within three working days after receipt of the copy of the District Engineer's report. The District must insure that our right to object is extended if the situation warrants.

(c) *Payment of awards and settlements.* (1) If an award or stipulated settlement requires the deposit of a deficiency, judgment will be entered by the court and thereafter transmitted to the Division or District Engineer by the Department of Justice for procurement of a check for deposit in the registry of the court in satisfaction of the final judgment.

(2) The copy of the letter from the Chief of Engineers to the Department of Justice recommending approval of an award or settlement, if required under §§ 644.117(b)(3) and 644.118(b), will constitute authority for payment of the deficiency, provided funds are available. If approval is not recommended by the Chief of Engineers to the Department of Justice and the judgment is submitted to the Division or District Engineer for payment, it should be forwarded to DAEN-REA-C without action. Upon receipt of a judgment where payment is authorized and funds are available, the Division or District Engineer will immediately procure and deliver the check to the United States Attorney and inform DAEN-REA-C of the action taken.

§ 644.119 Procedure after final judgment.

Generally, it is not necessary to obtain a final certificate of title or title insurance policy in condemnation cases where the intermediate or continuation certificate of title is continued to a date subsequent to the date of filing of the Notice of Lis Pendens, and the liability of the title company is not limited to an amount less than 50 percent of the total consideration paid for the land by the United States.

(a) *Final title opinion.* After entry of final judgment, the title assembly will be examined and a final title opinion issued. The title opinion and related papers on Army and Air Force projects will be forwarded to HQDA (DAEN-REP) WASH DC 20314 for permanent filing.

(b) *Report required to close case.* When all interests in a proceeding have been disposed of by final judgment, the Division or District Engineer will so advise the Chief of Engineers in order that the case may be closed. This report should not be made until the time for appeal has expired or any pending appeals have been resolved. The report should include a copy of the final judgment or other order of the court disposing of the case, and a statement that all monies deposited in the registry of the court have been disbursed.

§ 644.120 Condemnation for local cooperation projects.

Under the provisions of the River and Harbor Acts approved June 29, 1906 (33 U.S.C. 592) and August 8, 1917 (33 U.S.C. 593), and the Flood Control Acts approved March 1, 1917 (39 Stat. 950) and August 18, 1941 (33 U.S.C. 701c-2), respectively, the Secretary of the Army may cause proceedings to be instituted in the name of the United States for acquisition by condemnation of lands, easements or rights-of-way which local interests undertake to furnish free of cost to the United States. Requests for the institution of proceedings in the name of the United States will be addressed by the local parties to the Secretary of the Army and submitted to the Division or District Engineer. No land will be acquired on behalf of local interests by the filing of condemnation proceedings until local interests have furnished the Division or District Engineer with satisfactory assurances in accordance with the authorization act, and sufficient funds have been deposited with the Division or District Engineer to pay the expenses of the proceedings and any awards that may be made in the proceedings.

(a) *General.* The Corps of Engineers will institute condemnation proceedings on behalf of a local interest only when the local interest:

(1) Lacks authority to acquire the necessary real estate interests by eminent domain; or

(2) Cannot obtain possession by local eminent domain proceedings in time to meet the construction schedule; or

(3) Unusual circumstances exist so that acquisition by local inerests would not be in the best interest of the United States.

(b) *Information to accompany assembly.* Upon request of the local interests that the real estate interest be acquired by condemnation proceeding in the name of the United States, the Division or District Engineer will transmit to HQDA (DAEN-REA-C) WASH DC 20314 an appropriate condemnation assembly, prepared in accordance with § 644.114, with recommendations and the following information:

(1) Citation of authorizing act.

(2) Whether valid assurances have been accepted, giving date of acceptance.

(3) That the estate or estates to be acquired conform to the requirements set forth in Subpart J (to be published).

(4) Appraisal values of the interest proposed for acquisition.

(5) That sufficient funds to cover court awards and expenses of the proceedings have been deposited by local interests with the Division or District Engineer.

(6) Efforts made by local interests to acquire the real estate interests and reasons for requesting the United States to file condemnation proceedings.

§ 644.121 Leasehold condemnation requirements.

(a) *Requirements for extension.* The interest acquired in land by a leasehold condemnation proceeding terminates after a one-year term, unless notice to extend the term is filed in the appropriate United States District Court. In all leasehold cases, the Division or District Engineer will ascertain from the using service whether the premises included in such condemnation proceedings will be required for an additional term. This should be

done sufficiently in advance of the end of the term to allow adequate time for the action necessary to extend the term. These instructions apply to civil works projects as well as military projects.

(1) The Department of the Air Force will ascertain and advise the Chief of Engineers concerning the future requirements for the land in Air Force leasehold cases. Where the Department of the Air Force has a continuing requirement for land included in condemnation leasehold cases which are not extendible, the appropriate Division and District Engineers will be informed at the earliest practicable date.

(2) Extension of the term in a leasehold condemnation case must be accomplished through the Department of Justice which, upon request of the Chief of Engineers, will issue instructions to its field representatives to prepare a notice of election to extend the term and file it in the appropriate United States District Court. The Chief of Engineers should be advised of requirements of using services for extension of leasehold condemnation cases five months prior to the time that filing notice of extension with the court is due. The majority of pending leasehold condemnation cases require that notice to extend the term be filed with the court 30 days prior to the end of the term, although a few cases require the notice of extension to be filed at least 60 days prior to the end of the term. Negative reports are required.

(3) Since the General Services Administration is the disposal agency for excess and surplus airport property, all condemnation leaseholds forming an integral part of an airport should be extended and kept in force with the concurrence of the Department of the Air Force unless and until contrary instructions are received from the General Services Administration. In the event a bombing range or other installation in which leasehold interests have been acquired by condemnation is excess or surplus, but will not be decontaminated or dedudded prior to the end of the term, the leasehold condemnation proceeding will be extended beyond that date. In reporting leasehold condemnation cases to be extended within the categories mentioned in this paragraph, full information as to the necessity for extensions in each case should be furnished DAEN-REA-C.

(4) Specific authorization for deposit of funds in condemnation leasehold cases will be issued to Division and District Engineers by the Chief of Engineers.

(b) *Termination of leasehold condemnation proceedings.* If the need for all or part of the land included in a leasehold condemnation proceeding should terminate prior to the expiration of the term condemned, in the case of fixed term estates, or prior to the expiration of the right to renew by filing notice of extension, the Division or District Engineer, upon notification by the using service that the land is no longer needed, shall advise DAEN-REA-C accordingly. Prompt action will be taken by the Division or District Engineer to comply with the applicable requirements of Subpart I (to be published) relative to screening real property excess to one component of the Department of Defense with all other components and Federal agencies outside of the Department of Defense. Where restoration is involved, a report will be furnished DAEN-REA-C setting forth the status thereof.

(c) *Report to close leasehold condemnation cases.* When the term condemned has expired or all interests have been terminated and all interests have been disposed of by final judgment, the Division or District Engineer will so advise DAEN-REA-C in order that the case may be closed. Report in accordance with § 644.119(b) shall be furnished and shall also include a statement that the issue of restoration has been settled.

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THURSDAY, FEBRUARY 8, 1979

PART IV

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

■

MORTGAGE AND LOAN INSURANCE PROGRAMS UNDER THE NATIONAL HOUSING ACT

Permit Insurance of Advances for Building Components Stored Off-Site; Amendments

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER

SUBCHAPTER B—MORTGAGE AND LOAN INSURANCE PROGRAMS UNDER THE NATIONAL HOUSING ACT

[Docket No. R-79-615]

Amendments to Parts 207, 213, 220, 221, 227, 231, 232, 234, 236, 241, 242, and 244 To Permit Insurance of Advances for Building Components Stored Off-Site

AGENCY: Department of Housing and Urban Development.

ACTION: Interim rule.

SUMMARY: The amendments will permit HUD to insure advances of mortgage proceeds to cover the cost of large building components, or components subject to weather damage if stored on-site, specifically manufactured or pre-assembled for an insured project, but stored off-site. The amendments implement Section 525 of the National Housing Act.

EFFECTIVE DATE: February 27, 1979.

COMMENTS DUE: April 9, 1979.

ADDRESSES: All materials which persons wish to submit should refer to the above docket number and title and be sent to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Copies of the comments submitted will be available at this address for public inspection during business hours.

FOR FURTHER INFORMATION CONTACT:

John J. Collins, Chief, Programs Branch, Multifamily Mortgage Insurance Division, Department of Housing and Urban Development, Washington, D.C. 20410; (202) 755-9280.

SUPPLEMENTARY INFORMATION: This new insured advance procedure for components stored off-site will benefit manufacturers of eligible building components because it will enable them to receive payment for their products on completion, rather than having to wait until the component is at the building site. The procedure will encourage utilization of industrialized housing technology which will reduce costs, thereby benefiting the ultimate consumer.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular hours in the Office of the Rules Docket Clerk at the above address.

The Secretary has determined that these regulations are necessary to carry out the purposes and intent of Section 525 of the National Housing Act. They are beneficial to the public in that they provide a HUD procedure for insuring advances for components stored off-site which is not now available.

Currently builders of components must wait until components are shipped to the building site before receiving payment. However, shipment is often delayed, usually because there is no room for storage at the site, or to avoid the risk of damage if the component will have to be stored on site for a lengthy period. The result has been delay in the construction of multifamily housing, including Section 8 low income housing. Accordingly, the Secretary has determined that notice and public procedure with respect to this regulation are contrary to the public interest, and that good cause exists for making this regulation effective.

Accordingly, Parts 207, 213, 221, 232, 241, 242, and 244 are amended as shown below. Parts 220, 227, 231, and 234 are amended by references incorporating §§ 207.19a and 207.258. For eligibility, Part 236 is amended by reference incorporating § 221.541a. With respect to contract rights and obligations only, Parts 213, 221, 232, 236, 241, 242, and 244 are amended by references incorporating § 207.258.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

1. The Table of Contents is amended to include a new section numbered 207.19a to read as follows:

207.19a Insured advances for building components stored off-site.

2. The following new section is added and designated as § 207.19a.

§ 207.19a Insured advances for building components stored off-site.

(a) *Building components.* In insured advances for building components stored off-site, the term building component shall mean any manufactured or pre-assembled part of a structure which the Commissioner has specifically identified for incorporation into the property and has designated for off-site storage because it is of such size or weight that (1) storage of the number of components required for timely construction progress at the construction site is impractical, or (2) weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly.

(b) *Storage.* (1) An insured advance may be made for up to 90 percent of the aggregate cost of a building component stored off-site if the component is stored at a location approved by the mortgagee and the Commissioner which is either: (i) Under the control of a bonded warehouseman at the factory production site; or (ii) under the control of a bonded warehouseman at some site other than the factory production site. Aggregate cost may include storage cost, insurance while in storage and freight to the construction site. A bonded warehouseman is a person engaged in the business of storing goods on premises provided by him or some other person. In either situation, the bonded warehouseman, before any building components can be delivered to the warehouse, must provide a bond to the mortgagor and mortgagee covering them against loss occurring while the building components are under the control of the warehouseman.

(2) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which insured advances have been made and separate and apart from similar units not for use in the project.

(3) Storage costs, if any, shall be borne by the contractor.

(c) *Responsibility for transportation, storage, and insurance of off/site building components.* (1) The general contractor will enter into an agreement with the manufacturer of the building component which shall provide that the manufacturer shall be responsible for the delivery of the components to the predetermined storage site in accord with an approved delivery schedule and shall agree to: (i) Prepay freight charges from the production site to the storage site; (ii) insure the components during shipping to the storage site; (iii) deliver the components to the carrier properly packed for shipment; and (iv) prepare and deliver itemized invoices, shipping documents, warehouse receipts and bills of sale for the components to the mortgagor. (2) The general contractor of the insured mortgaged project shall have the responsibility for (i) insuring the components in the name of the mortgagor while in storage; (ii) delivering, or contracting for the delivery of the components to the construction site, including payment of freight.

(d) *Advances.* (1) Before an advance for a building component stored off-site is insured: (i) The mortgagor shall (A) obtain a bill of sale for the component, (B) give the mortgagee a security agreement, and (C) file a financing statement in accordance with the Uniform Commercial Code, and (ii) the mortgagee shall warrant to the Commissioner that the security instruments are a first lien on the building components covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(2) Before each advance for building components stored off-site is insured, the mortgagor's architect shall certify to the Commissioner that the components, in their intended use, comply with HUD-approved contract plans and specifications. Under those circumstances permitted by the Commissioner in which there is no architect, compliance with the HUD-approved contract plans and specifications shall be determined by the Commissioner.

(3) Advances may be made only for components stored off-site in a quantity required to permit uninterrupted installation at the site, but in no event may advances be made for components which are put into storage more than six months in advance of the time they are scheduled for incorporation into the project structure.

(4) At no time shall the aggregate cost of building components being stored off-site, for which advances have been insured, represent more than 25 percent of the total estimated construction costs for the insured mortgaged project as specified in the construction contract.

(5) No single advance which is to be insured shall be in an amount less than ten thousand ($10,000) dollars.

(6) Insurance of advances for components stored off-site may be authorized only when the total cost of development, including use of the off-site storage procedure and costs appurtenant to that procedure, do not exceed total development cost under conventional construction procedures as determined by the Commissioner.

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Subpart B—Contract Rights and Obligations

3. Section 207.258 is amended by revising paragraph (b), adding a new paragraph (b)(3), and redesignating the existing paragraphs (b)(3) and (b)(4) as (b)(4) and (b)(5), respectively, as follows:

§ 207.258 Insurance claim requirement.

* * * * *

(b) *Assignment of mortgage to Commissioner.* If the mortgagee elects to assign the mortgage to the Commissioner, it shall, at any time within 30 days after the date of the notice of such election, file its application for insurance benefits and assign to the Commissioner, in such manner as the Commissioner may require, the credit instrument(s) and the realty and chattel security instruments. In addition, the following requirements shall be met:

* * * * *

(3) *Chattel lien warranty.* In assigning its security interest in chattels, including materials, located on the premises covered by the mortgage, or its security interest in building components stored either on-site or off-site at the time of the assignment, the mortgagee shall warrant that:

(i) No act or omission of the mortgagee has impaired the validity or priority of the lien created by the chattel security instruments; and

(ii) The mortgagee has a good right to assign the security instruments; and

(iii) The chattel security instruments are a first lien on the items covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

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PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

4. The Table of Contents is amended to include a new section numbered 213.27a to read as follows:

213.27a Insured advances for building components stored off-site.

5. The following new section is added and designated as 213.27a.

§ 213.27a Insured advances for building components stored off-site.

(a) *Building components.* In insured advances for building components stored off-site, the term building component shall mean any manufactured or pre-assembled part of a structure which the Commissioner has specifically identified for incorporation into the property and has designated for off-site storage because it is of such size or weight that (1) storage of the number of components required for timely construction progress at the construction site is impractical or (2) weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly.

(b) *Storage.* (1) An insured advance may be made for up to 90 percent of the aggregate cost of a building component stored off-site if the component is stored at a location approved by the mortgagee and the Commissioner which is either: (i) Under the control of a bonded warehouseman at the factory production site; or (ii) under the control of a bonded warehouseman at some site other than the factory production site. Aggregate cost may include storage cost, insurance while in storage, and freight to the construction site. A bonded warehouseman is a person engaged in the business of storing goods on premises provided by him or some other person. In either situation, the bonded warehouseman, before any building components can be delivered to the warehouse, must provide a bond to the mortgagor and mortgagee covering them against loss occurring while the building components are under the control of the warehouseman.

(2) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which insured advances have been made and separate and apart from similar units not for use in the project.

(3) Storage costs, if any, shall be borne by the contractor.

(c) *Responsibility for transportation, storage and insurance of off-site building components.* (1) The general contractor will enter into an agreement with the manufacturer of the building component which shall provide that the manufacturer shall be responsible for the delivery of the components to the predetermined storage site in accord with an approved delivery schedule and shall agree to: (i) Prepay freight charges from the production site to the storage site; (ii) insure the components during shipping to the storage site; (iii) deliver the components to the carrier properly packed for shipment; and (iv) prepare and deliver itemized invoices, shipping documents, warehouse receipts and bills of sale for the components to the mortgagor. (2) The general contractor of the insured mortgaged project shall have the responsibility for (i) insuring the components in the name of the mortgagor while in storage; (ii) delivering, or contracting for the delivery of the components to the construction site, including payment of freight.

(d) *Advances.* (1) Before an advance for a building component stored off-site is insured: (i) The mortgagor shall (A) obtain a bill of sale for the component, (B) give the mortgagee a security agreement, and (C) file a financing statement in accordance with the Uniform Commercial Code, and (ii) the mortgagee shall warrant to the Commissioner that the security instruments are a first lien on the building components covered by the instruments except for such other liens or

encumbrances as may be approved by the Commissioner.

(2) Before each advance for building components stored off-site is insured, the mortgagor's architect shall certify to the Commissioner that the components, in their intended use, comply with HUD-approved contract plans and specifications. Under those circumstances permitted by the Commissioner in which there is no architect, compliance with the HUD-approved contract plans and specifications shall be determined by the Commissioner.

(3) Advances may be made only for components stored off-site in a quantity required to permit uninterrupted installation at the site, but in no event may advances be made for components which are put into storage more than six months in advance of the time they are scheduled for incorporation into the project structure.

(4) At no time shall the aggregate cost of building components being stored off-site, for which advances have been insured, represent more than 25 percent of the total estimated construction costs for the insured mortgaged project as specified in the construction contract.

(5) No single advance which is to be insured shall be in an amount less than ten thousand ($10,000) dollars.

(6) Insurance of advances for components stored off-site may be authorized only when the total cost of development, including use of the off-site storage procedure and costs appurtenant to that procedure, do not exceed total development cost under conventional construction procedures as determined by the Commissioner.

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PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

Subpart C—Eligibility Requirements—Moderate Income Projects

6. The Table of Contents is amended to include a new section numbered 221.541a to read as follows:

221.541a Insured advances for building components stored off-site.

7. The following new section is added and designated as 221.541a.

§ 221.541a Insured advances for building components stored off-site.

(a) *Building components.* In insured advances for building components stored off-site, the term building component shall mean any manufactured or pre-assembled part of a structure which the Commissioner has specifically identified for incorporation into the property and has designated for off-site storage because it is of such size or weight that (1) storage of the number of components required for timely construction progress at the construction site is impractical, or (2) weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly.

(b) *Storage.* (1) An insured advance may be made for up to 90 percent of the aggregate cost of a building component stored off-site if the component is stored at a location approved by the mortgagee and the Commissioner which is either: (i) Under the control of a bonded warehouseman at the factory production site; or (ii) under the control of a bonded warehouseman at some site other than the factory production site. Aggregate cost may include storage cost insurance while in storage and freight to the construction site. A bonded warehouseman is a person engaged in the business of storing goods on premises provided by him or some other person. In either situation, the bonded warehouseman, before any building components can be delivered to the warehouse, must provide a bond to the mortgagor and mortgagee covering them against loss occurring while the building components are under the control of the warehouseman.

(2) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which insured advances have been made and separate and apart from similar units not for use in the project.

(3) Storage costs, if any, shall be borne by the contractor.

(c) *Responsibility for transportation, storage and insurance of off-site building components.* (1) The general contractor will enter into an agreement with the manufacturer of the building component which shall provide that the manufacturer shall be responsible for the delivery of the components to the predetermined storage site in accord with an approved delivery schedule and shall agree to: (i) Prepay freight charges from the production site to the storage site; (ii) insure the components during shipping to the storage site; (iii) deliver the components to the carrier properly packed for shipment; and (iv) prepare and deliver itemized invoices, shipping documents, warehouse receipts and bills of sale for the components to the mortgagor. (2) The general contractor of the insured mortgaged project shall have the responsibility for (i) insuring the components in the name of the mortgagor while in storage; (ii) delivering, or contracting for the delivery of the components to the construction site, including payment of freight.

(d) *Advances.* (1) Before an advance for a building component stored off-site is insured: (i) The mortgagor shall (A) obtain a bill of sale for the component, (B) give the mortgagee a security agreement, and (C) file a financing statement in accordance with the Uniform Commercial Code, and (ii) the mortgagee shall warrant to the Commissioner that the security instruments are a first lien on the building components covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(2) Before each advance for building components stored off-site is insured, the mortgagor's architect shall certify to the Commissioner that the components, in their intended use, comply with HUD-approved contract plans and specifications. Under those circumstances permitted by the Commissioner in which there is no architect, compliance with the HUD-approved contract plans and specifications shall be determined by the Commissioner.

(3) Advances may be made only for components stored off-site in a quantity required to permit uninterrupted installation at the site, but in no event may advances be made for components which are put into storage more than six months in advance of the time they are scheduled for incorporation into the project structure.

(4) At no time shall the aggregate cost of building components being stored off-site, for which advances have been insured, represent more than 25 percent of the total estimated construction costs for the insured mortgaged project as specified in the construction contract.

(5) No single advance which is to be insured shall be in an amount less than ten thousand ($10,000) dollars.

(6) Insurance of advances for components stored off-site may be authorized only when the total cost of development, including use of the off-site storage procedure and costs appurtenant to that procedure, do not exceed total development cost under conventional construction procedures as determined by the Commissioner.

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

8. The Table of Contents is amended to include a new section numbered 232.57 to read as follows:

232.57 Insured advances for building components stored off-site.

9. The following new section is added and designated as 232.57.

§ 232.57 Insured advances for building components stored off-site.

(a) *Building components.* In insured advances for building components stored off-site, the term building component shall mean any manufactured or pre-assembled part of a structure which the Commissioner has specifically identified for incorporation into the property and has designated for off-site storage because it is of such size or weight that (1) storage of the number of components required for timely construction progress at the construction site is impractical, or (2) weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly.

(b) *Storage.* (1) An insured advance may be made for up to 90 percent of the aggregate cost of a building component stored off-site if the component is stored at a location approved by the mortgagee and the Commissioner which is either: (i) Under the control of a bonded warehouseman at the factory production site; or (ii) under the control of a bonded warehouseman at some site other than the factory production site. Aggregate cost may include storage cost, insurance while in storage, and freight to the construction site. A bonded warehouseman is a person engaged in the business of storing goods on premises provided by him or some other person. In either situation, the bonded warehouseman, before any building components can be delivered to the warehouse, must provide a bond to the mortgagor and mortgagee covering them against loss occurring while the building components are under the control of the warehouseman.

(2) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which insured advances have been made and separate and apart from similar units not for use in the project.

(3) Storage costs, if any, shall be borne by the contractor.

(c) *Responsibility for transportation, storage and insurance of off-site building components.* (1) The general contractor will enter into an agreement with the manufacturer of the building component which shall provide that the manufacturer shall be responsible for the delivery of the components to the predetermined storage site in accord with an approved delivery schedule and shall agree to: (i) Prepay freight charges from the production site to the storage site; (ii) insure the components during shipping to the storage site; (iii) deliver the components to the carrier properly packed for shipment; and (iv) prepare and deliver itemized invoices, shipping documents, warehouse receipts and bills of sale for the components to the mortgagor. (2) The general contractor of the insured mortgaged project shall have the responsibility for (i) insuring the components in the name of the mortgagor while in storage; (ii) delivering, or contracting for the delivery of the components to the construction site, including payment of freight.

(d) *Advances.* (1) Before an advance for a building component stored off-site is insured: (i) The mortgagor shall (A) obtain a bill of sale for the component, (B) give the mortgagee a security agreement, and (C) file a financing statement in accordance with the Uniform Commercial Code, and (ii) the mortgagee shall warrant to the Commissioner that the security instruments are a first lien on the building components covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(2) Before each advance for building components stored off-site is insured, the mortgagor's architect shall certify to the Commissioner that the components, in their intended use, comply with HUD-approved contract plans and specifications. Under those circumstances permitted by the Commissioner in which there is no architect, compliance with the HUD-approved contract plans and specifications shall be determined by the Commissioner.

(3) Advances may be made only for components stored off-site in a quantity required to permit uninterrupted installation at the site, but in no event may advances be made for components which are put into storage more than six months in advance of the time they are scheduled for incorporation into the project structure.

(4) At no time shall the aggregate cost of building components being stored off-site, for which advances have been insured, represent more than 25 percent of the total estimated construction costs for the insured mortgaged project as specified in the construction contract.

(5) No single advance which is to be insured shall be in an amount less than ten thousand ($10,000) dollars.

(6) Insurance of advances for components stored off-site may be authorized only when the total cost of development, including use of the off-site storage procedure and costs appurtenant to that procedure, do not exceed total development cost under conventional construction procedures as determined by the Commissioner.

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PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

Subpart A—Eligibility Requirements

10. The Table of Contents is amended to include a new section numbered 241.41 to read as follows:

241.41 Insured advances for building components stored off-site.

11. The following new section is added and designated as 241.41.

§ 241.41 Insured advances for building components stored off-site.

(a) *Building components.* In insured advances for building components stored off-site, the term building component shall mean any manufactured or pre-assembled part of a structure which the Commissioner has specifically identified for incorporation into the property and has designated for off-site storage because it is of such size or weight that (1) storage of the number of components required for timely construction progress at the construction site is impractical, or (2) weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly.

(b) *Storage.* (1) An insured advance may be made for up to 90 percent of the aggregate cost of a building component stored off-site if the component is stored at a location approved by the mortgagee and the Commissioner which is either: (i) Under the control of a bonded warehouseman at the factory production site; or (ii) under the control of a bonded warehouseman at some site other than the factory production site. Aggregate cost may include storage cost, insurance while in storage, and freight to the construction site. A bonded warehouseman is a person engaged in the business of storing goods on premises provided by him or some other person. In either situation, the bonded warehouseman, before any building components can be delivered to the warehouse, must provide a bond to the mortgagor and mortgagee covering them against loss occurring while the building components are under the control of the warehouseman.

(2) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which insured advances have been made and separate and apart from similar units not for use in the project.

(3) Storage costs, if any, shall be borne by the contractor.

(c) *Responsibility for transportation, storage and insurance of off-site building components.* (1) The general contractor will enter into an agreement with the manufacturer of the building component which shall provide that the manufacturer shall be responsible for the delivery of the components to their predetermined storage site in accord with an approved delivery schedule and shall agree to: (i) Prepay freight charges from the production site to the storage site; (ii) insure the components during shipping to the storage site; (iii) deliver the components to the carrier properly packed for shipment; and (iv) prepare and deliver itemized invoices, shipping documents, warehouse receipts and bills of sale for the components to the mortgagor.

(2) The general contractor of the insured mortgaged project shall have the responsibility for (i) insuring the components in the name of the mortgagor while in storage; (ii) delivering, or contracting for the delivery of the components to the construction site, including payment of freight.

(d) *Advances.* (1) Before an advance for a building component stored off-site is insured: (i) The mortgagor shall (A) obtain a bill of sale for the component, (B) give the mortgagee a security agreement, and (C) file a financing statement in accordance with the Uniform Commercial Code, and (ii) the mortgagee shall warrant to the Commissioner that the security instruments are a first lien on the building components covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(2) Before each advance for building components stored off-site is insured, the mortgagor's architect shall certify to the Commissioner that the components, in their intended use, comply with HUD-approved contract plans and specifications. Under those circumstances permitted by the Commissioner in which there is no architect, compliance with the HUD-approved contract plans and specifications shall be determined by the Commissioner.

(3) Advances may be made only for components stored off-site in a quantity required to permit uninterrupted installation at the site, but in no event may advances be made for components which are put into storage more than six months in advance of the time they are scheduled for incorporation into the project structure.

(4) At no time shall the aggregate cost of building components being stored off-site, for which advances have been insured, represent more than 25 percent of the total estimated construction costs for the insured mortgaged project as specified in the constuction contract.

(5) No single advance which is to be insured shall be in an amount less than ten thousand ($10,000) dollars.

(6) Insurance of advances for components stored off-site may be authorized only when the total cost of development, including use of the off-site storage procedure and costs appurtenant to that procedure, do not exceed total development cost under conventional construction procedures as determined by the Commissioner.

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PART 242—MORTGAGE INSURANCE FOR HOSPITALS

Subpart A—Eligibility Requirements

12. The Table of Contents is amended to include a new section numbered 242.54 to read as follows:

§ 242.54 Insured advances for building components stored off site.

13. The following new section is added and designated as 242.54.

§ 242.54 Insured advances for building components stored off-site.

(a) *Building components.* In insured advances for building components stored off-site, the term building component shall mean any manufactured or pre-assembled part of a structure which the Commissioner has specifically identified for incorporation into the property and has designated for off-site storage because it is of such size or weight that (1) storage of the number of components required for timely construction progress at the construction site is impractical, or (2) weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly.

(b) *Storage.* (1) An insured advance may be made for up to 90 percent of the aggregate cost of a building component stored off-site if the component is stored at a location approved by the mortgagee and the Commissioner which is either: (i) Under the control of a bonded warehouseman at the factory production site; or (ii) under the control of a bonded warehouseman at some site other than the factory production site. Aggregate cost may include storage cost, insurance while in storage, and freight to the construction site. A bonded warehouseman is a person engaged in the business of storing goods on premises provided by him or some other person. In either situation, the bonded warehouseman, before any building components can be delivered to the warehouse, must provide a bond to the mortgagor and mortgagee covering them against loss occurring while the building components are under the control of the warehouseman.

(2) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which insured advances have been made and separate and apart from similar units not for use in the project.

(3) Storage costs, if any, shall be borne by the contractor.

(c) *Responsibility for transportation, storage and insurance of off-site building components.* (1) The general contractor will enter into an agreement with the manufacturer of the building component which shall provide that the manufacturer shall be responsible for the delivery of the components to the predetermined storage site in accord with an approved delivery schedule and shall agree to: (i) Prepay freight charges from the production site to the storage site; (ii) insure the components during shipping to the storage site; (iii) deliver the components to the carrier properly packed for shipment; and (iv) prepare and deliver itemized invoices, shipping documents, warehouse receipts and bills of sale for the components to the mortgagor. (2) The general contractor of the insured mortgaged project shall have the responsibility for (i) insuring the components in the name of the mortgagor while in storage; (ii) delivering, or contracting for the delivery of the components to the construction site, including payment of freight.

(d) *Advances.* Before an advance for a building component stored off-site is insured: (i) The mortgagor shall (A) obtain a bill of sale for the component, (B) give the mortgagee a security agreement, and (C) file a financing statement in accordance with the Uniform Commercial Code, and (ii) the mortgagee shall warrant to the Commissioner that the security instruments are a first lien on the building components covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(2) Before each advance for building components stored off-site is insured, the mortgagor's architect shall certify to the Commissioner that the components, in their intended use, comply with HUD-approved contract plans and specifications. Under those circumstances permitted by the Commissioner in which there is no architect, compliance with the HUD-approved contract plans and specifications shall be determined by the Commissioner.

(3) Advances may be made only for components stored off-site in a quantity required to permit uninterrupted installation at the site, but in no event may advances be made for components which are put into storage more than

six months in advance of the time they are scheduled for incorporation into the project structure.

(4) At no time shall the aggregate cost of building components being stored off-site, for which advances have been insured, represent more than 25 percent of the total estimated construction costs for the insured mortgaged project as specified in the construction contract.

(5) No single advance which is to be insured shall be in an amount less than ten thousand ($10,000) dollars.

(6) Insurance of advances for components stored off-site may be authorized only when the total cost of development, including use of the off-site storage procedure and costs appurtenant to that procedure, do not exceed total development cost under conventional construction procedures as determined by the Commissioner.

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES (TITLE XI)

Subpart A—Eligibility Requirements

14. The Table of Contents is amended to include a new section numbered 244.68 to read as follows:

244.68 Insured advances for building components stored off-site.

15. The following new section is added and designated as § 244.68.

§ 244.68 Insured advances for building components stored off-site.

(a) *Building components.* In insured advances for building components stored off-site, the term building component shall mean any manufactured or pre-assembled part of a structure which the Commissioner has specifically identified for incorporation into the property and has designated for off-site storage because it is of such size or weight that (1) storage of the number of components required for timely construction progress at the construction site is impractical, or (2) weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly.

(b) *Storage.* (1) An insured advance may be made for up to 90 percent of the aggregate cost of a building component stored off-site if the component is stored at a location approved by the mortgagee and the Commissioner which is either: (i) Under the control of a bonded warehouseman at the factory production site; or (ii) under the control of a bonded warehouseman at some site other than the factory production site. Aggregate cost may include any storage cost, insurance while in storage, and freight to the construction site. A bonded warehouseman is a person engaged in the business of storing goods on premises provided by him or some other person. In either situation, the bonded warehouseman, before any building components can be delivered to the warehouse, must provide a bond to the mortgagor and mortgagee covering them against loss occurring while the building components are under the control of the warehouseman.

(2) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which insured advances have been made and separate and apart from similar units not for use in the project.

(3) Storage costs, if any, shall be borne by the contractor.

(c) *Responsibility for transportation, storage and insurance of off-site building components.* (1) The general contractor will enter into an agreement with the manufacturer of the building component which shall provide that the manufacturer shall be responsible for the delivery of the components to the predetermined storage site in accord with an approved delivery schedule and shall agree to: (i) Prepay freight charges from the production site to the storage site; (ii) insure the components during shipping to the storage site; (iii) deliver the components to the carrier properly packed for shipment; and (iv) prepare and deliver itemized invoices, shipping documents, warehouse receipts and bills of sale for the components to the mortgagor. (2) The general contractor of the insured mortgaged project shall have the responsibility for (i) insuring the components in the name of the mortgagor while in storage; (ii) delivering, or contracting for the delivery of the components to the construction site, including payment of freight.

(d) *Advances.* (1) Before an advance for a building component stored off-site is insured: (i) The mortgagor shall (A) obtain a bill of sale for the component, (B) give the morgagee a security agreement, and (C) file a financing statement in accordance with the Uniform Commercial Code, and (ii) the mortgagee shall warrant to the Commissioner that the security instruments are a first lien on the building components covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(2) Before each advance for building components stored off-site is insured, the mortgagor's architect shall certify to the Commissioner that the components, in their intended use, comply with HUD-approved contract plans and specifications. Under those circumstances permitted by the Commissioner in which there is no architect, compliance with the HUD-approved contract plans and specifications shall be determined by the Commissioner.

(3) Advances may be made only for components stored off-site in a quantity required to permit uninterrupted installation at the site, but in no event may advances by made for components which are put into storage more than six months in advance of the time they are scheduled for incorporation into the project structure.

(4) At no time shall the aggregate cost of building components being stored off-site, for which advances have been insured, represent more than 25 percent of the total estimated construction costs for the insured mortgaged project as specified in the construction contract.

(5) No single advance which is to be insured shall be in an amount less than ten thousand ($10,000) dollars.

(6) Insurance of advances for components stored off-site may be authorized only when the total cost of development, including use of the off-site storage procedure and costs appurtenant to that procedure, do not exceed total development cost under conventional construction procedures as determined by the Commissioner.

(Section 7(d), Department of Housing and Urban Development Act; 42 U.S.C. 3535(d)).

Issued in Washington, D.C. on December 6, 1978.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 79-4288 Filed 2-7-79; 8:45 am]

federal register

THURSDAY, FEBRUARY 8, 1979

PART V

ENVIRONMENTAL PROTECTION AGENCY

NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 1018-2]

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

Revisions to the National Ambient Air Quality Standards for Photochemical Oxidants

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: In accordance with the provisions of Sections 108 and 109 of the Clean Air Act as amended, EPA has reviewed and revised the criteria upon which the existing primary and secondary photochemical oxidant standards are based. These standards were promulgated in 1971 (36 FR 8186) and were both set at an hourly average level of 0.08 part per million (ppm) not to be exceeded more than 1 hour per year. On June 22, 1978, EPA proposed changes in the standard (43 FR 26962) based on the findings of the revised criteria. The proposed changes included (1) raising the primary standard to 0.10 ppm, (2) retaining the 0.08 ppm secondary standard, (3) changing the chemical designation of the standard from photochemical oxidants to ozone, and (4) changing to a standard with a statistical rather than deterministic form. The final rulemaking will make three further changes in the standard: (1) Raising the primary standard to 0.12 ppm, (2) raising the secondary standard to 0.12 ppm, and (3) changing the definition of the point at which the standard is attained to "when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is equal to or less than one."

EFFECTIVE DATE: This revision is effective immediately upon publication. The normal 30-day delay in effectiveness is not required, when, as in this case, a restriction is eased.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph Padgett, Director (MD-12), Strategies and Air Standards Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Telephone: 919-541-5204 (FTS 629-5204.

AVAILABILITY OF RELATED INFORMATION: A docket (Number OAQPS 78-8) containing information used by EPA in revising the standards is available for public inspection and copying between 8:00 a.m. and 4:30 p.m. Monday through Friday, at EPA's Central Docket Section, Room 2903 Waterside Mall, 401 M Street SW, Washington DC 20460. These materials include the "Air Quality Criteria for Ozone and Other Photochemical Oxidants" and "Control Techniques for Volatile Organic Emissions from Stationary Sources," both of which were issued simultaneously when this standard was proposed. The control techniques document and staff papers pertaining to the form of the ozone standard, risk assessment method, secondary standard, and health panel assessment are available upon request from Mr. Joseph Padgett. Statements of the environmental, economic, and energy impacts of implementing this standard revision are also available upon request from Mr. Joseph Padgett, at the address shown above. The air quality criteria document can be obtained from: Mr. Michael Berry (MD-52), Environmental Criteria and Assessment Office, Office of Research and Development, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Telephone: 919-541-2266 (FTS 629-2266).

This preamble describes revisions to 40 CFR Part 50, Appendix H, "Interpretation of the National Ambient Air Quality Standards for Ozone," and Appendix D, "Measurement Principle and Calibration Procedure for the Measurement of Photochemical Oxidants Corrected for Interferences Due to Nitrogen Oxides and Sulfur Dioxide," that are related to the revision of the air quality standard for ozone. In addition, elsewhere in this issue of the FEDERAL REGISTER EPA is promulgating revisions to 40 CFR Part 50, Appendix D, replacing (superseding) the current calibration procedure with a new, superior calibration procedure based on ultraviolet photometry.

Revisions to 40 CFR Part 51, substituting the word "ozone" for "photochemical oxidants" throughout that part, and to Section 51.14, pertaining to control strategies, are being promulgated by EPA elsewhere in this issue of the FEDERAL REGISTER.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On April 30, 1971, the Environmental Protection Agency promulgated in the FEDERAL REGISTER (36 FR 8186) National Ambient Air Quality Standards for photochemical oxidants. The scientific, technical, and medical bases for these standards are contained in the air quality criteria document for photochemical oxidants, published by the U.S. Department of Health, Education, and Welfare in March 1970. Both the primary and secondary standards were set at an hourly average level of 0.08 ppm not to be exceeded more than once per year. The asthma study cited as evidence for the original standard is based on work by Schoettlin and Landau (1961). As discussed in the June 22, 1978, proposed revision to the original standard, EPA has reassessed its conclusions regarding this study. This reassessment, plus the evaluation of medical evidence accumulated since 1970, led EPA to propose, on June 22, 1978, a revised primary standard of 0.10 ppm (43 FR 26962). EPA did not propose a change in the secondary welfare standard at that time. The proposal was accompanied by publication of revised criteria and control techniques documents, as well as various staff papers relating to the standard itself and to implementation of the standard. EPA solicited written comments on the proposed standard and, to accept oral testimony, sponsored four public hearings (Washington, D C.—July 18; Altanta, Ga.—August 17; Dallas, Tex.—August 22; Los Angeles, Calif.—August 24).

Oxidants are strongly oxidizing compounds, which are the primary constituents of photochemical smog. The oxidant found in largest amounts is ozone (O_3), a very reactive form of oxygen. Oxidants also include the group of compounds referred to collectively as peroxyacylnitrates (PANs) and other compounds, all produced in much smaller quantities than ozone.

Most of these materials are not emitted directly into the atmosphere but result primarily from a series of chemical reactions between oxidant precursors (nitrogen oxides and organic compounds) in the presence of sunlight. The principal sources of organic compounds are the hydrocarbon emissions from automobile and truck exhausts, gasoline vapors, paint solvent evaporation, open burning, dry cleaning fluids, chemical plants and other industrial operations. Nitrogen oxides are emitted primarily from combustion sources such as electric power generation units, gas and oil-fired space heaters, and automobile, diesel and jet engines.

The reductions in emissions of nitrogen oxides and organic compounds are achieved through Federal and State programs that have been formalized in regulations promulgated under the Clean Air Act. The Federal programs provide for reduction in emissions nationwide through the Federal Motor Vehicle Control Program, the Federal program for control of aircraft emissions, National Emission Standards for Hazardous Air Pollutants, and the development of New Source Performance Standards. The State programs

provide for additional control measures through State Implementation Plans in those areas of the country where the Federal programs are not sufficiently stringent to permit attainment of air quality standards.

LEGISLATIVE REQUIREMENTS AFFECTING THIS PROMULGATION

Two sections of the Clean Air Act govern the development of a National Ambient Air Quality Standard: Section 108 instructs EPA to document the scientific basis (criteria) for the standard, and Section 109 provides guidance on establishing standards and reviewing the criteria.

Air quality criteria are required by Section 108(a)(2) to reflect accurately the latest scientific information useful in indicating the kind and extent of all identifiable effects on public health or welfare that may be expected from the presence of the pollutant in the ambient air.

The Administrator is required to propose, simultaneously with the issuance of these criteria, primary and secondary ambient air quality standards based upon such criteria. The primary standard is defined in Section 109(b)(1) as the ambient air quality standard the attainment and maintenance of which in the Administrator's judgment, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. The secondary standard (Section 109(b)(2)) must specify a level the attainment and maintenance of which in the Administrator's judgment, based on such criteria, are requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of the pollutant in the ambient air. These adverse welfare effects, which are discussed in Section 302(h) of the Act, include effects on soils, water, crops, vegetation, man-made materials, animals, weather, visibility, hazards to transportation, economic values, personal comfort and well-being, and other factors.

The Clean Air Act specifies that primary National Ambient Air Quality Standards are to be based on scientific criteria relating to the level that should be attained to protect public health adequately. Considerations of cost of achieving those standards or the existence of technology to bring about needed reductions of emissions are not germane to such a determination, as the words of the Act and its legislative history clearly indicate. Section 109(d) directs the Administrator to complete a review of all existing standards and criteria before the end of 1980 and at 5-year intervals thereafter and to revise them in whatever manner that review reveals is necessary. This promulgation is the result of such a review.

Assuring attainment and maintenance of ambient air quality standards is the responsibility of the States. Under section 110 of the Act, they are to submit to EPA for approval State Implementation Plans (SIPs) that provide for the necessary legal requirements for sources of the relevant pollutant so as to demonstrate attainment and maintenance of the standards by certain deadlines. In many areas of the country the ambient air quality standards are not being attained, despite the fact that the deadline for attainment has long since passed. As a remedy, Part D of the Act requires states with violations of ambient air quality standards to submit revised SIPs to ensure attainment of the standards and to meet certain new requirements of Part D by January 1, 1979. (Section 129(c), Pub. L. 95-95, note under 42 U.S.C. 7502.) The Act does not authorize the Administrator to extend that deadline, and consequently this revision of the photochemical oxidant standard does not affect the deadline for submittal of SIP revisions.

Section 110(a)(1) requires that SIP revisions be submitted within 9 months after a standard is revised. However, this provision refers to situations where a standard is tightened, with the result that existing SIPs are no longer adequate to attain and maintain the standard in question. Where a standard is relaxed, no SIP revision is required by the law, since states may have more stringent controls than necessary if they choose.

Furthermore, the change in the chemical species designation of the standard from photochemical oxidants to ozone does not make this standard subject to the provision of section 110(a)(1) cited above. The intent of the standard (total oxidant reduction), the control strategies, and the index of progress toward attainment (measured ozone levels) remain unchanged.

SUMMARY OF GENERAL FINDINGS FROM AIR QUALITY CRITERIA FOR OZONE AND PHOTOCHEMICAL OXIDANTS

On April 20, 1977, EPA announced (42 FR 20493) that it was reviewing and updating the 1970 criteria document for photochemical oxidants in accordance with provisions of section 109(d)(1) of the Clean Air Act as amended. The notice called for information and data that would be helpful in revising the document. In preparing the criteria document, EPA provided a number of opportunities for external review and comment. Two drafts of the document have been made available for external review, and EPA recieved more than 50 written comments on the first draft and approximately 20 on the second draft. The American Petroleum Institute has submitted extensive information that EPA considered in this standard review. The criteria document was the subject of two meetings of the Subcommittee on Scientific Criteria for Photochemical Oxidants of EPA's Science Advisory Board. Each of these meetings was open to the public, and a number of individuals presented both critical review and new information for EPA's consideration. A full discussion of comments received during the review process, as well as EPA's disposition of these comments, can be found in the docket (OAQPS 78-8) assembled for this rulemaking.

From EPA's review of the scientific information presented in the criteria document, several key areas with particular relevance to setting the ozone standard have emerged:

1. *Threshold concept*—Although the concept of an adverse health effect threshold has utility in setting ambient air quality standards, the adverse health effect threshold concentration cannot be identified with certainty. The lowest concentration which causes measured health effects in a scientific experiment depends on the particular subjects who have been studied because sensitivity to pollutants varies among different members of the population. Only limited studies can be performed on groups of unusually sensitive persons. Most experimental studies of human subjects are performed on small numbers of relatively healthy persons who do not fully reflect the range of human sensitivity. Also, the air to which the subjects are exposed does not include the full mix of chemicals other than the pollutant being studied which are in the ambient air. Some of these chemicals may be additive with the given pollutant in causing the adverse health effect, so that lower levels of the pollutant will result in the effect. Animal exposure studies cannot provide precise models of sensitive human populations. Thus, adverse health effect thresholds for sensitive persons are difficult or impossible to determine experimentally, while the threshold for healthy persons or animals is not likely to be predictive of the response of more sensitive groups. In this notice of rulemaking EPA uses the terminology "probable effects level" to refer to the level that in its best judgment is most likely to be the adverse health effect threshold concentration. It is the fact that the adverse health effect threshold concentration is actually unknown that necessitates the margin of safety required by the Act.

2. *Ozone health effects*—Ozone is a pulmonary irritant that affects the respiratory mucous membranes, other

lung tissues and respiratory functions. Clinical and epidemiological studies have demonstrated that ozone impairs the normal mechanical function of the human lung and causes clinical symptoms such as chest tightness, coughing and wheezing. These effects may occur in sensitive individuals, as well as in healthy exercising persons, at short-term ozone concentrations between 0.15 and 0.25 ppm. The clinical studies data base for these effects is far more extensive than that which was available in 1970, and these effects have now been demonstrated at lower levels than those cited in the 1970 criteria document.

3. *Effects on Asthmatics*—The best available evidence suggests that an elevated proportion of asthmatics experience attacks on days when the peak hourly oxidant concentrations reach about 0.25 ppm. This finding is based on a reevalution of the study by Schoettlin and Landau (1961).

4. *Toxicologic findings*—The key finding from toxicologic studies is the increased susceptibility to bacterial infection in laboratory animals exposed to 0.10 ppm ozone and a bacterial challenge. Infection rates are lower for animals exposed only to the bacterial challenge. Other effects such as biochemical changes, morphological abnormalities, and genetic changes have been found in some studies of animals exposed to ozone concentrations as low as 0.1 to 0.3 ppm. While the data from animal studies cannot be directly extrapolated to man, they can be taken as indicators of the full range of effects that may occur in humans. The epidemiology study by Durham (1974) that reported increased rates of illness in college students following periods of elevated air pollution levels (with peak oxidant being the pollution variable most strongly associated with illness) further increases our concern regarding the implications for man of the animal study findings.

5. *Ozone effects on aging processes*—A limited amount of data suggests that ozone may accelerate the aging process in living organisms. Exposure of rabbits to unspecified concentrations of ozone for 1 hour per week for a year has been reported to induce premature aging symptoms such as premature cartilage calcification, severe depletion of body fat, and the general signs of aging (Stokinger, 1965).

6. *Pollutant interactions*—The fact that ozone exposure is frequently accompanied by exposure to other pollutants, such as sulfur dioxide (SO_2), has prompted several investigators to conduct laboratory evaluations of exposure of human subjects to combinations of O_3 and other pollutants. Simultaneous exposures to 0.37 ppm O_3 and 0.37 ppm SO_2 were reported to produce larger changes in pulmonary function than exposure to either pollutant alone. No obvious effects were observed in other simultaneous exposure tests using 0.25 ppm O_3 and 0.3 ppm nitrogen dioxide (NO_2), as well as O_3; NO_2, and 30 ppm carbon monoxide (CO). Nevertheless, the SO_2-O_3 synergism findings support the need for an adequate margin of safety in the ozone standard.

7. *Mortality studies*—No studies have conclusively linked exposure to ozone or photochemical oxidants with an increase in human mortality. A number of epidemiologic studies have been designed and conducted to demonstrate this effect, but in each case the results have been negative or inconclusive.

8. *Welfare effects*—Ozone accelerates the aging of many materials, resulting in rubber cracking, dye fading and paint erosion. These effects are linearly related to the total dose of ozone and can occur at very low levels, given long-duration exposures. Damage to vegetation, as expressed by decreased growth and yield, is related to the long-term (growing season) mean of the daily maximum 6- to 8-hour-average ozone concentrations.

9. *Causes and control of oxidant pollution*—All presently available evidence indicates that around urban centers with severe oxidant problems, the major concern is the formation of photochemical oxidants from man-made organic and nitrogen oxide emissions. Control of these emissions will result in significant reductions in ambient ozone, peroxyacetylnitrate (PAN), aldehydes and photchemical aerosol.

As is the case with most standard-setting activities, the data base on ozone will continue to expand after the standard is set. EPA will continue to inform itself of new research results and also will accelerate the schedule for its own research on the health effects of ozone and other photochemical oxidants at low exposure levels. The Agency plans to make the results of these studies available as they are completed and to issue an interim report on all new research results in two years.

RULEMAKING PETITIONS

The Agency was petitioned by the American Petroleum Institute (API) and 29 member companies on December 9, 1976, and by the City of Houston on July 11, 1977, to revise the criteria, standards and control strategy guidelines for photochemical oxidants. EPA had already begun such a revision when both petitions were filed, and the Agency responded that it was deferring decision on these petitions until the rulemaking was completed. EPA considers this final rulemaking and the accompanying one on control strategy guidelines to be the Agency's final action on these petitions. A summary of the two petitions and EPA's response is given below.

The API petition requested that EPA revise the air quality criteria document for photochemical oxidants in light of new information regarding the causes, effects, and extent of air pollution attributed to ozone and other oxidants. EPA has published a revised air quality criteria document for photochemical oxidants; in the Agency's judgment, this document accurately reflects the latest scientific information regarding the causes, effects, and extent of air pollution attributed to ozone and other oxidants.

The second request in the API petition was that EPA establish a national primary ambient air quality standard based on new studies that allegedly demonstrate no significant adverse human health effects at or below ozone levels of 0.25 ppm for 2-hour exposures. As requested by API and as required under the Clean Air Act, the Agency has considered all new studies published since 1971 that are relevant to setting a revised primary standard the attainment and maintenance of which would, in the Administrator's judgment, protect the public health with an adequate margin of safety. EPA disagrees with API's conclusion that new studies conducted since 1971 demonstrate no significant adverse human-health effects at or below 0.25 ppm.

A more detailed discussion of EPA's judgments regarding reported or probable health consequences at concentrations below 0.25 ppm is presented in the rationale for revising the primary standard and in the response to comments, which appear elsewhere in this notice.

The third request by API was that the national secondary ambient air quality standard be based on adverse effects on public welfare as indicated by studies using ozone-specific measurement methods. In addition, API concluded that Congress intended that EPA weigh the overall economic and social impact of a lower secondary standard against adverse effects of a pollutant. EPA has reviewed the data presented in the criteria document and concluded that there is currently no evidence of a significant decrease in yield or growth to commercially important crops for short-term exposures to ozone concentrations below 0.12 ppm. EPA believes a secondary standard more stringent than the primary standard is unnecessary and that a cost-benefit analysis is not required.

In their petitions, both API and Houston requested EPA to state the primary and secondary standards so as to permit reliable assessments of compliance. EPA agrees that the present

deterministic form of the oxidant standard has several limitations and has made reliable assessment of compliance difficult. The revised ozone air quality standards are stated in a statistical form that will more accurately reflect the air quality problems in various regions of the country and allow more reliable assessment of compliance with the standards.

The API and Houston petitions requested that EPA specify the use of an appropriate measurement method for monitoring ambient concentrations of ozone. API suggested the use of ethylene chemiluminescence calibrated by either gas phase titration (GPT) or ultraviolet (UV) photometry. As a result of EPA's continuing evaluation of several calibration techniques, the Agency has defined the reference method to be ethylene chemiluminescence calibrated by UV photometry. (See the amendment to Appendix D of 40 CFR Part 50 elsewhere in this edition of the FEDERAL REGISTER.) EPA is allowing the use of a modified version of the current calibration method (acidified KI) as an interim measure to avoid problems that would result from immediate conversion to UV photometry.

Both the API and Houston petitions requested revision of the State Implementation Plan (SIP) requirements (1) to delete the assumption of no background concentration of photochemical oxidants and (2) to specify more reliable, alternative oxidant prediction relationships to replace Appendix J of 40 CFR Part 51 for determining the degree of necessary precursor emission reductions.

With respect to the first point, EPA recognizes that background concentrations and transport of ozone from upwind locations can contribute to high levels of ozone in or near an urban area during the afternoon hours. Therefore, several revisions are being made in control strategy and implementation guidelines for ozone. The revised guidelines set forth procedures for consideration of both upwind transport and irreducible natural background by the States in calculating the necessary reductions in hydrocarbon emissions. In response to the second request, EPA has determined that Appendix J of 40 CFR Part 51 no longer represents an acceptable analytical relationship between hydrocarbons and ozone. Appendix J is, therefore, being deleted. EPA will now allow States to use any of four analytical techniques to determine the amount of hydrocarbon reduction necessary to demonstrate attainment of the national ozone air quality standards: (1) Photochemical dispersion models, (2) Empirical Kinetics Modeling Approach (EKMA), (3) Empirical and statistical models, and (4) Proportional rollback. These four techniques are discussed further in the revision of Part 51, which appears elsewhere in this edition of the FEDERAL REGISTER.

The Houston petition requested that EPA consider information in their petition relative to atmospheric conditions and other factors that affect photochemical oxidants in the Houston area. The petition claimed that the air pollution problems in Houston warrant special attention in standard-setting and "tailor-made" control strategies, because the emission and meteorology situations and the overall pollution picture in that area are "unique."

In response to the above claim, it should be noted that the majority of the data presented in the revised criteria document are based on ozone exposure. Nearly all of the clinical and toxicological studies are based on the effects of ozone. The biomedical data also suggest that many of the effects observed during periods of elevated photochemical oxidant concentrations are reasonably attributable primarily to ozone in the ambient air. Since the primary and secondary standards are based on the effects of ozone, the differences between areas in their overall photochemical oxidant mixtures do not bear upon the setting of national ozone air quality standards.

EPA agrees with the Houston petition that components of the photochemical oxidant mixture other than ozone may have an adverse impact on health and/or welfare. The data base is not, however, sufficient at this time to justify a separate standard for PAN or other non-ozone oxidants. While EPA does not propose to establish separate standards for the non-ozone constituents of the mixture at this time, those measures taken to reduce ozone precursor emissions will also reduce PAN and other non-ozone oxidant concentration levels.

In response to Houston's request for a unique standard based on their local situation, it must be realized that the Clean Air Act does not contemplate separate standards for different cities. Dealing in terms of *national* ambient air quality standards, the Act charges EPA to identify the air quality levels which must be attained and maintained to ensure, with an adequate margin of safety, that adverse health effects will not occur.

The Houston petition also requested that EPA include realistic requirements for the reduction of oxides of nitrogen as conditions in the Houston area may indicate to be necessary to achieve the revised standards. EPA's response is that it is the responsibility of the State of Texas and the City of Houston to submit State Implementation Plan provisions tailored to the situation prevailing in Houston. If the current SIP is not representative of the most efficient means of reducing ozone in Houston, then, with Houston's assistance, Texas should submit a revision that is consistent with local emission and meteorological conditions.

SUMMARY OF COMMENTS RECEIVED

EPA has solicited public comment and critique on proposed revisions to the photochemical oxidant air quality standard during all phases of the standard development process. Prior to proposal (April 20, 1977), EPA announced (42 FR 20493) that it was reviewing and updating the criteria document and called for information that might be helpful in revising the document. Public comments were received on two drafts of the criteria document, and the public was invited to two meetings of the Subcommittee on Scientific Criteria for Photochemical Oxidants of EPA's Science Advisory Board. In addition, the Agency held a public meeting on January 30, 1978, to receive comments from interested parties prior to development of any formal Agency position on the initial proposed revision of the standard. In particular, EPA actively solicited the participation of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) in this meeting; several representatives of these groups offered comments at the meeting. The results of this meeting are discussed in the proposed regulation (43 FR 26970) and a transcript of the meeting is available in docket OAQPS 78-8.

Following proposal, EPA held four public meetings to receive comments on the proposed standard revisions. Meetings were held in Washington, D.C.—July 18; Atlanta, Ga.—August 17; Dallas, Tex.—August 22; and Los Angeles, Calif.—August 24; transcripts are available in docket OAQPS 78-8. In addition, 168 written comments were received during the formal comment period, which extended through October 16, 1978.

The principal comments and Agency responses are summarized in the following paragraphs (individual responses to comments are contained in docket OAQPS 78-8). EPA also received comments on the proposed standard after October 16. Although EPA does not have a legal obligation to review these comments, all significant issues raised in the post-October 16 comments have been addressed and responded to as part of the discussion of comments in this preamble. As with all other documents considered or examined by EPA as part of its decision process, these documents have been placed in the public docket and have

become part of the administrative record of this decision.

The majority of comments received (132 out of 168) opposed EPA's proposed standard revision, favoring either a more relaxed or a more stringent standard. State air pollution control agencies (and STAPPA) generally supported a standard level of 0.12 ppm on the basis of their assessment of an adequate margin of safety. Municipal groups generally supported a standard level of 0.12 ppm or higher, whereas most industrial groups supported a standard level of 0.15 ppm or higher. Environmental groups generally encouraged EPA to retain the 0.08 ppm standard.

Comments on the proposed revisions were received from five Federal agencies. Three of the agencies endorsed the proposed primary standard, but one of these agencies requested that EPA consider formulating the standard on a daily maximum hourly average basis. Another agency expressed concern that EPA had inadequately substantiated the rationale for raising the primary standard level and requested that the final revisions provide further analysis in this regard. Finally, the Executive Office of the President/Council on Wage and Price Stability suggested, through the Regulatory Analysis Review Group, that the proposed standard was unnecessarily stringent, recommending that EPA set the primary standard using an alternative methodology that focuses on the marginal costs per person-hour of ozone effects avoided.

Groups and individuals submitting comments are identified below:

COMMENTS RECEIVED ENDORSING CURRENT PRIMARY STANDARD LEVEL OF 0.08 PPM

ORGANIZATION AND AGENCIES

American Lung Association of Colorado
American Lung Association of Colorado, West Region
American Lung Association of Louisiana
American Lung Association of New Jersey
American Lung Association of New York State, Inc.
Bangor-Brewer TB and Health Association, Maine
California Lung Association
Connecticut State Department of Health
Environmental Confederation of Southwest Florida
Environmental Defense Fund
Ms. Nancy C. Fahden, Supervisor District Two, Contra Costa County (Calif.) Board of Supervisors
Florida Lung Association
Greenleaf Nurseries, Warsaw, Indiana
Issac Walton League, Manasota Chapter
League of Women Voters of the U.S.
League of Women Voters of Dallas, Texas
Maine Health Systems Agency
Maine Lung Association
Medford-Ashland Air Quality Maintenance Advisory Committee, Oregon
Michigan Lung Association
Michigan Lung Association, Saginaw Valley Region
National Air Conservation Commission, American Lung Association
Natural Resources Advisory Committee, Cedar Grove, N.J.
Natural Resources Defense Council
New Mexico Lung Association
Oregon Environmental Council
Oregon Lung Association
Queensboro Lung Association, Jamaica, N.Y.
Sierra Club
Sierra Club, Houston Chapter
South Shore (Ohio) Christmas Seal Association
Southwestern Ohio Lung Association
U.S. Department of the Interior
Washington Air Quality Coalition
Yale Environmental Law Association

Summary. 35 comments from organizations, agencies or their representatives and 38 comments from concerned citizens supporting the current primary standard level of 0.08 ppm.

COMMENTS RECEIVED ENDORSING PROPOSED PRIMARY STANDARD LEVEL OF 0.10 PPM

ORGANIZATIONS AND AGENCIES

Air Pollution Control League of Greater Cincinnati
Air Quality Advisory Committee, California Department of Health
California Air Resources Board
Coalition of Labor and Business (COLAB), Concord, California
Colorado Department of Health
Connecticut Department of Environmental Protection
Massachusetts Department of Environmental Quality Engineering
Public Health Service, U.S. Department of HEW
Regional Planning Commission for Jefferson, Orleans, St. Bernard and St. Tammany Parishes, Louisiana
Rhode Island Lung Association
Southern Alameda County Board of Realtors, California
U.S. Department of Energy
U.S. Department of Transportation
Wasatch Front Regional Council, Utah
Wayne County Department of Health, Michigan
Wisconsin State Department of Natural Resources

Summary. 16 comments from organizations, agencies or their representatives and 1 comment from a concerned citizen endorsing the proposed primary standard level of 0.10 ppm.

COMMENTS RECEIVED ENDORSING A PRIMARY STANDARD LEVEL OF 0.12 PPM

STATE AND LOCAL AGENCIES

Alabama Air Pollution Control Commission
Berkeley, Charleston, and Dorchester (S.C.) Council of Governments
City of Philadelphia, Pennsylvania
Georgia Department of Natural Resources
Indiana State Board of Health
Kansas Department of Health and Environment
Kentucky Department for Natural Resources and Environmental Protection
Maryland Environmental Health Administration
Michigan Department of Natural Resources
Nebraska Department of Environmental Control
Nevada Department of Conservation and Natural Resources
New York Department of Environmental Conservation
North Carolina Department of Natural Resources and Community Development
Pennsylvania Department of Environmental Resources
Tennessee Department of Public Health
Utah Bureau of Air Quality
Virginia Air Pollution Control Board

ORGANIZATIONS AND COMPANIES

Area Cooperation Committee of Tidewater and Virginia Peninsula Chambers of Commerce
Evansville, Indiana, Chamber of Commerce
Sierra Pacific Power Company
State and Territorial Air Pollution Program Administrators
Texas Oil Marketers Association
Vulcan Materials Company, Wichita, Kansas

Summary. 17 comments from State and local agencies and 6 comments from organizations and corporations supporting a primary standard level of 0.12 ppm.

COMMENTS RECEIVED ENDORSING A PRIMARY STANDARD LEVEL HIGHER THAN 0.12 PPM AND/OR CONTENDING PROPOSED STANDARD TOO STRINGENT

	Endorse standard higher than 0.12 ppm	Proposed standard too stringent
Organization or agency:		
American Petroleum Institute (API)	X	X
Association of Local Air Pollution Control Officials		X
Associated Building Industry of Northern California		X
Cook County Dept. of Environmental Control, Illinois		X
Dow Chemical Company	X	
Eastman Kodak Company	X	
General Motors Corporation	X	X
Great Plains Legal Foundation		X
Greater San Antonio Chamber of Commerce, Texas		X
Houston Chamber of Commerce, Texas		X
Iowa-Illinois Gas and Electric Company		X
Louisiana Air Control Commission	X	
Manufacturing Chemists Association		X
Monsanto Chemical Intermediates Co	X	X
Motor Vehicle Manufacturers Association	X	X
National Flexible Packaging Association	X	X
New Orleans Public Service, Inc	X	
Oklahoma State Dept. of Health		X

COMMENTS RECEIVED ENDORSING A PRIMARY STANDARD LEVEL HIGHER THAN 0.12 PPM AND/OR CONTENDING PROPOSED STANDARD TOO STRINGENT—Continued

	Endorse standard higher than 0.12 ppm	Proposed standard too stringent
Owens-Illinois	X	X
Rio Blanco Oil Shale Company	X	
St. Louis County, Missouri	X	
San Antonio Metropolitan Health District, Texas	X	
Shell Oil Company		X
Stearns-Roger, Inc., Denver, Colorado		X
Tennessee Eastmen Corp.		X
Texas Air Control Board	X	
Texas Chemical Council	X	
U.S. Council on Wage and Price Stability		X
Utah Manufacturers Association		X
Virginia Air Pollution Control Board		X
Western Oil and Gas Association		X
White River Shale Project		X

Summary: 15 comments from organizations, agencies, and companies and 4 comments from concerned citizens supporting a primary standard level higher than 0.12 ppm. 23 comments stating the proposed standard is too stringent.

The principal issues raised during the comment period relate to the following topics:

I. Health effect criteria and selection of the primary standard.

A. Definition of an Adverse Health Effect.

B. EPA's interpretation of cited studies.

C. Margin of safety.

D. Use of animal studies.

E. Exposure of sensitive groups.

F. Synergistic effects and chemical species designation of the standard.

II. Risk assessment method.

III. Welfare effects and the secondary standard.

IV. Implementation and attainability.

A. Value of hydrocarbon control and timing of SIP submissions.

B. Consideration of control costs.

C. Natural background concentrations.

V. Procedural issues.

The comments received have been reviewed and a document detailing their disposition has been placed in the rulemaking docket (OAQPS 78-8) for public inspection. The following sections summarize the significant comments and present the Agency's responses.

I. HEALTH EFFECT CRITERIA AND SELECTION OF THE PRIMARY STANDARD

A. DEFINITION OF AN ADVERSE HEALTH EFFECT

Comment. The proposed standard is unsuitable because EPA has never defined what constitutes "protection of public health." As a specific example, EPA has not shown that pulmonary function and ventilatory pattern changes are adverse health effects.

Agency Response. As stated in the criteria document, the available evidence regarding pulmonary function changes observed in clinical exposures of healthy subjects to ozone does not suggest that small changes in lung function (unaccompanied by discomfort symptoms or impairment of oxygen uptake) would interfere with normal activity in healthy individuals. However, even small changes in people with underlying respiratory disease such as asthma, chronic bronchitis, and emphysema can interfere with normal activity and, thus, may signal impairment of public health.

Comment. EPA should identify where adverse effects begin in the continuum of responses to pollutants.

Agency Response. In conducting a preliminary risk assessment, EPA interviewed several biomedical experts to obtain their judgments as to the risk of exceeding the threshold of adverse health effects in sensitive persons for alternative standard levels. An essential feature of this risk assessment procedure is the utilization of the experts' judgments as to the point in the continuum of physiological responses to ozone that must be exceeded for an adverse health effect to occur. As an example, discussions with several experts indicated that a 1 percent decrease in pulmonary function (e.g., forced expiratory volume 1-second test) would be inconsequential, whereas a 50 percent decrease would be a severe effect in sensitive persons; the experts' judgments varied as to the point at which adverse effects would begin, but fell within the range of a 5 to 15 percent decrease.

Comment. Quickly reversible irritation experienced for a short period of time is a welfare effect related to personal comfort and well-being and should therefore be considered in connection with the secondary standard.

Agency Response. The criteria document states that physical discomfort, as manifested by symptoms such as difficulty in breathing, chest tightness, and pain on deep inspiration, has usually been observed in clinical studies in conjunction with pulmonary function changes. Even when reversible, respiratory symptoms may restrict normal activity or limit the performance of tasks. In clinical studies, exposure of *healthy subjects* to realistic levels of ozone (0.3 ppm) has produced discomfort sufficient to prevent completion of experimental protocols, particularly when vigorous exercise was involved. Accordingly the criteria document concluded that increased rates of respiratory symptoms constitute impairment of public health. On this topic, a physician affiliated with the California Department of Health stated (docket OAQPS 78-8, IV-F-31) that it was his medical opinion that symptoms such as those described above constitute adverse health effects, inasmuch as they signal pulmonary function decrements and an increased pulmonary work load for affected individuals. He expressed his concern for the long-term effect of repeated exposure to levels of ozone sufficient to induce such symptoms. EPA concurs in this view and considers such symptoms, even though transitory, to be of concern in selecting the level of the primary standard.

B. EPA'S INTERPRETATION OF CITED STUDIES

1. *DeLucia and Adams (1977)*

Comments. (a) EPA misread the DeLucia and Adams study in claiming significant effects have been reported at 0.15 ppm for one hour.

(b) Mouthpiece breathing may have invalidated the DeLucia and Adams study.

(c) Since DeLucia and Adams demonstrated effects at 0.15 ppm in healthy individuals, more susceptible populations would be expected to sustain effects at lower levels.

Agency Responses. (a) EPA acknowledges that DeLucia and Adams failed to demonstrate any statistically significant decrements in pulmonary function resulting from exposure to 0.15 ppm for one hour. (The investigators did observe statistically significant decrements in pulmonary function resulting from exposure to 0.30 ppm for one hour.) In groups as small as those tested by DeLucia and Adams (six subjects), however, tests of statistical significance are difficult to interpret. The criteria document concluded that the study by DeLucia and Adams, although unreplicated, has raised the question of whether O_3 concentrations as low as 0.15 ppm exert effects in a portion of healthy subjects exercising vigorously. Indeed, DeLucia and Adams specifically state that the two most sensitive subjects sustained markedly impaired respiratory function and exercise ventilatory patterns during the two most stressful exercise protocols in the four ozone-exposure

experiments (i.e., both 0.15 ppm and 0.30 ppm).

Furthermore, DeLucia and Adams state that most of the subjects experienced subjective symptoms of discomfort (e.g., congestion, chest pain, and cough) when exposed to 0.15 ppm for one hour under the most stressful exercise protocol (equivalent to running about 6 miles in an hour). These symptoms occurred at a lower excercise rate when the subjects were exposed to 0.30 ppm. DeLucia and Adams did not report the incidence of these symptoms in a quantitative manner, but this fact does not remove EPA's concern about the implications for healthy persons such as those studied by DeLucia and Adams, or for more susceptible persons who may sustain more severe reactions or who may be affected at lower concentrations than those observed.

(b) As noted in the criteria document, persons tend to breathe through their mouths when exercising. Thus, DeLucia and Adams' utilization of mouthpieces to dispense O_3 probably represents actual exposures in persons who, in the course of their normal daily activities, are undergoing exercise.

(c) EPA agrees with this comment, as noted above. EPA considered the implications of this study for more susceptible members of the population in its determination of the margin of safety for the ozone standard.

2. *Schoettlin and Landau (1961)*

Comments. (a) There are still problems with reliance on this study because (1) ambiguities remain in its interpretation and (2) more recent studies of effects of ozone on asthmatics have failed to corroborate this study's conclusions.

(b) EPA's interpretation of the concentration at which Schoettlin and Landau correlated increased incidence of asthmatic attacks is unnecessarily conservative. There is good reason to believe that the 0.25-ppm oxidant concentration cited by Schoettlin and Landau was a daily peak (2-minute average) concentration rather than a daily maximum hourly average concentration, as EPA claims. Furthermore, the level of ozone occurring on these high oxidant days would have been less than the level of oxidant reported.

Agency Responses. (a) The criteria document recognizes limitations that make it difficult to interpret the Schoettlin and Landau study unequivocally. Nevertheless, Schoettlin and Landau did conclude that the proportion of asthmatics having attacks was significantly greater on days when the oxidant concentration exceeded 0.25 ppm than on days when the concentration was below that level. EPA does not believe that this conclusion has been refuted by more recent studies. The reported results of the recent epidemiological study by Kurata et al (1976) are qualitatively similar to those of Schoettlin and Landau. EPA's analysis (docket OAQPS 78-8, IV-A-1) of the data presented in the Kurata study indicates that a statistically significant elevation of the asthma index occurred on days when the maximum instantaneous (2-minute average) oxidant concentrations exceeded 0.28 ppm. While the exact hourly average equivalent of this value is not known, it must be less than or equal to 0.28 ppm, and is probably in the range of 0.20 to 0.27 ppm.

(b) EPA acknowledges that it is uncertain from Schoettlin and Landau's paper what averaging time was used in correlating oxidant concentration and incidence of asthma attacks. As stated in the criteria document, however, consultations with the authors have established that daily asthma attack rates were correlated with daily *maximum hourly average* oxidant levels. EPA considers that these consultations (docket OAQPS 78-8, IIA-C-2) have satisfactorily resolved the controversy regarding the averaging times used by Schoettlin and Landau.

EPA agrees with the comment that ozone levels may have been lower than the oxidant readings with which Schoettlin and Landau correlated asthma attack incidence. Ozone levels have been shown to range from approximatley 65 percent to nearly 100 percent of the total oxidant levels. This fact provides reason for concern that ozone in the ambient air at daily maximum hourly average concentrations less than 0.25 ppm may adversely affect asthmatic persons.

3. *Hammer et al. (1974)*

Comments. (a) This study has methodological problems (such as the failure to adjust the data for smoking habits and allergy histories) that undermine confidence in its conclusions.

(b) It is uncertain that oxidants caused the increase in symptoms observed in this study.

Agency Responses. (a) Hammer et al. conducted a longitudinal survey of an essentially constant group of subjects over a period of time. Consequently, in order for the authors' failure to adjust the data for smoking habits and allergy histories to have biased the results, the survey reponse pattern on high pollution days would had to have differed with respect to the distribution of smokers and allergic persons as compared with the pattern on low pollution days. Such an occurrence seems unlikely; furthermore, the criteria document noted that the results of this epidemiological study are generally consistent with the results of clinical exposure studies. This fact, along with the extensive data base evaluated (about 53,000 person-days of observation), enhances the reliability of Hammer's study.

(b) Hammer et al. found that symptom frequencies were more closely correlated to photochemical oxidants than to several other environmental parameters (e.g., carbon monoxide and nitrogen dioxide). In addition, the criteria document noted that the oxidant levels at which cough and chest discomfort were observed to increase in the student nurse population were quite similar to ozone concentrations that have been observed to produce impairment of pulmonary function and respiratory irritation in experimental exposures of healthy subjects performing intermittent light exercise (0.37 ppm for 2 hours). Consequently, it is reasonable to propose that photochemical oxidants—and specifically ozone in the ambient air—contributed substantially to observed increases in rates of cough, chest discomfort, and headache.

4. *Hazucha (1973)*

Comment. Results reported by Hazucha on impairment of pulmonary function at ozone levels of 0.25 ppm for 2 hours are not statistically significant.

Agency Response. The small number of subjects (three) examined at that exposure precludes the application of statistical methods to the results. The absolute value of the pulmonary function decrements (about 5 percent) is the more relevant factor in evaluating the results of this study.

As described in the criteria document, the small pulmonary function changes observed by Hazucha in a 2-hour exposure of healthy subjects undergoing intermittent light exercise lie along a continuum of responses when compared with results at higher concentrations and similar exposure regimes. There is no indication that 0.25 ppm is the threshold for that exercize level, and indeed the study by DeLucia and Adams (1977) has shown symptomatic effects in *healthy* individuals that are indicative of pulmonary function impairment at levels as low as 0.15 ppm under a more strenuous exercise protocol.

5. *Studies in which effects were not observed at levels above 0.15 ppm*

Comments. (a) The 1977 National Academy of Sciences (NAS) document, Ozone and Other Photochemical Oxidants, was cited in several comments as concluding that effects in human subjects have been observed only from ozone exposures above 0.25 ppm.

(b) Linn et al. (1978) failed to find any significant pulmonary effects in asthmatics exposed to 0.20-0.25 ppm for 2 hours under conditions of heat and exercise.

(c) Hackney et al. (1975) observed human health effects only at exposures above 0.25 ppm for 2 hours.

Agency Responses. (a) The NAS document states that "some limited studies show evidence of human health effects of exposure to pure ozone at concentrations as low as 0.25 ppm * * *" This document was prepared before publication of the DeLucia and Adams study, which suggests effects at lower levels. Furthermore, this NAS document in no way concludes that effects resulting from ozone, as it occurs in the ambient photochemical mix, do not occur at concentrations below 0.25 ppm.

(b) Although Linn et al. found statistically significant changes in one of several measures of pulmonary function in their laboratory study, the manner in which the investigators conducted the study (e.g., persons with marked respiratory disability were excluded from the study) and analyzed the data are such that the observed results probably underestimate the effects that would occur at similar ambient exposure levels. There was a slight increase in symptom scores during ozone exposure, and statistically significant changes in blood biochemical factors were observed. While the clinical significance of these latter changes is uncertain, they do represent alterations in normal body functions and cannot be discarded in selecting a standard that protects public health with an adequate margin of safety.

(c) Although the criteria document states that Hackney et al. observed no lung function changes of note at 0.25 ppm for 2 hours even among "reactive" subjects (persons giving a history of cough, chest discomfort, or wheezing in response to allergy or air pollution exposure), closer inspection of the Hackney et al. (1975) studies reveals that dose-response relationships hold for sensitive subjects for lung function and blood biochemical effects across the range of exposure from 0.20 to 0.50 ppm ozone.

6. *Other Human Studies*

Comments. (a) Von Nieding et al. (1976) have demonstrated effects on pulmonary function of healthy individuals at 0.10 ppm ozone.

(b) EPA cannot justify a conclusion that Japanese epidemiological studies indicate a risk of symptomatic effects in human beings from ozone exposures below 0.15 ppm for one hour.

Agency Responses. (a) EPA is concerned about the findings of von Nieding et al. showing decreased oxygen pressure in arterialized blood and increased airway resistance after 2 hours of exposure to 0.10 ppm ozone and intermittent light exercise. The criteria document points out, however, that the investigators used non-standard physiologic measurement methods. Thus, although von Nieding's findings cannot be ignored in the standard-setting process, they are unconfirmed, and must be interpreted cautiously.

(b) Makino and Mizoguchi (1975) reported an epidemiological study of Tokyo students that showed increased rates of discomfort symptoms on days when the oxidant level (believed to be a daily maximum hourly average concentration) exceeded 0.15 ppm as compared with days when it fell below 0.10 ppm. The criteria document reviewed this and several other Japanese epidemiological studies, and concluded that the studies were appropriately designed but that it is very difficult to interpret their results. In setting a standard with an adequate margin of safety, however, EPA must consider evidence such as these Japanese studies and must evaluate the uncertainties which medical research has not yet resolved.

7. *Validity of Clinical Studies in General*

Comment. At the August 22, 1978 public hearing in Dallas, testimony was presented alleging that the ozone generators used in clinical health studies produce other toxic materials in addition to ozone. Experimental data obtained using a new total oxidant monitoring method indicated that these additional oxidants were present in large quantities (as high as 300 percent greater than ozone). It was hypothesized that the adverse effects noted in clinical studies may be preponderantly caused by the additional oxidants and not ozone.

Agency Response. EPA has concluded that the experimental evidence offered to support these findings is unconvincing and cannot be substantiated. The results of an experimental program initiated by EPA after the Dallas hearing indicate that the new monitoring technique which supposedly measured ozone and any additional oxidants has a variable chemical reaction relationship (stoichiometry) with ozone depending on whether or not oxygen is present. The higher oxidant readings obtained by this technique appear to result from this variable stoichiometry rather than representing the presence of any additional non-ozone oxidants. Furthermore, an exhaustive search for such oxidants in the output of ozone generators operating under various conditions (using as the input stream either dry or humidified tank air or oxygen, with very low or background concentrations of hydrocarbons, mostly methane) failed to produce any evidence of non-ozone oxidants. Consequently, EPA judges the hypothesis offered by this comment to be experimentally unsupportable. A report documenting the results of EPA's experimental program has been placed in the docket (OAQPS 78-8, IV-A-2).

C. MARGIN OF SAFETY

Comment. EPA has proposed a standard with an inappropriate margin of safety. The margin of safety was criticized as being either inadequate or too great.

Agency Response. The Clean Air Act requires that EPA set air quality standards that are requisite to protect the public health, allowing an adequate margin of safety. As stated in the legislative history of the Clean Air Act, the standard must protect against hazards that research has not yet identified. EPA feels that the decision regarding an adequate margin of safety is a *judgment* which must be made by the Administrator after weighing *all* the medical evidence bearing on ozone. The factors to be taken into account include inconclusive evidence as well as findings from studies that are considered definitive and not subject to challenge. For example, in selecting an adequate margin of safety, the Administrator must consider: (1) findings from animal studies that show increased susceptibility to infectious respiratory disease and other serious effects at relatively low ozone levels, (2) the concern that health studies may not always reflect the health impact in more sensitive segments of the population, and (3) studies suggesting that ozone may produce an enhanced effect when combined with other air pollutants commonly present in the urban atmosphere but not present in clinical study chambers.

D. USE OF ANIMAL STUDIES

Comment. EPA has failed to give appropriate consideration to the results of animal studies, especially those involving young animals and those examining reduced resistance to infection.

Agency Response. EPA is concerned about the studies which have demonstrated effects in young animals and decreased resistance to infection in animals exposed to ozone. The infection effect has been demonstrated at exposures as low as 0.08 ppm for 3 hours. The criteria document concluded that these findings have definite human health implications, although different exposure levels may be associated with such effects in humans. For this reason, these results cannot be the sole factor used in selecting the level of the primary standard. However, as is the case with other inconclusive evidence, EPA must consider these studies in selecting an adequate margin of safety.

Comment. There is no evidence of reduced resistance to infection in epi-

demiologic studies in places such as Los Angeles.

Agency Response. Epidemiological studies have been inconclusive in demonstrating this effect in man. However, EPA does not agree with this comment. The study by Durham (1974) of air pollution effects on college students, indicates that rates of new illness increase following short-term exposures to elevated pollutant concentrations. The pollutant variable most strongly associated with illness was peak oxidant. Also, several studies documenting increased levels of mucous membrane irritation during periods of ozone exposure suggest indirectly that susceptibility to infection may rise during these periods. Furthermore, although animal study findings cannot be directly extrapolated to man, the criteria document concludes that the reactions observed in mice represent effects on basic biological responses to infectious agents, and there is no reason to believe that the pollutant-induced alterations of basic defense mechanisms that occur in mice could not occur in human beings. Thus, these studies cannot be ignored in the standard-setting process.

E. EXPOSURE OF SENSITIVE GROUPS

Comment. EPA is being unnecessarily stringent in selecting the sensitive population. The standard could be much less stringent without endangering the health of such persons if EPA accounted for the portion of time that persons are indoors and, thus, not exposed to higher ambient concentrations.

Agency Response. The legislative history of the Clean Air Act makes quite clear Congress' intention to protect sensitive persons (asthmatics and emphysematous patients are cited as examples) who in the normal course of daily activity are exposed to the ambient environment. Air quality standards are to be established with reference to protecting the health of a representative sample of persons comprising the sensitive group rather than a single person in such a group. Standards must be based on a judgment of a safe air quality level and not on an estimate of how many persons will intersect given concentration levels. EPA interprets the Clean Air Act as providing citizens the opportunity to pursue their normal activities in a healthy environment.

F. SYNERGISTIC EFFECTS AND CHEMICAL SPECIES DESIGNATION OF STANDARD

Comment. There were objections to the proposed change of the chemical designation of the standard from photochemical oxidants to ozone because the health impacts of photochemical air pollution arise not only from ozone, but also from the spectrum of other gaseous and particulate pollutants that co-exist with ozone. There was also concern that the change in the chemical designation signalled a change in emphasis in oxidant control efforts that would impede progress in the reduction of non-ozone components of the photochemical oxidant mixture such as peroxyacetylnitrate (PAN). Specific concern was expressed regarding the eye-irritating components of the mixture, since at ambient levels ozone alone is not an eye irritant.

Agency Response. Certain clinical studies (such as Hazucha and Bates, 1975) have demonstrated the potential for greater health impacts resulting from exposure to ozone in combination with other pollutants which occur in the ambient air than from exposure to ozone alone. The ozone standard is not intended merely to protect against the levels of ozone that have been demonstrated to produce effects in clinical studies where subjects have been exposed to highly purified air to which ozone alone has been added. Rather, setting an ozone standard with an adequate margin of safety involves, among other considerations, evaluating the effects of ozone as it occurs in the ambient air, in combination with other pollutants.

One reason for changing the chemical designation of the standard from photochemical oxidants to ozone is to correct an inconsistency between the title of the standard (photochemical oxidants) and the chemical species (ozone) that has always been measured by the reference method used to estimate ambient oxidant levels and determine compliance with the standard. Consequently, no redirection of control efforts is contemplated; i.e., reductions in hydrocarbon and nitrogen oxide emissions will continue to be required in order to reduce the levels of the secondarily generated pollutant (ozone) measured to determine compliance with the standard.

The criteria document examined the issue of whether or not measures taken to reduce ozone will also reduce other manifestations of photochemical pollution such as eye irritation. The evidence from laboratory and theoretical studies indicates that, for urban atmospheres, reductions in hydrocarbon and nitrogen oxide emissions should have even greater impacts on ambient PAN than on ambient ozone. Similarly, laboratory data suggest a linear relation between hydrocarbon emissions and ambient levels of photochemically produced aldehydes. Since PAN and such aldehydes as fomaldehyde and acrolein are know to be eye irritants, the criteria document concludes that emission control measures for ozone reduction will probably have a positive effect on reducing eye irritation in those situations where eye irritation is associated with photochemical processes (e.g., Los Angeles).

II. RISK ASSESSMENT METHOD

Comment. The risk assessment method should not be used at this time because it has not been reviewed adequately by the Science Advisory Board or the scientific community.

Agency Response. The risk assessment method is not being used to set the ozone standard. In determining what ozone standard has an adequate margin of safety, however, the findings of the initial application of the risk assessment method to ozone have been considered. EPA agrees that the method has not received sufficient review. The method will be published in the open literature and the Science Advisory Board is forming an ad hoc subcommittee to review the method.

Comment. EPA's risk assessment method is incomplete.

Agency Response. EPA agrees with the comment. As applied to ozone, the risk assessment method assesses the risk (probability) that ozone would contribute to health effects in some sensitive people if alternative standards were just met. A complete risk picture would also include information on:

(a) a best point estimate of the number of people affected;

(a') the "expected number" (in a statistical sense) of people affected;

(a") various risks (probabilities) that the actual number of people affected would be various amounts greater than the expected number;

(b) a best point estimate of the amount of health damage;

(b') the "expected" health damage; and

(b") various risks (probabilities) that the actual health damage would be various amounts greater than the expected health damage.

As noted in the draft EPA document explaining the risk assessment method, there are complex technical problems that must be dealt with in responsibly developing information of this type suitable for use in setting National Ambient Air Quality Standards. EPA is presently developing the capability to generate this type of information and will only consider its risk assessment method complete when the method includes this capability.

Comment. The main problem with the risk assessment method stems from its purpose. Instead of estimating health damage, EPA provides a table of risk numbers without providing an estimate of their health significance; these numbers serve no function.

Agency Response. EPA agrees that the risk estimates provided do not serve the function of estimating

health damage, but the Agency does not agree that the estimates are without value. The function of these estimates is to indicate the varying risk (or probability) that some sensitive people would suffer health effects in a given period of time if alternative ozone standards were just met. For each health effect category, the response that is of sufficient concern to be deemed a health effect has been decided upon and its seriousness described. As EPA interprets the Clean Air Act, this determination, which is an important step in the process of setting National Ambient Air Quality Standards, is a function that is to be served by a risk assessment.

There were many comments on both the procedural and the technical aspects of the risk assessment method. EPA will consider these comments in the detailed responses to be placed in the docket. Some of the comments identify improvements that can be made in the risk assessment method, while others reflect misunderstandings that will be dealt with in the detailed docket responses. Some of the comments provide discussion and opinions on various complex issues that arise in the conduct of a program involving the difficult subject areas of risk assessment and standard-setting methodology. EPA will take these comments into advisement as it develops its risk assessment and standard-setting methodologies.

III. Welfare Effects and the Secondary Standard

Comment. EPA's proposal to retain the existing secondary standard is based entirely on evidence of possible damage to extremely sensitive vegetation. An adequate economic analysis that considers the incremental costs and benefits of alternative secondary standard levels should be conducted. EPA should then weigh the economic costs of pollution control measures against the benefits of reduced damages from lower ozone concentration levels before setting a secondary standard.

Agency Response. The Clean Air Act requires EPA to set a national secondary ambient air quality standard at a level that, in the judgment of the Administrator, is requisite to protect the public welfare from any known or anticipated adverse effects. The term "public welfare," which is defined in Section 302(h) of the Clean Air Act, includes among other things effects on crops, vegetation, wildlife, visibility, and climate, "as well as effects on economic values and on personal comfort and well-being."

EPA has carefully examined the data presented in the criteria document concerning ozone-related damage to vegetation, crops, materials, and visibility. A staff paper, "Evaluation of Alternative Secondary Ozone Air Quality Standards," has been placed in the docket (OAQPS 78-8, IV-A-3).

With regard to damage to materials, the paper concludes that no effect-based rationale can be offered to decide the level of the secondary standard. Damage to materials is linearly related to the total dose sustained by the material. As a result, the annual average concentration will determine the rate at which material damage occurs. Current evidence indicates that annual average concentrations for remote rural areas are comparable to urban areas, due to strong night-time scavenging of ozone in urban areas by man-made pollutants. Reducing the peak 1-hour concentration in urban areas will have virtually no impact on the annual average concentration. Therefore, there would be no measurable reduction in materials damage if a more stringent secondary standard level was selected.

The criteria document states that there is a limited amount of data suggesting an association between ambient ozone and visibility degradation, particularly in the Los Angeles area. On the basis of EPA's evaluation to date of the information presented in the criteria document, however, EPA is unable to conclude at this time that a secondary ozone standard more stringent than the primary standard is necessary to prevent visibility deterioration. The relationship between visibility and abmient ozone will be considered further in the development of subsequent PSD programs designed to protect against significant deterioration of air quality.

Finally, EPA has concluded that there is currently no evidence indicating that a significant decrease in yield or growth or commercially important crops or indigenous vegetation will result from the long-term (growing season) mean of the daily maximum 7-hour-average ozone concentrations which is expected to occur when the primary standard is attained. Consequently, EPA does not believe that a secondary standard more stringent than the primary standard is necessary to protect vegetation from ozone-related yield reduction effects.

On the basis of these conclusions, EPA does not believe that a detailed cost-benefit analysis of alternative standard levels is required, since a secondary standard more stringent than the primary standard is not necessary to protect the public welfare adequately.

Comment. The current secondary standard of 0.08 ppm should be retained to protect vegetation and crops. There is singificant reduction in growth and yield to crops exposed to 0.10 ppm of ozone.

Agency Response. The claims that significant reduction in growth and yield occurs in crops as a result of short-term exposures to ozone at levels around 0.10 ppm are undocumented. While sensitive plants may incur foliar injury at low ozone levels, there is currently no evidence that significant yield or growth effects in commerically important crops or indigenous flora are associated with the long-term (growing season) mean of the daily maximum 7-hour-averaging ozone concentrations expected to occur when the primary standard is attained. Consequently, EPA does not believe that a secondary standard more stringent than the primary standard is necessary to prevent ozone-related yield reduction effects in vegetation.

IV. Implementation and Attainability

A. Value of Hydrocarbon Control and Timing of SIP Submissions

EPA received comments on the effectiveness of hydrocarbon controls in reducing levels of ozone in the ambient air as well as on the issue of whether or not the statutory deadline for submission of revised State Implementation Plans (SIPs) for nonattainment areas should be postponed because of the changes in the photochemical oxidants standard. The Agency responses to these comments are contained in the accompanying Federal Register notice dealing with the revision of the 40 CFR Part 51 regulations pertaining to the implementation of the standard.

B. Consideration of Control Costs

Comment.

Cost of control should be considered in selecting the level of the primary standard.

Agency Response. The Agency's position with respect to control cost consideration was stated in the preamble to the proposed regulation (43 FR 26963); this position remains unchanged. The Clean Air Act specifies that primary National Ambient Air Quality Standards are to be based on scientific criteria relating to the level that should be attained to protect public health adequately. Considerations of cost of achieving these standards or of the existence of technology to bring about needed reductions of emissions are not germane to such a determination, as the words of the Act and its legislative history clearly indicate. EPA has, however, analyzed the cost and economic impacts of the control programs required to attain alternative ozone standard levels in order that the public may be better informed

of the consequences of the Agency's decision. This analysis and the comments received in response to it are available to the States for their use in developing strategies to implement the standard.

Comment. The cost estimates presented in EPA's cost and economic impact assessment document are understated.

Agency Response. EPA has carefully reviewed and considered these comments and is publishing a revised economic impact assessment, which is available from Mr. Padgett at the previously mentioned address.

C. NATURAL BACKGROUND CONCENTRATIONS

Several comments were made regarding the contribution of natural sources to ambient ozone concentrations. These comments focus on (1) the extent to which natural background was considered in developing the proposed standards and related control programs and (2) the attainability of these standards, considering the possibility that natural background may at times contravene the proposed levels. Some of the comments suggested that EPA ignored, or did not adequately consider, natural background in developing the proposed standards and related control programs. While this topic was not emphasized in the preamble to the proposed rulemaking, EPA was, and is, cognizant of the background levels that can be attributed to natural sources. This matter was treated extensively in the revised criteria document. Furthermore, EPA procedures for preparation of control plans recommend allowance for natural background in developing control strategies for ozone.

For several years, EPA has been conducting an active field and laboratory research program seeking to determine the nature and extent of background concentrations of ozone. The results of these studies have been widely publicized in EPA reports, scientific literature, and public conferences. One comment suggested that EPA had ignored evidence of natural source impacts reported in contract work conducted for the Agency and that this information had not been released for public review. Actually, all pertinent information available to EPA was considered. However, there may have been some contractually developed information that had not been released or could not be specifically cited because the contract studies were still in progress and the resulting data had not been fully validated or analyzed. Subsequent to the comment, all information in question were released publically or arrangements have been made to release them as soon as possible.

EPA's review of data related to the background contribution leads the Agency to conclude that such levels are usually well below the proposed levels of the standard, especially during the season of the most active production of photochemical ozone. It is possible, however, that natural events could occasionally cause contravention of the promulgated standard levels. EPA policy (see 40 CFR 51.12(d)) permits data for such occurrences to be disregarded for regulatory purposes. Such events are usually distinguishable because they tend not to coincide with conditions conducive to buildup of man-caused, photochemically produced ozone. Field measurements at some remote sites, where man-caused ozone is likely to be negligible, have shown low—but not insignificant—rates of exceedances of the 0.08-ppm level originally proposed for the secondary standard. The frequencies decrease markedly for concentrations above 0.12 ppm, so that natural exceedances of the standards being promulgated can be considered quite rare at any particular location.

One comment indicated that stratospheric tracer levels measured at surface sites increase by about 40 percent between the front and back side of high pressure systems in the Eastern United States, thus suggesting that stratospheric ozone, through subsidence and horizontal circulation in highs, plays a significant role in the widespread buildup of ozone that tends to occur in the back side of highs in the Eastern U.S. during the photochemically active season. EPA's estimate is that, even if commonly occurring natural ozone background were increased by 40 percent, the resulting concentration would be insufficient to exceed the standard levels being promulgated. Also, a corresponding increase between the tracer and ozone of stratospheric origin would not be expected, since the tracer is chemically stable near the surface, while ozone is rapidly depleted by reactions with surfaces and with air contaminants.

Some comments referred to a possibly significant contribution to ozone concentrations from reactions involving organic compounds emitted by vegetation. Such emissions are abundant, relative to man-made emissions, but are relatively diffuse spatially. Some of the comments cited a recent statistical study that reported a high correlation between vegetative growth in the Bay Area of California, as indicated by winter rainfall, and the frequency of days with concentrations above 0.08 ppm. EPA has not, however, seen sufficient physical evidence of a relative abundance of natural organics or associated ozone increases in ambient air to consider vegetative sources as significant contributors to high ambient ozone levels. The principal source of natural ozone is still considered to be the stratosphere, with gradual transfer accounting for the more commonly observed background levels, and sporadic intrusions being the principal cause of anomalous high values.

Although research will continue to assess more definitively the contribution of natural sources of ozone, EPA believes that adequate consideration has been given to this issue in developing control programs and implementation guideline documents.

V. PROCEDURAL ISSUES

Comment. EPA's use of an "Advisory Panel on Health Effects of Photochemical Oxidants" was procedurally incorrect in that certain legal requirements on establishment and use of Advisory Committees were not met.

Agency Response. The ad hoc Advisory Panel consisted of a group of medical experts retained by EPA as consultants for the purpose of obtaining their interpretation of the evidence presented in a preliminary version of the criteria document. As such, EPA did not regard the Panel as an advisory body within the meaning of the Advisory Committee Act of 1972. In any case, the Panel's report has been in the docket and subject to comment since proposal, and bases for its recommendations have been fully aired.

Comment. In revising its criteria document, EPA failed to comply with the recommendations of the statutory scientific review body, the Science Advisory Board (SAB), as evidenced by the SAB's refusal to approve the criteria document.

Agency Response. The function of the Science Advisory Board subcommittee is to advise EPA regarding the scientific and technical accuracy, the manner of presentation, and the adequacy of the criteria document. Inevitably, no two scientists ever agree completely on the importance, accuracy and manner of presentation of data. In the final analysis the responsibility for the criteria document rests with EPA and, therefore, the decision regarding the content of the document must also rest with EPA.

EPA solicits the advice of its scientific advisors and has attempted to respond to the specific comments made by members of the SAB subcommittee established to review the criteria document by incorporating suggested changes in the document. Following the last SAB subcommittee meeting in Febrary 1978, members of the subcommittee who had specific comments were consulted by EPA personnel, and

their comments and criticisms were discussed with them prior to making the changes in the document. It has always been Agency policy that once the EPA staff had considered the changes suggested by the SAB and, where appropriate, incorporated them into the criteria document, the Agency would proceed with publication. Consequently, EPA feels that the criteria document adequately reflects the latest scientific knowledge pertaining to the effects of ozone and other photochemical oxidants.

Comment. EPA has failed to submit the proposed standard to the SAB for review as required by the Environmental Research, Development, and Demonstration Authorization Act of 1978 (Pub. L. 95-155). EPA should do so before promulgating the standard.

Agency Response. The development of the ozone standard revision, which began in 1976, followed the procedural process in place before the enactment of Public Law 95-155. Accordingly, the SAB was asked to review only the criteria document. The independent committee established in accordance with the 1978 Act held its first session in October 1978, when there was not adequate time for it to review the standard. The thorough review of the technical and scientific basis for the criteria document, which is in turn the basis for the standard, substantially complies with the objectives of the Act.

Selecting the Level of the Primary Standard

EPA's objective in setting the standard level is to select an ozone concentration that will reflect an accurate consideration of the existing medical evidence and an adequate assessment of the uncertainties in this evidence, and, thus, will protect all population groups with an adequate margin of safety.

The criteria document supports the contention that a clear threshold of adverse health effects cannot be identified with certainty for ozone. Rather, there is a continuum consisting of ozone levels at which health effects are certain, through levels at which scientists can generally agree that health effects have been clearly demonstrated, and down to levels at which the indications of health effects are less certain and harder to identify. Given such a body of evidence, in selecting a standard with an adequate margin of safety the decisionmaker is taking into account the uncertainty about whether a possible standard will prevent adverse health effects.

This uncertainty results from several factors. First, human susceptibility to health effects varies, and we cannot be certain that experimental evidence has accounted for the full range of susceptibility. Second, we cannot be certain that all effects occurring at low ozone levels have been identified and demonstrated. Third, variations in weather create uncertainty as to the expected annual maximum ozone concentrations.

The Clean Air Act, as the Administrator interprets it, does not permit him to take factors such as cost or attainability into account in setting the standard; it is to be a standard that will adequately protect public health. He recognizes that controlling ozone to very low levels is a task that will have significant impact on economic and social activities. This recognition causes him to reject as an option the setting of a zero-level standard as an expedient way of protecting public health without having to decide among uncertainties. However, it is public health, and not economic impact, that must be the compelling factor in the decision. Thus, the decision as to what standard protects public health with an adequate margin of safety is based on the uncertainty that any given level is low enough to prevent health effects, and on the relative acceptability of various degrees of uncertainty, given the seriousness of the effects.

In selecting the proper level for the standard, EPA must make assessments and judgments in five critical areas:

1. Reported effect levels from human studies.
2. Characterizing the sensitive population.
3. Nature and severity of effects.
4. Probable adverse health effect level in sensitive persons.
5. Judgment of a standard level below the probable effect level that provides an adequate margin of safety.

Reported Effect Levels

In the preamble to the proposed standard (43 FR 26965), EPA presented a table of demonstrated effect levels in man ranging from 0.15 to 0.30 ppm. On the basis of suggestions received during the comment period, that table has been expanded to include a greater number of studies where effects have been reported. EPA believes that this is a more complete representation of the medical evidence since it includes some less conclusive studies at low levels that cannot be discarded in weighing the full body of health data. Nonetheless, the table must be used with caution and in conjunction with qualifying statements made in the criteria document regarding the technical merit of each study, particularly the less conclusive studies at lower concentrations.

While this table does not provide an undisputed value for adverse health effect levels in sensitive individuals, it does indicate that normal body functions are most likely disrupted at relatively low ozone concentrations. The studies also indicate that the intensity and significance of effects increases as the pollutant level increases. The reported findings leave open the question of increased intensity of effects in more sensitive persons and the concern that effects reported in some studies may occur at lower concentrations when ozone is present in combination with other urban pollutants.

[6560-01-C]

REPORTED EFFECT LEVELS

Compilation of Results Reported in Human Studies Examining Ozone or Oxidant Exposure

Concentration, ppm	Exposure Duration, hours (for clinical studies); Averaging time (for epidemiological studies)	Pollutant Measured (O_3 = ozone, O_x = oxidant)	Reported Effect(s)	Reference(s)
0.01 - 0.30	hourly average	O_3	Lung function parameters in about 25% of Japanese school children tested were significantly correlated with O_3 concentrations (over the range of 0.01 - 0.30 ppm) in the 2 hours prior to testing.	Kagawa and Toyama (1975); Kagawa et al. (1976)
0.03 - 0.30	hourly average	O_x	Although significant correlation was observed between decreased athletic performance and O_x concentrations in the range of 0.03 - 0.30 ppm, the criteria document states that inspection of the data reveals no obvious relationship between performance and O_x values below 0.10-0.15 ppm.	Wayne et al. (1967)
0.10	2	O_3	Decreased O_2 pressure in arterialized blood, increased airway resistance observed using nonstandard measurement techniques.	von Nieding et al. (1976)
0.10 - 0.15	probably daily maximum hourly average	O_x	Increased rates of respiratory symptoms and headache were reported by Japanese students on days when O_x concentrations exceeded 0.15 ppm as compared to days when O_x concentrations were less than 0.10 ppm.	Makino and Mizoguchi (1975)
0.15	1	O_3	Subjective symptoms of discomfort were observed by most subjects, and discernible but not statistically significant changes in respiratory patterns occurred while performing vigorous exercise.	DeLucia & Adams (1977)
0.20	3	O_3	Reduction in visual acuity (night vision) observed.	Lagerwerff (1963)
0.20 - 0.25	2	O_3	Asthmatic patients exposed under intermittent light exercise conditions showed no statistically significant changes in respiratory function. Symptom scores increased slightly during O_3 exposures. Small but statistically significant blood biochemical changes occurred.	Linn et al. (1978)
0.25	2	O_3	Small changes in lung function were observed in 3 subjects performing intermittent light exercise.	Hazucha (1973)
0.25	2 and 4	O_3	No lung function changes of note were observed in "reactive" subjects (who had histories of cough, chest discomfort or wheezing associated with air pollution or allergy) while performing intermittent, light exercise.	Hackney et al. (1975)
0.25	daily maximum hourly average	O_x	The average number of asthma patients having attacks was statistically significantly elevated on days when O_x levels exceeded 0.25 ppm.	Schoettlin and Landau (1961)
0.25	0.5 - 1	O_3	Blood samples of exposed subjects had increased rates of sphering of red blood cells	Brinkman et al. (1964)
0.28	daily maximum instantaneous (2-minute) average	O_x	Although the reported results are inconclusive, EPA's examination of the evidence presented suggests exacerbation of asthma when O_x levels are above 0.28 ppm.	Kurata et al. (1976)
0.30	1	O_3	Subjective symptoms of discomfort and statistically significant changes in pulmonary function were observed in subjects undergoing vigorous exercise.	DeLucia and Adams (1977)
0.30	daily maximum hourly average	O_x	Increased rates of cough, chest discomfort, and headache were observed in student nurses on days when the O_x concentrations exceeded 0.30 ppm.	Hammer et al. (1974)
0.37	2	O_3	Discomfort symptoms and significant changes in lung function were observed in subjects undergoing intermittent light exercise.	Hazucha et al. (1973); Folinsbee et al. (1975); Silverman et al. (1976)
0.37 0.37	2 2	O_3 SO_2	Exposure to O_3 and SO_2 together produced changes in lung function substantially greater than the sum of the separate effects of the individual pollutants.	Hazucha and Bates (1975)
0.37 0.37	2 2	O_3 SO_2	The observed O_3 - SO_2 interactive effect on lung function was considerably smaller than that seen by Hazucha and Bates. The authors concluded that the earlier study probably more nearly simulated a smog episode in regions having high oxidant and sulfur pollution.	Bell et al. (1977)

SENSITIVE POPULATION

The legislative history of the Clean Air Act indicates that, in setting primary ambient air quality standards, EPA is to direct its efforts at groups of "particularly sensitive citizens such as bronchial asthmatics and emphysematics who in the normal course of daily activity are exposed to the ambient environment." (U.S. Senate Serial No. 93-18, 93d Cong. 2d Sess. p. 410).

Clinical and epidemiological studies have shown that persons with chronic obstructive airway disease, particularly asthmatics, appear most sensitive to changes in ozone concentrations. This sensitivity results from the fact that their airways are hyper-reactive to irritants such as ozone. These people are, thus, judged to be the principal sensitive group of concern in setting the standard.

Studies have also established that exercise effectively increases the ozone dose delivered to the target tissues in the respiratory tract. Thus, persons engaging in exercise are particularly vulnerable to the acutely irritating effects of ozone. The response of these groups to such changes in concentrations has not, however, been systematically studied.

NATURE AND SEVERITY OF EFFECTS

Impaired Pulmonary Function and Clinical Symptoms—Ozone is a pulmonary irritant that affects the mucous lining, other lung tissue, and respiratory function. Changes in lung function appear as increased airway resistance and as reductions in vital capacity, expiratory flow rates, and diffusion capacity. These effects are greater in exercising individuals and individuals with hyper-reactive airways (i.e., individuals with a history of developing symptoms during light activity in smog or history of asthma). Changes in lung function are accompanied by clinical symptoms such as coughing, chest tightness, and lower chest soreness.

Because the human respiratory system is endowed with a large reserve, even airway-resistance increases of 50 to 100 percent will not ordinarily be perceived in normal individuals. As stated in the criteria document, however, two considerations suggest that oxidant-associated changes in lung function may signal impairment of public health. first, in people with underlying respiratory illness such as asthma, chronic bronchitis, and emphysema, even small decrements in lung function often interfere with normal activity. Second, at experimental ozone concentrations as low as 0.30 ppm, decrements in lung function have usually been accompanied by physical discomfort, as manifested in symptoms such as sore throat, chest pain, cough, and headache. At times this discomfort has been great enough to prevent the completion of experimental protocols, particularly when subjects have been exercising vigorously. It appears quite likely that the pulmonary irritant properties of ozone (and perhaps other oxidants) underlie both the discomfort and the decrements in function. Thus, at least when associated with ozone exposure, changes in lung function often represent a level of discomfort which, even among healthy people, may restrict normal activity or impair the performance of tasks.

Decreased Resistance to Infection—This effect is represented by an increased rate of mortality in laboratory animals subjected to both a bacterial challenge and exposures to ozone. According to some studies, the effect may be enhanced by the addition of such stresses as exercise or the addition of other pollutants in combination with the ozone dose. Despite the uncertainties involved in predicting human effects from animal studies, medical experts agree that decreased resistance to infection probably does occur in man. The Durham study (1974) reporting increased illness in college students following periods of elevated pollution levels (with peak oxidant being the pollution variable most strongly associated with illness) reinforces this hypothesis and adds to EPA's concern about the relationship of ozone to the occurrence of such an effect in man.

Aggravation of Chronic Respiratory Disease—Although the relationship between ambient oxidant or ozone levels and chronic pulmonary disease has not been fully assessed, available evidence suggests that the incidence and severity of asthma attacks increase when short-term total oxidant concentrations exceed 0.25 to 0.28 ppm. Also, several investigators have reported a relationship between short-term oxidant exposure and aggravation of other chronic obstructive lung diseases. However, their reports are inconclusive since short-term fluctuations in cigarette smoking habits were not considered in their data analyses.

Air pollution is one of the many stresses that can precipitate an asthma attack or worsen the disease state in persons with chronic cardiopulmonary disease. Other factors that can precipitate attacks include respiratory infections, passage of cold fronts, seasonal pollens, extreme heat or cold, and emotional disturbances.

Eye Irritation—Eye irritation is associated with selected chemical species (such as PAN) in the photochemical oxidant mix and with other organic vapors. While there is no evidence that eye irritation is produced by ozone, an ozone standard will serve to limit this effect because control measures that reduce ozone will also reduce the eye-irritating components in the total oxidant mix.

Biochemical Effects—Experimental exposures of human subjects to ozone have produced changes in blood biochemistry, such as increased fragility of red blood cells and altered enzyme activities in the serum. The significance of these ozone-mediated changes is not yet known, but the criteria document states that changes of the magnitude observed in human experimental exposures have not yet been linked to any clinical diseases.

Carcinogenic, Mutagenic and Related Effects—Studies have been conducted in an attempt to relate ozone to carcinogenic, mutagenic, and related effects. Available evidence in these areas is not particularly helpful in setting ambient ozone standards because most of the studies have not yet been replicated (in spite of some attempts to do so), and because some effects observed in lower life forms are of questionable significance for man. The criteria document states that the significance of effects such as chromosomal aberations has not been established and that some studies have produced conflicting results. In addition, EPA's Science Advisory Board recommended that certain studies on the mutagenic effects of ozone, which have not been replicated, not be emphasized in the criteria document.

PRIMARY STANDARD

As illustrated in the table of reported effect levels, there is no clear threshold air concentration of ozone indicated by the data as the onset of adverse health effects. It is EPA's best judgment that physiological responses probably occur in extremely sensitive persons at very low levels. At what point these responses become an adverse health effect and at what level they most likely occur in sensitive persons must necessarily be an informed judgment. As stated in the proposal, this judgment is based on (1) the Agency's understanding of the medical evidence presented in the criteria document and in the table of reported effect levels, (2) the findings of the advisory panel on health effects, and (3) the judgment of medical experts as to the adverse effect level in sensitive persons. The health experts who were consulted were asked to focus not only on the most sensitive population group, but also on a very sensitive portion of that group (specifically, those persons who are more sensitive than 99 percent of the sensitive group, but less sensitive than 1 percent of that group). The lowest adverse health effect level estimate cited by the health panel and the median value developed through the expert inter

view process are reasonably consistent, ranging from 0.15 to 0.18 ppm. (See table below.) On the basis of the effect levels cited in the criteria document, it is EPA's judgment that the most probable level for adverse health effects in sensitive persons, as well as in healthier (less sensitive) persons who are exercising vigorously, falls in the range of 0.15-0.25 ppm. While the evidence is more convincing and the effects more pronounced at the higher end of this range, the data shows effects of concern at the lower concentration.

PROBABLE EFFECT LEVEL ESTIMATES

[Estimates for Sensitive Population Segments]

	Aggravation of asthma, emphysema, and chronic bronchitis	Reduced resistance to bacterial infection (animal studies)	Reduction in pulmonary function	Chest discomfort and irritation of the respiratory tract
Health panel judgment of effect level.	0.15-0.25 ppm	Not available	0.15-0.25 ppm	0.15-0.25 ppm
Probable or median effect level as estimated from interviews with health experts (Range of estimates given in parentheses).	0.17 ppm (0.14-0.25 ppm)	0.18 ppm (0.07-0.38 ppm)	0.15 ppm (0.07-0.18 ppm)	0.15 ppm (0.11-0.18 ppm)

In order to set an ambient air quality standard that protects the public health with an adequate margin of safety, EPA must deal with the uncertainty inherent in the judgment that the probable level for adverse effects in sensitive persons is in the range of 0.15-0.25 ppm.

Because the nature and intensity of effects vary from pollutant to pollutant and because medical research produces new and different findings as science progresses, EPA does not believe that a fixed acceptable margin of safety can be established for all pollutants or for a single pollutant over time. Each decision on a standard level must be made on the best evidence available at the time and should include consideration of such factors as:

1. *Concern for more sensitive individuals*—Sensitive persons may respond to ozone differently from the less sensitive persons who generally are tested in clinical studies. Individuals with underlying respiratory illness such as asthma, chronic bronchitis, and emphysema are particularly sensitive to even modest impairments of pulmonary function resulting from ozone exposure. For ethical reasons, clinical investigators normally do not expose persons with these illnesses and thus caution that such studies may not represent the full range of sensitivity to ozone. Also of concern are individuals engaged in vigorous outdoor activity (construction work, tennis, jogging, etc.) where the effects of ozone are enhanced or may occur at lower ambient concentrations.

2. *Pollutant interactions*—There is real concern that effects reported in some ozone studies may occur at lower concentrations and may be enhanced when ozone is present in combination with other urban pollutants. Laboratory studies of a single pollutant (e.g., ozone in clean, filtered air), while important in elucidating physiological effects peculiar to that pollutant, cannot be viewed as providing definitive evidence of the minimum level at which these effects occur when that pollutant is present as only a part of the total insult delivered to an individual in the urban environment. Also of concern are other toxic oxidant species, such as PAN, that are often present with ozone in the ambient photochemical pollution mixture and cause other adverse effects such as eye irritation. Thus, the effects of ozone must be considered in the context of the total environment of the exposed individual; this environment includes concentrations of other pollutants consistent with their maximum allowable levels, high relative humidity, high ambient temperature, and high levels of physical stress.

3. *Long-term deleterious effects of ozone*—Unfortunately, there are few studies that have attempted to document the long-term adverse effect of human exposure to repeated peaks of ozone. Some animal studies do indicate that long-term ozone exposures act as an inducer of biochemical or morphological changes. Some of these changes are transient and, on a short-term basis, may have a physiological significance in that they confer a resistance against further lung injury in an oxidant environment (a similar response has been observed in human clinical studies). Some animal studies have indicated, however, that effects from continued exposure can result in an emphysema-like condition (e.g., P'an et al., 1972).

4. *Animal infectivity studies*—Although evidence of reduced resistance to bacterial infection has not reached the point where it can be meaningfully used to extrapolate concentrations that would similarly affect man, these studies cannot be dismissed in selecting a standard level that provides an adequate margin of safety. Despite the present inability to extrapolate to an effect level in humans, most experts agree that ozone exposures may well result in decreased resistance to infection in humans. Further, it is the kind of effect that is serious enough in its implications to raise a need for caution. Thus, it is prudent public health practice to set a standard more stringent than the probable effect level estimated from human studies, in order to account in some measure for these unquantified, but possibly serious, effects.

5. *Inconclusive studies reporting effects at low levels*—A similar caution is suggested by both the Makino and Mizoguchi epidemiological study and the von Nieding clinical study reporting effects at levels around 0.10 ppm.

6. *Uncertainties arising from air quality variations due to meteorology*—Since EPA's revised standard is statistically based and permits an expected number of allowable violations per year, there is concern about the magnitude of these excursions and how they might impact an exposed sensitive individual.

7. *Effects of calibration procedure change*—Another factor that has been considered in establishing a margin of safety is the variability that exists in the measurement and calibration techniques used in health studies and how these measurements may differ from those made with the ultraviolet (UV) reference calibration procedure being promulgated elsewhere in this issue of the FEDERAL REGISTER. Most of the relevant clinical studies utilized monitoring instruments calibrated with the current (NBKI colorimetric) reference calibration procedure or modifications thereof. EPA's best judgment is that the reference NBKI procedure shows a positive bias of about 10 percent with respect to the UV procedure when these techniques are compared under carefully controlled experimental conditions. However, due to the variability that can reasonably be expected in any clinical exposure monitoring measurements, as well as the uncertainty introduced by the modified calibrations procedures, EPA cannot determine a precise quantitative factor to adjust the findings of these health studies. In the case of the study done by DeLucia and Adams (1977), the authors have indicated to EPA that the reported ozone values

might be high with respect to the UV calibration procedure. While the exact magnitude of any required adjustment in the reported ozone values is uncertain, adjusted values could range from 0.12 to 0.15 ppm for the 0.15 ppm value reported by the authors, and from 0.23 to 0.30 ppm for the 0.30 ppm concentration. EPA will continue its evaluation of this issue through its program of clinical exposure studies.

8. *Findings from the preliminary risk assessment*—The preamble to the proposed standard described a preliminary risk assessment method performed to aid EPA in accurately treating the uncertainties associated with a standard decision. While this method cannot be used at this time as the sole tool for making that decision, the Agency does believe that the findings resulted from this initial application of the method do not permit any relaxation of the standard above 0.12 ppm.

After reviewing the comments received from all segments of the public, including those from the public health community, EPA remains convinced that at levels in the range of 0.15–0.25 ppm, adverse health effects will almost certainly be experienced by significant numbers of sensitive persons. Unless the standard is set somewhat below that level, the Agency would not be exercising that degree of prudence called for by the "adequate margin of safety" requirement of the Clean Air Act. The Administrator must exercise the informed scientific judgment that Congress has authorized him to bring to bear on these difficult problems.

There is no collection of facts or medical evidence that permits selecting an undisputed value for the standard level. EPA proposed a standard of 0.10 ppm, taking several factors into account in providing a margin of safety, as discussed above. Among those were epidemiological studies indicating effects below 0.15 ppm which the criteria document did not fully endorse, but which EPA thought it unwise to disregard. (See 43 FR 26966.) Also considered were animal studies indicating reduced resistance to bacterial infection, although extrapolation to human effects levels is not possible. (*Id.*) During the comment periods, EPA received informed scientific opinion disputing the interpretation and application of such studies. Based on its current understanding of these studies, EPA has concluded that they do not dictate as wide a margin of safety as was established in the proposal. EPA does believe, however, that these studies do suggest the real possibility of significant human adverse health effects below 0.15 ppm. Consequently, the Administrator has determined that a standard of 0.12 ppm is necessary and is sufficiently prudent unless and until further studies demonstrate reason to doubt that it adequately protects public health.

Welfare Effects and the Secondary Standard

The Clean Air Act mandates the setting of a national secondary ambient air quality standard to protect the public welfare from any known or anticipated adverse effects associated with an air pollutant in the ambient air. Ozone and other photochemical oxidants constitute a form of air pollution that has been shown to affect vegetation and materials and that may have an impact on visibility. The economic loss resulting from current oxidant levels has been estimated to be in the range of several hundred million dollars per year nationwide. Non-quantifiable losses to the natural environment occur as well. A staff paper, "Assessment of Welfare Effects and the Secondary Air Quality Standard for Ozone," was placed in the docket at the time of proposal. The following paragraphs summarize this report and information received after its release.

Exposure of vegetation to harmful levels of ozone may result in leaf injury, decreased growth and yield, or reproductive effects. Visible leaf injury is the most readily detectable and frequently reported symptom of ozone damage; however, it is not an accurate indicator of yield or growth reduction.

In the June 22, 1978, Federal Register proposal (43 FR 26968–26969), it was stated that several investigators suggested that foliar injury rates in the range of 5 to 10 percent could produce detectable reductions in growth or yield, depending on the timing of the injury and other environmental factors. Since proposal of the standard in June, EPA has discussed the matter further with several experts in the field of air pollution damage to vegetation, particularly regarding what level of leaf injury should be of concern in protecting against significant reductions in yield or growth in commercially important crops and indigenous flora. These experts emphasized the uncertainty associated with correlating yield reduction with foliar injury. Some stated that detectable yield reductions would not occur until leaf injury reached values as high as 10 to 20 percent, and others felt that foliar injury was an inappropriate indicator of yield reduction.

The foliar responses of plants to ozone exposures are not linearly dependent on the dose (product of concentration and exposure duration) sustained by the plant. A given dose applied over a short period of time is more damaging than if it were applied over a longer period. EPA used a mathematical model to summarize, for several crops, the experimental results which depict the variation in foliar response with short-term (0.5-hour to 8-hour) ozone exposures. The notice of proposed rulemaking predicted (on the basis of the mathematical model) that a secondary ozone air quality standard set at an hourly average concentration of 0.08 ppm, expected to be exceeded only once per year, would prevent any important commercial crop from receiving more than 3 percent leaf injury. On the basis of this prediction and the aforementioned assumptions regarding the relationship of foliar injury and yield reduction, EPA proposed to set the secondary standard level at 0.08 ppm.

As a result of its further consultations with researchers, EPA decided to reassess the uncertainties associated with the judgments that led to the proposed 0.08 ppm 1-hour average secondary standard. These experts pointed out that there are large uncertainties in the assumptions relating yield reduction to foliar injury. The mathematical model used to predict foliar injury was based on chamber studies, not on studies conducted under field conditions. The experts cautioned that these chamber studies generally represent experimental conditions in which the most sensitive varieties of a given species are used and in which moisture and temperature are optimal for producing injury. In addition, a given short-term dose of ozone, which can produce 5, 10, or even 20 percent foliar injury in a given plant, is unlikely to have an impact on yield unless the plant is exposed during a critical stage in the plant's life cycle.

Consequently, EPA has decided to base its decision on the secondary ozone air quality standard on the information currently available on growth and yield reduction in commercially important crops and indigenous vegetation exposed to ozone under field conditions. As discussed in a staff paper that has been placed in the docket (OAQPS 78–8, IV–A–3), "Evaluation of Alternative Secondary Ozone Air Quality Standards," these data indicate that growth and yield responses are related to the long-term (growing season) mean of the daily maximum 6- to 8-hour-average ozone concentrations. Based on an examination of this information, and the available air quality data, EPA concludes that there is currently no evidence indicating that a significant decrease in growth or yield of commercially important crops or indigenous flora will result from the long-term mean of the daily maximum 7-hour-average ozone concentrations expected to occur when the primary standard is attained. Consequently, EPA believes that a secondary standard more stringent than the primary standard is not necessary on

the basis of ozone-related yield reduction effects in vegetation.

Materials damage resulting from ozone can be described as an acceleration of aging processes; for example, rubber cracking, dye fading, and paint weathering. In contrast to the effects of ozone on vegetation, these effects are linearly dependent on the total ozone dose sustained by the material. As a result, the annual average concentration will determine the rate at which material is damaged. Any nonzero ozone concentration (including natural background levels) will contribute to the deterioration of sensitive materials over a sufficient exposure duration. While peak 1-hour ozone concentrations in urban areas tend to be considerably higher than in rural areas remote from man-made emission sources, the annual average concentrations observed in these areas are essentially the same. This finding is believed to be due to the impact of very low urban-area nighttime ozone concentrations on the annual average values; nighttime ozone levels in remote areas are not reduced as much from the daytime levels due to the absence of scavenging by man-made urban pollutants. As peak ozone levels in urban areas are reduced through control of man-made pollutants, scavenging will also be reduced resulting in little if any change in the annual average. Consequently, no effect-based rationale can be offered to decide the level of the secondary standard needed to protect materials. Accordingly, EPA believes that a secondary standard more stringent than the primary standard is not necessary on the basis of ozone damage to materials.

The criteria document states that there is a limited amount of data suggesting an association between ambient ozone and visibility degradation, particularly in the Los Angeles area. On the basis of EPA's evaluation to date of the information presented in the criteria document, however, EPA is unable to conclude at this time that a secondary ozone standard more stringent than the primary standard is necessary to prevent visibility deterioration. The relationship between visibility and ambient ozone will be considered further in the development of subsequent PSD programs designed to protect against significant deterioration of air quality.

On the basis of these conclusions with respect to ozone damage to vegetation and materials and the association of ozone with visibility reduction in some areas, EPA is revising the secondary ozone air quality standard level to 0.12 ppm.

OTHER ASPECTS OF THE STANDARD

On the basis of EPA's evaluation of evidence submitted and comments received during the public review process, no major changes will be made in the following aspects of the proposed standard: (1) Averaging time: 1 hour; (2) chemical species: ozone; (3) form: statistical; and (4) a separate standard for PAN is not being promulgated. As discussed below, changes will be made in (1) the set of hourly averages from which the number of exceedances of the standard level is counted, and (2) the exclusion criteria for missing data.

DAILY MAXIMUM HOURLY AVERAGE INTERPRETATION OF THE STANDARD

The maximum ozone concentrations which will occur in any given time period will vary from one period to the next, even if precursor emissions remain constant. These variations are mainly due to the random nature of meteorological factors which affect the formation and dispersion of ozone in the atmosphere. The present deterministic form of the standard, which permits only a single hourly exceedance of the standard level in any year, inadequately deals with this situation. The risk to public health contributed to by ozone can be managed better if the ozone standard reflects the fact that maximum ozone concentrations are probabilistic in nature. Consequently, EPA is changing the standard to a statistical form that allows one expected exceedance per year.

The proposed standard would have allowed one expected hourly exceedance per year. EPA is further modifying the standard so that the one expected exceedance will be given a daily interpretation; that is, a calendar day will exceed the standard level if the maximum hourly average concentration for the day exceeds the level of the standard. This modification means that a day with two hourly values over the standard level counts as one exceedance of the standard level rather than two; similarly for days with more than two hourly values over the standard level. As was indicated in the proposal notice, the daily interpretation has some advantages and it is evident from the comments received that there is considerable support for the use of this interpretation.

It should be understood that the change to a daily interpretation is not predicated on a reinterpretation of health data. In making this change, EPA is not concluding that 3 hours of exposure above a given level, for example, are no worse than 1 hour of exposure above the same level as long as the 3 hours of exposure occur during the same day. The impact of ozone is related to the total dose delivered to the respiratory tract, and obviously for a given concentration a 3-hour exposure gives a greater dose than a 1-hour exposure. In the case of ozone, the pattern of hourly levels is mainly determined by meteorological fluctuations, and EPA's decision to promulgate a daily standard does not affect meteorological fluctuations. Ozone precursor emissions are not easily manipulated on a short-term basis, so there is little likelihood that emission sources could readily alter emission patterns to take advantage of the daily interpretation.

The change to a daily interpretation does make the standard slightly less stringent, and hence there is a small increase in the risk to health. In general, the reduction in emissions of organic compounds needed to meet the standard under the daily interpretation will be smaller. As discussed in a report placed in the docket (OAQPS 78-8, IV-A-4), the long-term increase in health risk at an average geographical location is estimated to be equivalent to the increase that would result from raising the level of the standard to 0.123 ppm and keeping the hourly interpretation of the number of exceedances.

EXCLUSION CRITERIA FOR MISSION DATA

EPA is additionally modifying the standard with respect to the treatment of missing data. The proposed standard permitted certain missing values to be excluded from the estimated exceedances calculation if either of two exclusion criteria were satisfied. The first criterion recognized the impact of short-term meteorological influences by allowing a missing value to be excluded if the adjacent values were below an arbitrary limit (75 percent of the standard level). This criterion should be relatively easy to incorporate into data-handling schemes and has been retained, although it now applies to daily maximum hourly average values. The second criterion dealt with comparisons with data from the previous 3 years. The purpose of this second criterion was to accommodate situations for which ozone data for a particular season are not available but for which known seasonal patterns of ozone and related meteorological factors make it unlikely that the level of the standard would have been exceeded.

This second criterion would be more difficult to implement because it necessitates the cross-referencing of earlier historical data. For newly established monitors, the historical data needed to invoke this exclusion would not be available. Thus, this second criterion in the proposal is difficult to implement and could be potentially burdensome in geographic areas where the climate makes high ozone values during certain seasons very unlikely. It is also possible to accomplish the intended purpose of this exclusion through provisions of the recently proposed 40 CFR Part 58 (see 43 FR

34892) that would grant waivers of the ozone monitoring requirements for certain times of the year at the discretion of the appropriate Regional Administrator. Therefore, the second exclusion criterion has been eliminated, and the computation formulas for estimating the expected number of exceedances have been modified to reflect the number of required monitoring days for the year.

Definition of When the Standard is Attained—EPA is adding Appendix H to 40 CFR Part 50 to explain when the standard is or is not being attained. Certain modifications to the proposal were necessary to accommodate the daily interpretation and the previously mentioned changes in the treatment of missing data. In order to implement the change from an hourly to a daily interpretation, it is necessary to define what is meant by a valid day of ozone data. Such a definition must ensure that a sufficient number of hours of the day have been monitored and that the hourly values in question reflect the time of day when high ozone values are likely to occur. At the same time, this criterion should be relatively easy to implement, it should allow time for routine maintenance, and yet it should protect against high values being ignored merely because not enough hours of the day were measured. Accordingly, a daily maximum hourly average concentration will be considered valid if 75 percent of the hourly values from 9:01 a.m. to 9:00 p.m. (LST) were recorded or if an hourly value above the level of the standard was measured. This validity criterion is intended as a minimum requirement and not as a recommended schedule.

The computation formula for calculating the estimated number of exceedances per year has been modified to correspond to the daily interpretation of the standard. Allowance has also been made for any situation in which the Regional Administrator has granted a waiver of the ozone monitoring requirements under the provisions of the recently proposed 40 CFR Part 58 and, therefore, the total number of required monitoring days is less than a full year. The use of the exclusion criterion may result in an underestimate of the probability of an exceedance in some situations but is relatively easy to implement and should suffice to account for the effect of missing data. It should be noted that the formula given in Appendix H is necessary to show attainment. Accounting for missing data can never, however, decrease the number of exceedances, and thus it is possible to establish non-attainment without the use of this equation.

These modifications to Appendix H are intended to simplify somewhat the calculations and to allow for more flexible monitoring schedules. The comments received on Appendix H were varied. A few commenters thought it was too complicated while others suggested even more complex techniques. Most cmments were, however, supportive of (or, at least, neutral toward) the proposed approach. One suggestion was to employ a minimum percent completeness requirement, rather than estimating the number of exceedances. The problem with that approach, however, is that it remains unclear as to what should be done with data sets that fail to meet such a completeness requirement.

Some comments discussed the use of 3 years of data. As indicated in the proposal, the choice of a 3-year period represents a compromise between added stability and reasonably current status assessments. Even under the present deterministic form of the standard, attainment designations (e.g., 40 CFR Part 81, Section 107) have been based on more than 1 year. Furthermore, although 3 years are used in estimating the expected number of exceedances under the statistical form of the standard being promulgated, it is still possible to establish non-attainment after one year if, for example, four or more exceedances were reported. Therefore, an upper bound to exceedances during a single year still applies under the new form.

Economic, Energy, and Environmental Impacts

As has been noted, the Clean Air Act specifically requires that National Ambient Air Quality Standards be based on scientific criteria relating to the level that should be attained to protect public health and welfare adequately. EPA interprets the Act as excluding any consideration of the cost of achieving such a standard in determining the level of the primary standard. However, in compliance with the requirements of Executive Orders 11821 and 11949 and OMB Circular A-107 and with the provisions of the recently issued Executive Order 12044 for rulemaking proceedings that are currently pending, EPA has prepared an analysis of economic impacts associated with efforts to attain this standard.

Ozone air pollution is a pervasive problem throughout the country. Most urban and many rural areas exceed the existing standard. Even with the less stringent standard, most of the major urban areas are not expected to attain the standard in the near term. Control of the organic precursor materials that generate photochemical oxidants is a major effort in this country and a multibillion-dollar program. The existing control program includes measures to reduce organic emissions from automobile and truck exhausts, production of chemical and petroleum products, the dry-cleaning industry, most painting operations (including the automotive industry), and other industrial operations.

Because the attainment problem in most urban areas is so severe, the relaxation of the standard is not expected to change the level of control requirements in the near term. The move to a 0.12 ppm standard will, however, eliminate the theoretical need for major control programs in many rural and wilderness areas that currently exceed the present standard.

With the relaxation of the standard, EPA's economic impact analysis indicates that most urban areas are expected to achieve the standard by 1987. Even with aggressive control programs, however, it will be very difficult for some urban areas to achieve the standard within the next 10 years.

In addition, a document has been prepared assessing the impacts that efforts to attain the standard may have on the nation's energy requirements. This document examines the extent to which ozone precursors will be controlled by recovery of organic materials that would otherwise be emitted to the atmosphere, with resultant energy savings. Furthermore, an additional energy conservation should result in those areas that utilize transportation control measures to reduce precursor emissions by reducing the total number of vehicle-miles travelled. Because of such energy savings, EPA believes that ozone precursor control measures may well lessen the nation's energy requirements.

Finally, environmental impacts associated with control of oxidant precursors have been examined in a document available in docket number OAQPS 78-8. This study indicates that modifying the current standard should have minimal environmental impacts.

Copies of these analyses of the economic, energy, and environmental impacts involved in the revised ozone standard are available from Joseph Padgett at the address given earlier.

Revisions to Part 50 Regulations

In addition to the revised standard, this action necessitates two other revisions to 40 CFR Part 50 as follows:

1. In Appendix D, as well as in the table of sections for Part 50, the title is revised to read as follows: "Appendix D—Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere." The substitution of "ozone" for "photochemical oxidants corrected for interferences due to nitrogen oxides and sulfur dioxide" is a result

of the change in the chemical species designation of the standard.

2. Appendix H, "Interpretation of the National Ambient Air Quality Standards for Ozone," is added because additional guidance is necessary to understand the statistical nature of the revised standard.

REVISIONS TO PART 51 REGULATIONS

Elsewhere in this issue of the FEDERAL REGISTER, three revisions to 40 CFR Part 51 are promulgated concurrently with the revision to the photochemical oxidant standard. They are as follows:

1. The term "photochemical oxidants" is changed to "ozone" throughout Part 51.

2. Section 51.14, "Control strategy: Carbon monoxide, hydrocarbons, photochemical oxidants, and nitrogen dioxide," is revised to (a) allow the states to use any of four analytical techniques in the place of Appendix J to calculate the percent hydrocarbon reduction needed to attain the ozone standard, and (b) require that the states consider background ozone concentrations and ozone transport.

3. Appendix J is deleted from Part 51.

FEDERAL REFERENCE METHOD

The measurement principle and calibration procedure applicable to reference methods for measuring ambient ozone concentrations to determine compliance with the standard are not affected by this rulemaking. Elsewhere in this issue of the FEDERAL REGISTER, however, EPA is replacing (superseding) the current calibration procedure with a new, superior calibration procedure based on ultraviolet photometry. The measurement principle and the current calibration procedure are set forth in Appendix D of 40 CFR Part 50 (as amended in the February 18, 1975, issue of the FEDERAL REGISTER, 40 FR 7042). Reference methods—as well as equivalent methods—for monitoring ozone are designated in accordance with 40 CFR Part 53 (40 FR 7044). A list of all methods designated by EPA as reference or equivalent methods for measuring ozone is available from any EPA regional office, or from EPA, Department E (MD-76), Research Triangle Park, NC 27711.

Dated: January 26, 1979.

DOUGLAS M. COSTLE,
Administrator.

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EPA amends Part 50 of Chapter I, Title 40, of the *Code of Federal Regulations* as follows:

1. Section 50.9 is revised to read as follows:

§ 50.9 National primary and secondary ambient air quality standards for ozone.

(a) The level of the national primary and secondary ambient air quality standards for ozone measured by a reference method based on Appendix D to this part and designated in accordance with Part 53 of this chapter, is 0.12 part per million (235 $\mu g/m^3$). The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 part per million (235 $\mu g/m^3$) is equal to or less than 1, as determined by Appendix H.

2. In Appendix D, as well as in the table of sections for Part 50, the title is revised to read as follows:

APPENDIX D—MEASUREMENT PRINCIPLE AND CALIBRATION PROCEDURE FOR THE MEASUREMENT OF OZONE IN THE ATMOSPHERE

3. Appendix H is added as follows:

APPENDIX H—INTERPRETATION OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE

1. *General*

This appendix explains how to determine when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm (235 $\mu g/m^3$) is equal to or less than 1. An expanded discussion of these procedures and associated examples are contained in the "Guideline for Interpretation of Ozone Air Quality Standards." For purposes of clarity in the following discussion, it is convenient to use the term "exceedance" to describe a daily maximum hourly average ozone measurement that is greater than the level of the standard. Therefore, the phrase "expected

number of days with maximum hourly average ozone concentrations above the level of the standard" may be simply stated as the "expected number of exceedances."

The basic principle in making this determination is relatively straightforward. Most of the complications that arise in determining the expected number of annual exceedances relate to accounting for incomplete sampling. In general, the average number of exceedances per calendar year must be less than or equal to 1. In its simplest form, the number of exceedances at a monitoring site would be recorded for each calendar year and then averaged over the past 3 calendar years to determine if this average is less than or equal to 1.

2. *Interpretation of Expected Exceedances*

The ozone standard states that the expected number of exceedances per year must be less than or equal to 1. The statistical term "expected number" is basically an arithmetic average. The following example explains what it would mean for an area to be in compliance with this type of standard. Suppose a monitoring station records a valid daily maximum hourly average ozone value for every day of the year during the past 3 years. At the end of each year, the number of days with maximum hourly concentrations above 0.12 ppm is determined and this number is averaged with the results of previous years. As long as this average remains "less than or equal to 1," the area is in compliance.

3. *Estimating the Number of Exceedances for a Year*

In general, a valid daily maximum hourly average value may not be available for each day of the year, and it will be necessary to account for these missing values when estimating the number of exceedances for a particular calendar year. The purpose of these computations is to determine if the expected number of exceedances per year is less than or equal to 1. Thus, if a site has two or more observed exceedances each year, the standard is not met and it is not necessary to use the procedures of this section to account for incomplete sampling.

The term "missing value" is used here in the general sense to describe all days that do not have an associated ozone measurement. In some cases, a measurement might actually have been missed but in other cases no measurement may have been scheduled for that day. A daily maximum ozone value is defined to be the highest hourly ozone value recorded for the day. This daily maximum value is considered to be valid if 75 percent of the hours from 9:01 a.m. to 9:00 p.m. (LST) were measured or if the highest hour is greater than the level of the standard.

In some areas, the seasonal pattern of ozone is so pronounced that entire months need not be sampled because it is extremely unlikely that the standard would be exceeded. Any such waiver of the ozone monitoring requirement would be handled under provisions of 40 CFR Part 58. Some allowance should also be made for days for which valid daily maximum hourly values were not obtained but which would quite likely have been below the standard. Such an allowance introduces a complication in that it becomes necessary to define under what conditions a missing value may be assumed to have been less than the level of the standard. The following criterion may be used for ozone:

A missing daily maximum ozone value may be assumed to be less than the level of the standard if the valid daily maxima on both the preceding day and the following day do not exceed 75 percent of the level of the standard.

Let z denote the number of missing daily maximum values that may be assumed to be less than the standard. Then the following formula shall be used to estimate the expected number of exceedances for the year:

$$e=v+[(v/n)*(N-n-z)] \qquad (1)$$

(*Indicates multiplication.)

Where:

e=the estimated number of exceedances for the year,
N=the number of required monitoring days in the year,
n=the number of valid daily maxima,
v=the number of daily values above the level of the standard; and
z=the number of days assumed to be less than the standard level.

*Indicates multiplication.

This estimated number of exceedances shall be rounded to one decimal place (fractional parts equal to 0.05 round up).

It should be noted that N will be the total number of days in the year unless the appropriate Regional Administrator has granted a waiver under the provisions of 40 CFR Part 58.

The above equation may be interpreted intuitively in the following manner. The estimated number of exceedances is equal to the observed number of exceedances (v) plus an increment that accounts for incomplete sampling. There were (N-n) missing values for the year but a certain number of these, namely z, were assumed to be less than the standard. Therefore, (N-n-z) missing values are considered to include possible exceedances. The fraction of measured values that are above the level of the standard is v/n. It is assumed that this same fraction applies to the (N-n-z) missing values and that (v/n)*(N-n-z) of these values would also have exceeded the level of the standard.

AUTHORITY: Sections 109 and 301 of the Clean Air Act, as amended (42 U.S.C. 7409, 7601).

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[6560-01-M]

[FRL 1018-3]

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

Calibration of Ozone Reference Methods

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Appendix D to 40 CFR Part 50 prescribes a measurement principle upon which reference methods for the measurement of ozone* in the atmosphere must be based. This appendix also specifies a procedure to be used for calibrating those ozone reference methods. EPA has evidence that another calibration procedure for ozone reference methods is significantly more accurate and less variable than the procedure currently specified in Appendix D. Accordingly, EPA is amending 40 CFR Part 50, Appendix D, to replace (supersede) the current calibration procedure with a superior calibration procedure based on ultraviolet photometry.

EFFECTIVE DATE: This action is effective immediately upon publication because the revised standard to which it applies is immediately effective.

FOR FURTHER INFORMATION CONTACT:

Mr. Larry J. Purdue, Telephone 919-541-2665 (FTS: 629-2665).

ADDRESS: Department E (MD-77), Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part 50 of Title 40, Chapter I of the Code of Federal Regulations specifies the National Ambient Air Quality Standards for several air pollutants including ozone. Appendixes to Part 50 provide information concerning the reference methods which are used to measure those pollutants. In particular, Appendix D to Part 50 describes a measurement principle upon which ozone reference methods must be based, and specifies a calibration procedure to be used for calibrating such methods. Previously, the calibration procedure specified by Appendix D was based on assay of ozone with 1% neutral buffered potassium iodide (NBKI) and was known as the "NBKI procedure."

On June 22, 1978, EPA indicated its conclusion that another calibration procedure was clearly superior to the NBKI procedure, and accordingly EPA proposed an amendment to Appendix D to replace the NBKI procedure with the new procedure, based on ultraviolet (UV) photometry (43 FR 26971-26984). The rationale for the proposed amendment was discussed in the preamble to that proposal. Interested persons and organizations were afforded an opportunity to comment on all aspects of the proposed changes. The amendment, revised slightly after consideration of the public comments, is being promulgated today in conjunc-

*The term "ozone" is used herein to be consistent with another EPA action in this issue of the FEDERAL REGISTER substituting "ozone" for "photochemical oxidants corrected for interferences due to nitrogen oxides and sulfur dioxide," which was formerly used in Part 50.

tion with changes in the ambient air quality standards for photochemical oxidants (ozone) appearing elsewhere in this issue of the FEDERAL REGISTER.

NATURE OF CHANGES

The amendment makes three salient changes to the previous requirements for calibration of ozone reference methods. These are as follows:

(1) The NBKI calibration procedure is superseded by a procedure based on UV photometry for the calibration of reference methods for ozone. Since no National Bureau of Standards (NBS) Standard Reference Material is available for ozone, ozone standard concentrations established via the UV procedure are tantamount to primary ozone standards, and the UV procedure itself is thus referred to as a "UV standard" for ozone.

(2) Independent use of a manual KI procedure known as the "BAKI procedure" in lieu of the UV procedure is allowed for 18 months after the effective date of the amendment, with the recommendation that the BAKI technique be related to a UV standard whenever possible.

(3) The use of alternative procedures as transfer standards is specifically allowed if they meet certain transfer standard performance guidelines set forth by EPA. A transfer standard is any device or procedure which can be referenced to a UV ozone standard and then used at another location to reproduce ozone standards. A practical transfer standard offers some important advantages—such as lower cost, ruggedness, easier operation, or convenience—over direct use of the UV procedure.

NEW UV CALIBRATION PROCEDURE

The new UV calibration procedure is quite simple. After generating a stable, ozone concentration with an ozone generator, the operator assays it by passing all or a portion of the gas flow through the cell of a UV photometer. The photometer readings are then used in a formula to calculate the ozone concentration, which as noted earlier, is effectively a primary ozone standard. Most commercially available photometers do the photometric calculations automatically, and some may also make temperature and pressure corrections automatically. The primary burden on the operator is to insure (1) that the photometer is operating correctly, (2) that the apparatus is set up properly and is clean and leak-free, and (3) that the calculations are complete and accurate. While none of these is particularly difficult, EPA has prepared a Technical Assistance Document which explains these tasks and provides other detailed information about the procedure. This document, which is still in draft form to allow further incorporation of user's comments, is available from the address specified at the beginning of this preamble.

The photometer is obviously of critical importance to the procedure and must have a precision within 0.005 ppm or 3% of the concentration, whichever is greater. While a calibration photometer can be assembled from laboratory components, EPA recommends the purchase of a commerical photometer which is either designed specifically for this calibration procedure, or which can be readily adapted to it. EPA is presently aware of 2 such commercial photometers (available from Dasibi Environmental Corp., Glendale, California, and Science Applications, Inc., La Jolla, California) and expects others will become available in the future.

UV photometers of the type used in ambient ozone analyzers are likely to be suitable as calibration photometers. Conversion of an ambient UV analyzer to a calibration photometer is covered in the Technical Assistance Document mentioned above. However, it is important to differentiate between the use of a UV photometer as an ambient analyzer and its use as a calibration photometer. This distinction is predicated more on operational differences than on any specific physical differences. The new calibration procedure requires that a photometer used for calibration must be dedicated exclusively to such use, must be maintained under meticulous conditions, and must be used only with clean, calibration gases. UV analyzers used for ambient monitoring should always be calibrated with an independent calibration photometer or a certified transfer standard. A UV analyzer should not be considered to be "self-calibrated" even though it contains a UV photometer which meets the specifications of the UV calibration procedure.

NEW BAKI CALIBRATION PROCEDURE

The New BAKI calibration procedure is very similar to the previously specified NBKI procedure. Relatively minor modifications provide somewhat less variability than the NBKI procedure. Agencies which are familiar with the NBKI procedure should have no difficulty switching to the BAKI procedure. Independent use of the BAKI prodecure is allowed only for direct calibration of ozone analyzers (not transfer standards) on a temporary basis during the 18-month transition period to permit agencies to adopt the new, UV calibration procedure. Nevertheless, the BAKI procedure has more variability than the UV procedure. Therefore, EPA would urge agencies to adopt the UV procedure as soon as practical. And, when possible, the BAKI procedure should be related to the UV procedure to improve the overall accuracy.

Following the 18-month period, the BAKI procedure will not be authorized for independent use, but can be used as a transfer standard. As such, it must be related to the UV procedure, and its variability and accuracy must be monitored and controlled. Thus, agencies which find the BAKI procedure advantageous could continue to use this procedure as a transfer standard.

TRANSFER STANDARDS

EPA is specifically allowing transfer standards for calibrating ozone analyzers, and has noted a number of advantages which can be realized by their use. Transfer standards for ozone can include procedural techniques such as BAKI and gas phase titration, as well as devices such as ozone analyzers and stable ozone generators. EPA recommends that agencies consider the use of transfer standards where advantageous. But transfer standards must meet certain performance specifications, and their performance must be monitored. EPA has prepared a Technical Assistance Document on "Transfer Standards for Calibration of Ambient Air Monitoring Analyzers for Ozone," which gives the required performance specifications and general guidance on the certification and use of any type of transfer standard for ozone. This document is also still in draft form to allow incorporation of further user's comments, and a copy of it may be obtained from the address given at the beginning of this preamble.

SUMMARY OF COMMENTS RECEIVED AND CHANGES MADE TO FINAL AMENDMENT

Comments relative to the proposed amendment (43 FR 26971) were received from 26 respondents representing EPA Regional Offices, State and local air pollution control agencies, industrial corporations, and other organizations. Almost all of the respondents expressed general support for the proposed change to the UV photometric calibration procedure. Other comments ranged from issues of basic policy to technical aspects of the proposed amendment. After consideration of all the comments, several minor revisions and improvements were made to the proposed amendment, although the basic principles and objectives have not been altered. Specific changes to the proposed amendment are discussed briefly below.

A document containing a summary of all the comments received, the identity of the respondents, the resulting changes made to the amendment, and the rationale for adoption or rejection of each comment is available from the address given at the beginning of this

preamble. This document will also be added to Docket No. OAQPS 78-8, which is available for public inspection during normal business hours at the USEPA, Central Docket Section, Room 2903, 401 M Street, SW., Washington, D.C. 20460.

Several respondents pointed to the relatively high cost of implementing the change in calibration procedures and suggested that EPA should either provide the necessary funds to those agencies with nonattainment and unclassified areas, or make available, in each EPA Region, a reference photometer that could be used to certify appropriate transfer standards. Other comments suggested a similar need for such reference photometers until such time that commercial photometers become more generally available. EPA agrees with these general comments and intends to pursue them, but this requires no actual change to the amendment as proposed.

Many of the comments indicated a concern for a lack of reliability in present commercial UV systems. Some of these same respondents recommended revisions in the UV calibration procedure to incorporate procedures for checking or calibrating the photometer's wavelength, path length, and optical density (or absorbancy). However, EPA believes that the reliability of most commercial photometers will be adequate. The photometer specifications require a non-dispersive optical system which is not likely to experience changes in the wavelength. Path length is normally fixed and should be adequately specified by the photometer manufacturer. Optical density checks with neutral density filters (for example) are not practical because of the extremely small optical density range over which the photometer normally operates. The only practical way to check the response of the photometer is with an absorbing gas such as ozone. The linearity test described in Section 5.2.3 serves this purpose.

There was some concern for whether the absorption coefficient of ozone at 254 nm (given in the procedure as 308 ± 4 atm^{-1} cm^{-1} at 0°C and 760 torr) might be different at different temperatures. Other comments indicated that the corrections for temperature and pressure in the UV photometric assay procedure were not always clear. The absorption coefficient of ozone is, in fact, quite insensitive to temperature between 0 and 40°C—aside from the normal effect of gas density change with temperature. For photometers used at temperatures and pressures other than 0° and 760 torr, corrections are required according to the perfect gas laws. Efforts are being made to further clarify these correction procedures in the ozone calibration Technical Assistance Document mentioned earlier.

A series of comments from one respondent recommended revisions to the proposed procedure to more clearly allow the use of other UV photometer designs and other configurations of components within the UV calibration system. It was further pointed out that, with certain configurations, some of the components shown in the suggested configuration might not be necessary, and some of the procedural steps in the proposed procedure might not be necessary or even possible. This respondent questioned whether UV photometer linearity tests by the user are necessary if the manufacturer of the photometer has done the tests. Modification of the commercial photometer might be necessary to carry out the tests and any resultant leaks in the system or improper dilution techniques might confuse the results.

In response to these comments, EPA has revised Sections 3, 3.2, and 5.3 somewhat to more explicitly allow alternate systems or system configurations and to provide for appropriate variations in the procedural steps to accommodate such systems. Also, Section 5.2.3 on linearity has been changed to allow acceptance of the manufacturer's linearity test in lieu of the user-conducted test if the manufacturer can show that the linearity error is less than 3%. When the user carries out the test, the error specification remains at 5% to allow for some variation in the necessary flow measurements.

There were several comments regarding the BAKI calibration procedure and its use for an interim period of 18 months. One respondent questioned the wisdom of changing from a known procedure (NBKI) to an unknown procedure (BAKI) and then changing again to UV photometry within 18 months. The respondent recommended that EPA allow the continued use of the NBKI procedure on an interim basis until the change to UV photometry can be implemented. Another respondent questioned the necessity of allowing the considerably more variable (than UV photometry) BAKI procedure for the interim period, and recommended that comments from State and local agencies directly affected should guide EPA in this area.

EPA agrees that the BAKI procedure is more variable than the UV procedure but believes that some transition period is necessary before the UV procedure is required exclusively. There were few comments to the contrary. EPA considered allowing continued use of the NBKI procedure during the transition period, but the BAKI procedure is really only a slightly modified version of the NBKI procedure and is thus very similar. Since the change from NBKI to BAKI is so easily made, and the performance of the BAKI procedure is significantly better than the NBKI procedure, EPA feels the interim change to BAKI is adequately justified.

A few relatively minor changes were made to the BAKI procedure in Sections 1, 3.8, 4.4.4, and 4.4.5 where respondents suggested a need for clarification or where various improvements to the method could be realized. For example, the units given as "eq" in equation 5a of the BAKI were changed to "equivalents" in order that they not be confused with equivalent weight. Also, the concentration of the hydrogen peroxide added in Section 3.8 has been increased slightly and the specification for the resulting absorbance increase has been reduced from 0.010 to 0.008. Furthermore the calibration slope specification in Section 4.4.5 has been changed from $25{,}800 \pm 600$ to $26{,}000 \pm 780$.

While several respondents endorsed the use of transfer standards in general, one respondent questioned the advisability of allowing the use of transfer standards based on methods known to be highly variable even under ideal conditions. EPA still believes that the variability of such transfer standards will be adequately controlled by the qualification and certification requirements on transfer standards described in the transfer standard Technical Assistance Document mentioned previously. Hence, EPA has made no major changes to the transfer standard concept as originally proposed.

In regard to EPA's statement that no factor is available to "correct" previously collected ozone measurements to make them comparable to the new UV standard, one respondent thought that EPA should allow individual states or Regions to make corrections to their previously obtained ozone air quality data if they have consistent comparative data for the NBKI and UV photometric calibration techniques. EPA has re-evaluated this position, but as noted below, still discourages such attempted corrections.

EFFECT ON NATIONAL AMBIENT AIR QUALITY STANDARD FOR OZONE

Because of the substantial variability of the NBKI procedure and the unpredictable bias results reported by various investigators, the exact magnitude of any universal bias which may exist between the NBKI and UV procedures cannot be determined. However, available data suggest that any such bias probably does not exceed 10% on the average. For this reason, EPA believes that supersession of the NBKI calibration procedure with the UV procedure should have no effect on the magnitude of the National Am-

bient Air Quality Standard for Ozone (being revised elsewhere in this issue of the FEDERAL REGISTER). And for the same reason, EPA discourages any attempt to "correct" or "adjust" previously obtained oxidant or ozone measurements to make them "comparable" to measurements based on the new UV calibration procedure—even when individual agencies or laboratories try to determine a more precise, laboratory-specific bias value.

EFFECT ON CURRENTLY DESIGNATED REFERENCE AND EQUIVALENT METHODS

As noted in the June 22 proposal, a change in the calibration procedure specified in Appendix D of 40 CFR Part 50 does not affect the design or performance characteristics of existing reference methods for ozone. The only effect of the change is on the calibration procedure described in the operation manuals associated with the analyzers. EPA will allow a 6-month period of time after final promulgation for manufacturers to revise their manuals, have the revised manuals approved by EPA, and distribute revised manuals (or manual supplements) to all analyzer owners.

The two equivalent methods for ozone designated to date prescribe the NBKI calibration procedure. Because the UV calibration procedure and the transfer standard concept are as beneficial to equivalent methods as they are for reference methods, EPA will also request that the manufacturers of the two equivalent methods revise their respective manuals to specify the UV procedure or certified transfer standards for calibration. EPA believes that, under the circumstances, such a modification to equivalent methods for ozone is desirable and appropriate and should not jeopardize their designated status. Conversely, failure to make such a change may be considered by EPA as possible grounds for cancellation of the equivalent method designation under 40 CFR 53.11. If all manufacturers respond promptly to this request for appropriate manual changes, there will be no impact (other than the change in calibration procedure itself) to owners of designated ozone analyzers.

REVISION ADOPTED

Accordingly, with the final changes as described above, Appendix D of 40 CFR Part 50 is revised as set forth below.

Dated: January 26, 1979.

DOUGLAS M. COSTLE,
Administrator.

Part 50 of Title 40, Code of Federal Regulations is amended as follows:

1. Appendix D is revised to read as follows:

APPENDIX D—MEASUREMENT PRINCIPLE AND CALIBRATION PROCEDURE FOR THE MEASUREMENT OF OZONE IN THE ATMOSPHERE

AUTHORITY:

Section 109, 301 of the Clean Air Act as amended (42 USC 57409, 7601).

MEASUREMENT PRINCIPLE

1. Ambient air and ethylene are delivered simultaneously to a mixing zone where the ozone in the air reacts with the ethylene to emit light, which is detected by a photomultiplier tube. The resulting photocurrent is amplified and is either read directly or displayed on a recorder.

2. An analyzer based on this principle will be considered a reference method only if it has been designated as a reference method in accordance with Part 53 of this chapter and calibrated as follows:

CALIBRATION PROCEDURE

1. Principle. The calibration procedure is based on the photometric assay of ozone (O_3) concentrations in a dynamic flow system. The concentration of O_3 in an absorption cell is determined from a measurement of the amount of 254 nm light absorbed by the sample. This determination requires knowledge of (1) the absorption coefficient (α) of O_3 at 254 nm, (2) the optical path length (l) through the sample, (3) the transmittance of the sample at a wavelength of 254 nm, and (4) the temperature (T) and pressure (P) of the sample. The transmittance is defined as the ratio I/I_o, where I is the intensity of light which passes through the cell and is sensed by the detector when the cell contains an O_3 sample, and I_o is the intensity of light which passes through the cell and is sensed by the detector when the cell contains zero air. It is assumed that all conditions of the system, except for the contents of the absorption cell, are identical during measurement of I and I_o. The quantities defined above are related by the Beer-Lambert absorption law,

$$\text{Transmittance} = \frac{I}{I_0} = e^{-\alpha c \ell} \qquad (1)$$

where:

α=absorption coefficient of O_3 at 254 nm=308±4 atm^{-1} cm^{-1} at 0°C and 760 torr.[1,2,3,4,5,6,7]

c=O_3 concentration in atmospheres

l=optical path length in cm

In practice, a stable O_3 generator is used to produce O_3 concentrations over the required range. Each O_3 concentration is determined from the measurement of the transmittance (I/I_o) of the sample at 254 nm with a photometer of path length l and calculated from the equation,

$$c(\text{atm}) = -\frac{1}{\alpha \ell}(\ln I/I_0) \qquad (2a)$$

or,

$$c(\text{ppm}) = -\frac{10^6}{\alpha \ell}(\ln I/I_0) \qquad (2b)$$

The calculated O_3 concentrations must be corrected for O_3 losses which may occur in the photometer and for the temperature and pressure of the sample.

2. Applicability. This procedure is applicable to the calibration of ambient air O_3 analyzers, either directly or by means of a transfer standard certified by this procedure. Transfer standards must meet the requirements and specifications set forth in Reference 8.

3. Apparatus. A complete UV calibration system consists of an ozone generator, an output port or manifold, a photometer, an appropriate source of zero air, and other components as necessary. The configuration must provide a stable ozone concentration at the system output and allow the photometer to accurately assay the output concentration to the precision specified for the photometer (3.1). Figure 1 shows a commonly used configuration and serves to illustrate the calibration procedure which follows. Other configurations may require appropriate variations in the procedural steps. All connections between components in the calibration system downstream of the O_3 generator should be of glass, Teflon, or other relatively inert materials. Additional information regarding the assembly of a UV photometric calibration apparatus is given in Reference 9. For certification of transfer standards which provide their own source of O_3, the transfer standard may replace the O_3 generator and possibly other components shown in Figure 1; see Reference 8 for guidance.

3.1 UV photometer. The photometer consists of a low-pressure mercury discharge lamp, (optional) collimation optics, an absorption cell, a detector, and signal-processing electronics, as illustrated in Figure 1. It must be capable of measuring the transmittance, I/I_o, at a wavelength of 254 nm with sufficient precision such that the standard deviation of the concentration measurements does not exceed the greater of 0.005 ppm or 3% of the concentration. Because the low-pressure mercury lamp radiates at several wavelengths, the photometer must incorporate suitable means to assure that no O_3 is generated in the cell by the lamp, and that at least 99.5% of the radiation sensed by the detector is 254 nm radiation. (This can be readily achieved by prudent selection of optical filter and detector response characteristics.) The length of the light path through the absorption cell must be known with an accuracy of at least 99.5%. In addition, the cell and associated plumbing must be designed to minimize loss of O_3 from contact with cell walls and gas handling components. See Reference 9 for additional information.

3.2 Air flow controllers. Devices capable of regulating air flows as necessary to meet the output stability and photometer precision requirements.

3.3 Ozone generator. Device capable of generating stable levels of O_3 over the required concentration range.

3.4 Output manifold. The output manifold should be constructed of glass, Teflon, or other relatively inert material, and should be of sufficient diameter to insure a negligible pressure drop at the photometer connection and other output ports. The system must have a vent designed to insure atmospheric pressure in the manifold and to prevent ambient air from entering the manifold.

3.5 Two-way valve. Manual or automatic valve, or other means to switch the photometer flow between zero air and the O_3 concentration.

3.6 Temperature indicator. Accurate to ±1°C.

3.7 Barometer or pressure indicator. Accurate to ±2 torr.

4. Reagents.

4.1 Zero air. The zero air must be free of contaminants which would cause a detectable response from the O_3 analyzer, and it should be free of NO, C_2H_4, and other species which react with O_3. A procedure for generating suitable zero air is given in Reference 9. As shown in Figure 1, the zero air supplied to the photometer cell for the I_o reference measurement must be derived from the same source as the zero air used for generation of the ozone concentration to be assayed (I measurement). When using the photometer to certify a transfer standard having its own source of ozone, see Reference 8 for guidance on meeting this requirement.

5. Procedure.

5.1 General operation. The calibration photometer must be dedicated exclusively to use as a calibration standard. It should always be used with clean, filtered calibration gases, and never used for ambient air sampling. Consideration should be given to locating the calibration photometer in a clean laboratory where it can be stationary, protected from physical shock, operated by a responsible analyst, and used as a common standard for all field calibrations via transfer standards.

5.2 Preparation. Proper operation of the photometer is of critical importance to the accuracy of this procedure. The following steps will help to verify proper operation. The steps are not necessarily required prior to each use of the photometer. Upon initial operation of the photometer, these steps should be carried out frequently, with all quantitative results or indications recorded in a chronological record either in tabular form or plotted on a graphical chart. As the performance and stability record of the photometer is established, the frequency of these steps may be reduced consistent with the documented stability of the photometer.

5.2.1 Instruction manual: Carry out all set-up and adjustment procedures or checks as described in the operation or instruction manual associated with the photometer.

5.2.2 System check: Check the photometer system for integrity, leaks, cleanliness, proper flowrates, etc. Service or replace filters and zero air scrubbers or other consumable materials, as necessary.

5.2.3 Linearity: Verify that the photometer manufacturer has adequately established that the linearity error of the photometer is less than 3%, or test the linearity by dilution as follows: Generate and assay an O_3 concentration near the upper range limit of the system (0.5 or 1.0 ppm), then accurately dilute that concentration with zero air and reassay it. Repeat at several different dilution ratios. Compare the assay of the original concentration with the assay of the diluted concentration divided by the dilution ratio, as follows

$$E = \frac{A_1 - A_2/R}{A_1} \times 100\% \qquad (3)$$

where:

E=linearity error, percent

A_1=assay of the original concentration

A_2=assay of the diluted concentration

R=dilution ratio=flow of original concentration divided by the total flow

The linearity error must be less than 5%. Since the accuracy of the measured flowrates will affect the linearity error as measured this way, the test is not necessarily conclusive. Additional information on verifying linearity is contained in Reference 9.

5.2.4 Intercomparison: When possible, the photometer should be occasionally intercompared, either directly or via transfer standards, with calibration photometers used by other agencies or laboratories.

5.2.5 Ozone losses: Some portion of the O_3 may be lost upon contact with the photometer cell walls and gas handling components. The magnitude of this loss must be determined and used to correct the calculated O_3 concentration. This loss must not exceed 5%. Some guidelines for quantitatively determining this loss are discussed in Reference 9.

5.3 Assay of O_3 concentrations.

5.3.1 Allow the photometer system to warm up and stabilizer.

5.3.2 Verify that the flowrate through the photometer absorption cell, F allows the cell to be flushed in a reasonably short period of time (2 liter/min is a typical flow). The precision of the measurements is inversely related to the time required for flushing, since the photometer drift error increases with time.

5.3.3 Insure that the flowrate into the output manifold is at least 1 liter/min greater than the total flowrate required by the photometer and any other flow demand connected to the manifold.

5.3.4 Insure that the flowrate of zero air, F_z, is at least 1 liter/min greater than the flowrate required by the photometer.

5.3.5 With zero air flowing in the output manifold, actuate the two-way valve to allow the photometer to sample first the manifold zero air, then F_z. The two photometer readings must be equal ($I=I_o$).

NOTE.—In some commercially available photometers, the operation of the two-way valve and various other operations in section 5.3 may be carried out automatically by the photometer.

5.3.6 Adjust the O_3 generator to produce an O_3 concentration as needed.

5.3.7 Actuate the two-way valve to allow the photometer to sample zero air until the absorption cell is thoroughly flushed and record the stable measured value of I_o.

5.3.8 Actuate the two-way valve to allow the photometer to sample the ozone concentration until the absorption cell is thoroughly flushed and record the stable measured value of I.

5.3.9 Record the temperature and pressure of the sample in the photometer absorption cell. (See Reference 9 for guidance.)

5.3.10 Calculate the O_3 concentration from equation 4. An average of several determinations will provide better precision.

$$[O_3]_{OUT} = \left(\frac{-1}{\alpha \ell} \ln \frac{I}{I_o}\right) \left(\frac{T}{273}\right) \left(\frac{760}{P}\right) \times \frac{10^6}{L} \qquad (4)$$

where:

$[O_3]_{OUT}$=O_3 concentration, ppm

α=absorption coefficient of O_3 at 254 nm=308 atm^{-1} cm^{-1} at 0°C and 760 torr

l=optical path length, cm

T=sample temperature, K

P=sample pressure, torr

L=correction factor for O_3 losses from 5.2.5=(1-fraction O_3 lost).

NOTE.—Some commercial photometers may automatically evaluate all or part of equation 4. It is the operator's responsibility to verify that all of the information required for equation 4 is obtained, either automatically by the photometer or manually. For "automatic" photometers which evaluate the first term of equation 4 based on a linear approximation, a manual correction may be required, particularly at higher O_3 levels. See the photometer instruction manual and Reference 9 for guidance.

5.3.11 Obtain additional O_3 concentration standards as necessary by repeating steps 5.3.6 to 5.3.10 or by Option 1.

5.4 Certification of transfer standards. A transfer standard is certified by relating the output of the transfer standard to one or more ozone standards as determined according to section 5.3. The exact procedure varies depending on the nature and design of the transfer standard. Consult Reference 8 for guidance.

5.5 Calibration of ozone analyzers. Ozone analyzers are calibrated as follows, using ozone standards obtained directly according to section 5.3 or by means of a certified transfer standard.

5.5.1 Allow sufficient time for the O_3 analyzer and the photometer or transfer standard to warmup and stabilize.

5.5.2 Allow the O_3 analyzer to sample zero air until a stable response is obtained and adjust the O_3 analyzer's zero control. Offsetting the analyzer's zero adjustment to +5% of scale is recommended to facilitate observing negative zero drift. Record the stable zero air response as "Z".

5.5.3 Generate an O_3 concentration standard of approximately 80% of the desired upper range limit (URL) of the O_3 analyzer. Allow the O_3 analyzer to sample this O_3 concentration standard until a stable response is obtained.

5.5.4 Adjust the O_3 analyzer's span control to obtain a convenient recorder response as indicated below:

$$\text{recorder response (\% scale)} = \left(\frac{[O_3]_{OUT}}{URL} \times 100\right) + Z \qquad (5)$$

where:

URL=upper range limit of the O_3 analyzer, ppm

Z=recorder response with zero air, % scale

Record the O_3 concentration and the corresponding analyzer response. If substantial adjustment of the span control is necessary, recheck the zero and span adjustments by repeating steps 5.5.2 to 5.5.4.

5.5.5 Generate several other O_3 concentration standards (at least 5 others are recommended) over the scale range of the O_3 analyzer by adjusting the O_3 source or by Option 1. For each O_3 concentration standard, record the O_3 and the corresponding analyzer response.

5.5.6 Plot the O_3 analyzer responses versus the corresponding O_3 concentrations and draw the O_3 analyzer's calibration curve or calculate the appropriate response factor.

5.5.7 *Option 1:* The various O_3 concentrations required in steps 5.3.11 and 5.5.5 may be obtained by dilution of the O_3 concentration generated in steps 5.3.6 and 5.5.3. With this option, accurate flow measurements are required. The dynamic calibration system may be modified as shown in Figure 2 to allow for dilution air to be metered in downstream of the O_3 generator. A mixing chamber between the O_3 generator and the output manifold is also required. The flowrate through the O_3 generator (F_o) and the dilution air flowrate (F_D) are measured with a reliable flow or volume standard traceable to NBS. Each O_3 concentration generated by dilution is calculated from:

$$[O_3]'_{OUT} = [O_3]_{OUT} \left(\frac{F_O}{F_O + F_D}\right) \qquad (6)$$

where:

$[O_3]'_{OUT}$=diluted O_3 concentration, ppm
F_o=flowrate through the O_3 generator, liter/min
F_D=diluent air flowrate, liter/min

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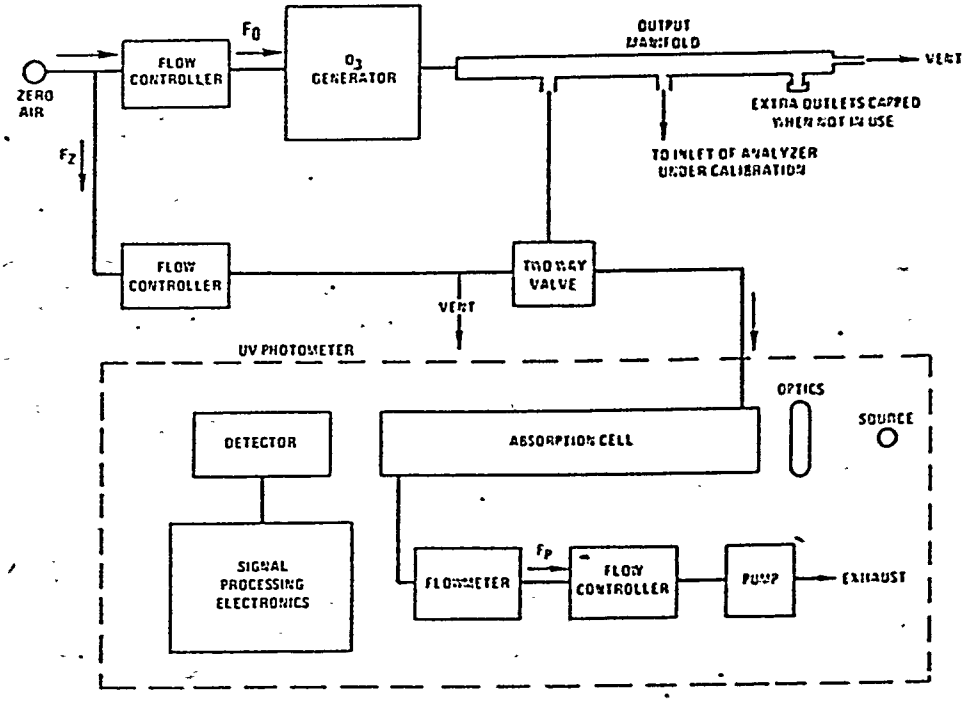

Figure 1 Schematic diagram of a typical UV photometric calibration system

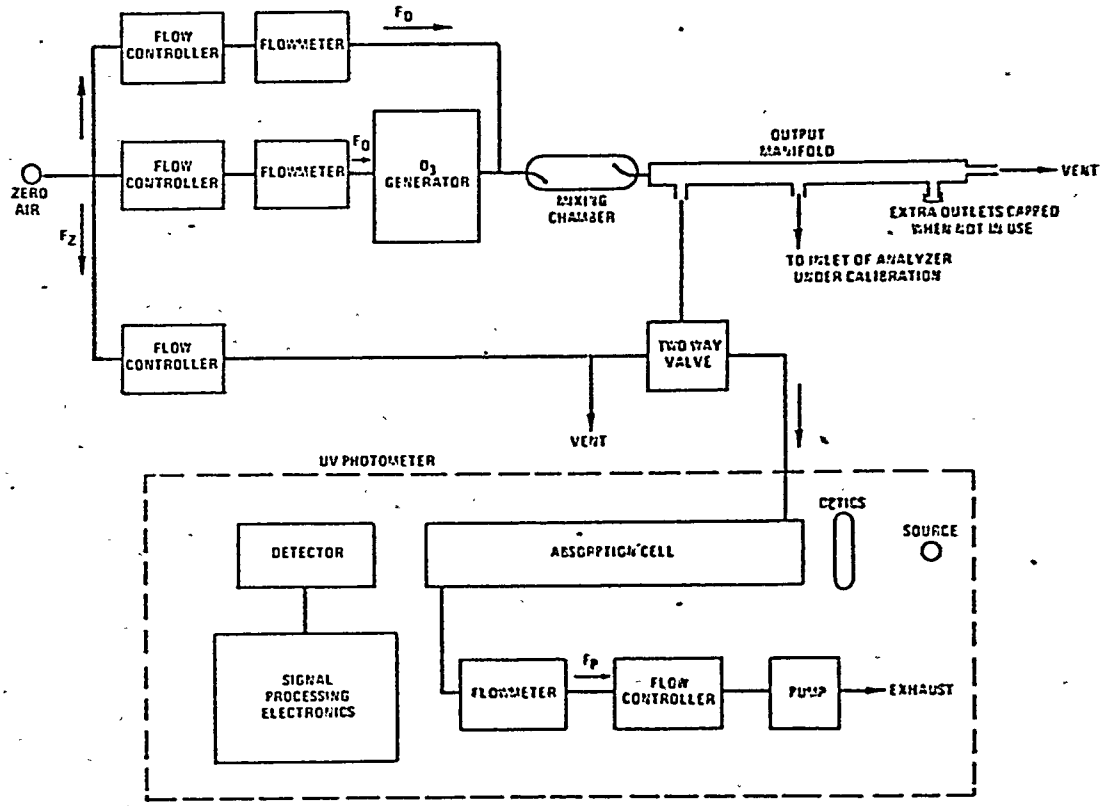

Figure 2. Schematic diagram of a typical UV photometric calibration system (OPTION 1)

Temporary Alternative Calibration procedure—(Boric Acid-Potassium Iodide). This procedure may be used as an alternative to the Ultraviolet Photometry procedure for direct calibration of ozone analyzers—but not to certify transfer standards—until [18 months after the date of final promulgation]. After that time this procedure can be used only as a transfer standard in accordance with the guidance and specifications set forth in Reference 4, "Transfer Standards for Calibration of Ambient Air Monitoring Analyzers for Ozone".

1. Principle. This calibration procedure (1) is based upon the reaction between ozone (O_3) and potassium iodide (KI) to release iodine (I_2) according to the stoichiometric equation: (2)

$$O_3 + 2I^- + 2H^+ \rightarrow I_2 + H_2O + O_2$$

The stoichiometry is such that the amount of I_2 released is equivalent to the amount of O_3, absorbed. Ozone is absorbed in a 0.1M boric acid (H_3BO_3) solution containing 1% KI, and the I_2 released reacts with excess iodide ion (I^-) to form triiodide ion (I^-_3) which is measured spectrophotometrically at a wavelength of 352 nm. The output of a stable O_3 generator is assayed in this manner, and the generator is immediately used to calibrate the O_3 analyzer. The O_3 generator must be used immediately after calibration and without physical movement, and it is recalibrated prior to each use. Alternatively, the O_3 analyzer may be calibrated by assaying the O_3 concentrations using the prescribed procedure while simultaneously measuring the corresponding O_3 analyzer responses. Ozone concentration standards may also be generated by an optional dilution technique. With this option, the highest O_3 concentration standard is assayed using the prescribed procedure. The additional O_3 concentration standards required are then obtained by dilution.

2. Apparatus. Figures 1 and 2 illustrate a typical BAKI O_3 calibration system and show the suggested configuration of the components listed below. All connections between components downstream of the O_3 generator should be of glass, Teflon or other relatively inert material.

2.1 Air flow controller. Device capable of maintaining a constant air flowrate through the O_3 generator within ±2%.

2.2 Air flowmeter. Calibrated flowmeter capable of measuring and monitoring the air flowrate through the O_3 generator within ±2%.

2.3 Ozone generator. Device capable of generating stable levels of O_3 over the required concentration range.

2.4 Output manifold. The output manifold should be constructed of glass, Teflon, or other relatively inert material and should be of sufficient diameter to insure a negligible pressure drop at the analyzer connection. The system must have a vent designed to insure atmospheric pressure in the manifold and to prevent ambient air from entering the manifold.

2.5 Impingers. All glass impingers with the specifications indicated in Figure 2 are recommended. The impingers may be purchased from most major glassware suppliers. Two impingers connected in series are used to insure complete collection of the sample.

2.6 Air pump and flow controller. Any pump and flow control device capable of maintaining a constant flowrate of 0.4-0.6 liter-min through the impingers may be used. A critical orifice as described by Lodge *et al.* (3) is recommended. The orifice should be protected against moisture and particulate matter with a membrane filter or moisture trap containing Drierite, silica gel, or glass wool. The air pump must be capable of maintaining a pressure differential of at least 0.6-0.7 atmospheres across the critical orifice. Alternatively, a needle valve could be used with the pump to adjust the flow through the impingers. A flowmeter is then recommended to monitor the flow. The needle valve-flowmeter combination should be protected against moisture and particulate matter with a membrane filter or moisture trap.

2.7 Thermometer. Accurate to ±1°C.

2.8 Barometer. Accurate to ±2 torr.

2.9 Volumetric flasks (Class A). 25, 100, 200, 500, 1000-ml.

2.10 Pipets (Class A). 1, 5, 10, 15, 20, and 25-ml volumetric; 1-ml or 10-ml graduated.

2.11 Spectrometer. Capable of measuring absorbance at 352 nm with an absolute accuracy of ±1% and linear response over the range of 0-1.0 absorbance units. The photometric accuracy may be checked using optical glass filters which have certified absorbance values at specified wavelengths. Matched 1-cm or 2-cm cells should be used for all absorbance determinations.

3. Reagents.

3.1 Zero air. The zero air must be free of contaminants which will cause a detectable response of the O_3 analyzer or which might react with 1% BAKI. Air meeting this requirement may be obtained by: (1) passing it through silica gel for drying; (2) treating it with O_3 to convert any nitric oxide (NO) to nitrogen dioxide (NO_2); (3) passing it through activated charcoal (6-14 mesh) and molecular sieve (6-16 mesh, type 4A) to remove any NO_2, hydrocarbons, and traces of water vapor; and (4) passing it through a 2-micron filter to remove any particulate matter.

3.2 Boric acid (H_3BO_3), ACS reagent grade.

3.3 Potassium iodide (KI), ACS reagent grade.

3.4 Hydrogen peroxide (H_2O_2), ACS reagent grade, 3% or 30%.

3.5 Potassium iodate (KIO_3), ACS reagent grade certified 0.1N.

3.6 Sulfuric acid (H_2SO_4), ACS reagent grade, 95% to 98%.

3.7 Distilled water. Used for preparation of all reagents.

3.8 Absorbing reagent. Dissolve 6.2 g of boric acid (H_3BO_3) in approximately 750 ml of distilled water in an amber 1000-ml volumetric flask. The flask may be heated gently to speed dissolution of the H_3BO_3, but the solution must then be cooled to room temperature or below before proceeding with the reagent preparation. [While the H_3BO_3 solution is cooling, prepare the hydrogen peroxide (H_2O_2) solution according to the directions in 3.9.] When the H_3BO_3 solution has cooled, add 10 g of potassium iodide (KI) to the H_3BO_3 solution and dissolve. Add 1 ml of 0.0021% H_2O_2 solution (see 3.9) and mix thoroughly. Within 5 minutes after adding the peroxide, dilute to volume with distilled water, mix, and determine the absorbance of this BAKI solution at 352 nm against distilled water as the reference. The pH of the BAKI solution should be 5.1±0.2.

Set the absorbing solution aside for 2 hours and then redetermine the absorbance at 352 nm against distilled water as the reference. If the resultant absorbance from this second determination is at least 0.008 absorbance units/cm greater than the first determination, the absorbing reagent is ready for use. If no increase or an increase of less than 0.008 absorbance units/cm is observed, the KI reagent probably contains an excessive amount of a reducing contaminant and *must be discarded*. In this event, prepare fresh absorbing reagent using a different numbered lot of KI. If unacceptable absorbing reagent results from different lots of KI, test the possibility of contamination in the H_3BO_3 by using a different numbered lot of H_3BO_3.

3.9 Hydrogen peroxide solution 0.0021%. Using a graduated pipet, add 0.7 ml of 30% or 7.0 ml of 3% hydrogen peroxide (H_2O_2) to approximately 200 ml of distilled water in a 500-ml volumetric flask, dilute to volume with distilled water and mix thoroughly. To prepare the 0.0021% solution, pipet 5 ml of the above solution into 50 ml of distilled water in a 100-ml volumetric flask, dilute to volume with distilled water, and mix thoroughly. This 0.0021% H_2O_2 solution must be prepared fresh each time a fresh batch of absorbing reagent is prepared. Therefore, the remaining contents of both volumetric flasks should be discarded after treatment of the BAKI absorbing reagent (see 3.8).

3.10 Standard potassium iodate solution (0.1N). Use a commercial standard solution of potassium iodate (KIO_3) having a certified normality.

3.11 Sulfuric acid (1N). Dilute 28 ml of concentrated (95-98%) sulfuric acid (H_2SO_4) to volume in a 1000-ml volumetric flask.

4. Procedure.

4.1 Assemble an ozone calibration system such as shown in Figure 1.

4.2 Assemble the KI sampling train such as shown in Figure 2. All connections between the various components must be leak tight and may be made using grease-free ball joint fittings, heat-shrinkable Teflon tubing, or Teflon tube fittings. The connection to the O_3 output manifold should be made using 6 mm (¼ in.) Teflon tubing not to exceed 1.5 meters in length.

4.3 Calibrate all flowmeters and critical orfices under the conditions of use against a reliable flow or volume standard such as a NBS traceable bubble flowmeter or wet-test meter. Correct all volumetric flowrates to 25°C and 760 torr as follows:

$$F_R = F_S \times \frac{P_S - P_{H_2O}}{760} \times \frac{298}{T_S + 273}$$

where:

F_R=flowrate corrected to reference conditions (25° C and 760 torr), liter/min

F_S=flowrate at sampling conditions, liter/min

P_S=barometric pressure at sampling conditions, torr

P_{H_2O}=vapor pressure of H_2 at T_S, torr (For wet volume standard. For a dry standard, P_{H_2O}=O)

T_S=temperature at sampling conditions, °C

4.4 KI calibration curve.

4.4.1 Prepare iodine standards, fresh when needed, as follows:

A. Accurately pipet 10 ml of 0.1N standard potassium iodate (KIO_3) solution into a 100-ml volumetric flask containing approximately 50 ml of distilled water. Add 1 g of potassium iodide (KI) and 5 ml of 1N sulfuric acid (H_2SO_4), dilute to volume with distilled water, and mix thoroughly.

B. Immediately before use, pipet 10 ml of the iodine (I_2) solution prepared in step A above into a 100-ml volumetric flask and dilute to volume with absorbing reagent. Then further dilute this solution by pipetting 10 ml of it into a 200-ml volumetric flask and diluting it to volume with absorbing reagent.

C. In turn, pipet 5, 10, 15, 20, and 25 ml aliquots of the final I_2 solution prepared in step B above into a series of 25-ml volumetric flasks. Dilute each to volume with absorbing reagent and mix thoroughly. To prevent I_2 losses by volatilization, the flasks should remain stoppered until absorbance measurements are made. Absorbance measurements (see 4.4.2) should be taken within 20 minutes after preparation of the I_2 standards.

4.4.2 Determine the absorbance of each I_2 standard at 352 nm. Also measure the absorbance of a sample of unexposed absorbing reagent. Determine the net absorbance of each I_2 standard as:

$$\text{net absorbance} = \begin{pmatrix}\text{sample}\\ \text{absorbance}\end{pmatrix} - \begin{pmatrix}\text{unexposed}\\ \text{reagent}\\ \text{absorbance}\end{pmatrix}$$

4.4.3 For each I_2 standard, calculate the net absorbance/cm as:

$$\text{net absorbance/cm} = \frac{\text{net absorbance}}{b}$$

where:

b=spectrophotometer cell path length, cm

4.4.4 For each I_2 standard, calculate the I_2 concentration in mole/liter as:

$$[I_2]_i = N_{KIO_3} \times \frac{1 \text{ equivalent } I_2}{1 \text{ equivalent } KIO_3} \times \frac{1 \text{ mole } I_2}{2 \text{ equivalent } I_2} \times \frac{10}{100} \times \frac{10}{100} \times \frac{10}{200} \times \frac{V_i}{25}$$

$$[I_2]_i = N_{KIO_3} \times V_i \times 10^{-5}$$

where:

$[I_2]_i$=concentration of each I_2 standard, mole I_2/liter

N_{KIO_3}=normality of KIO_3 (from 3.10), equivalent liter

V_i=volume of I_2 solution (from step 4.4.1.C)=5, 10, 15, 20, or 25 ml

4.4.5 Plot net absorbance/cm (y-axis) versus the mole I_2/liter (x-axis) for each I_2 standard and draw the KI calibration curve. Calculate the slope of the curve in liter $mole^{-1}$ cm^{-1} and record as S_c. The value of the slope should be [26,000±780. If the slope is not within this range, and the photometric accuracy of the spectrophotometer meets the specifications given in 2.11, repeat the procedure using freshly prepared I_2 standards. If the slope is still not within the specified range, repeat the procedure using a different lot of certified 0.1N KIO_3 to prepare the I_2 standards.

4.5 Calibration of the ozone generator.

4.5.1 Adjust the air flow through the O_3 generator to the desired flowrate and record as F_R. At all times the air flow through the generator must be greater than the total flow required by the sampling systems, to assure exhaust flow at the vent.

4.5.2 With the O_3 generator off, flush the system with zero air for at least 15 minutes to remove residual O_3. Pipet 10 ml of absorbing reagent into each of 2 impingers and connect them into the sampling train as shown in Figure 2. Draw air from the output manifold of the O_3 calibration system through the sampling train at 0.4-0.6 liter/min for 10 minutes. Immediately transfer the exposed solutions to clean spectrophotometer cells. Determine the net absorbance (sample absorbance-unexposed reagent absorbance) of each solution at 352 nm within three minutes. Add the net absorbances of the two solutions to obtain the total net absorbance. Calculate the indicated O_3 concentration (system blank) as equivalent O_3 concentration according to 4.5.4. If the system blank is greater than 0.005 ppm O_3, continue flushing the O_3 generation system for an additional 30 minutes and redetermine the system blank. If the system blank is still greater than 0.005 ppm O_3, the zero air probably contains traces of an oxidizing contaminant, and the activated charcoal and molecular sieve (see 3.1) should be replaced.

4.5.3 Adjust the O_3 generator to generate an O_3 concentration in the range of interest and allow the system to equilibrate for about 15 minutes. The uncalibrated O_3 analyzer to be calibrated can conveniently be used to indicate the stability of the O_3 generator output. When the O_3 generator output has stabilized, pipet 10 ml of absorbing reagent into each impinger. Draw O_3 from the output manifold of the O_3 calibration system through the sampling train at 0.4-0.6 liter/min. Use a sample time of between 10 and 30 minutes such that a total net absorbance between 0.1 and 1.0 absorbance units is obtained. (At an O_3 concentration of 0.1 ppm and a sampling rate of 0.5 liter/min, a total net absorbance >0.1 absorbance units should be obtained if a sampling time of 20 minutes and 1-cm spectrophotometer cells are used.) Immediately after collection, transfer the exposed solutions to clean spectrophotometer cells. Determine the net absorbance (sample absorbance—unexposed reagent absorbance) of each solution at 352 nm within three minutes. Add the net absorbances of the two solutions to obtain the total net absorbance.

4.5.4 Calculation of ozone concentration.

4.5.4.1 Calculate the total volume of air sampled, corrected to reference conditions of 25°C and 760 torr as:

$$V_R = F_R \times t_S$$

where:

V_R=volume of air sampled, corrected to reference conditions, liter

F_R=sampling flowrate corrected to reference conditions, liter/min

t_S=sampling time, min

4.5.4.2 Calculate the I_2 released in moles as:

$$\text{mole } I_2 = \frac{\text{total net absorbance} \times 0.01}{S_C \times b}$$

where: total net absorbance=sum of net absorbances for the two solutions

0.01=volume of absorbing reagent in each impinger, liter

S_c=slope of KI calibration curve, liter $mole^{-1}$ cm^{-1}

b=spectrophotometer cell path length, cm

4.5.4.3 Calculate the μl of O_3 absorbed as:

$$\mu l\ O_3 = \text{mole } I_2 \times \frac{1 \text{ mole } O_3}{1 \text{ mole } I_2} \times \frac{24.47 \text{ l } O_3}{\text{mole } O_3} \times \frac{10^6 \ \mu l\ O_3}{\text{l } O_3}$$

or,

$$\mu l\ O_3 = \text{mole } I_2\ 24.47 \times 10^6$$

4.5.4.4 Calculate the O_3 concentration in ppm as:

$$\text{ppm } O_3 = \frac{\mu l\ O_3}{V_R}$$

4.5.5 Repeat steps 4.5.3 and 4.5.4 at least one more time at the same O_3 generator setting. Average the two (or more) determinations and record the average along with the O_3 generator setting.

4.5.6 Adjust the O_3 generator to obtain other O_3 concentrations over the desired range. Determine each O_3 concentration using the procedure given above. Five or more O_3 concentrations are recommended. Plot the O_3 concentrations versus the corresponding O_3 generator settings and draw the O_3 generator calibration curve.

4.6 Calibration of the ozone analyzer.

4.6.1 Allow sufficient time for the O_3 analyzer to warm-up and stabilize.

4.6.2 Allow the O_3 analyzer to sample zero air until a stable response is obtained and adjust the O_3 analyzer's zero control. Offsetting the analyzer's zero adjustment to +5% of scale is recommended to facilitate observing negative zero drift. Record the stable zero air response as "Z".

4.6.3 Using the O_3 generator as calibrated above and the same F_R, generate an O_3 concentration near 80% of the desired upper range limit (URL) of the O_3 analyzer.

4.6.4 Allow the O_3 analyzer to sample this O_3 concentration until a stable response is obtained. Adjust the analyzer's span control to obtain a convenient recorder response as indicated below:

$$\text{recorder response (\% scale)} = \left(\frac{[O_3]_{OUT}}{URL} \times 100\right) + Z$$

$[O_3]_{OUT}$ = O_3 concentration at the output manifold, ppm URL = upper range limit of the O_3 analyzer, ppm, Z = recorder response with zero air, % scale.

Record the O_3 concentration and the O_3 analyzer response. If substantial adjustment of the span control is necessary, recheck the zero and span adjustments by repeating steps 4.6.2 through 4.6.4.

4.6.5 Generate several other O_3 concentrations (at least 5 others are recommended) over the scale range of the O_3 analyzer by adjusting the O_3 generator settings (preferably the same settings as used in 4.5) or by Option 1. For each O_3 concentration, allow for a stable analyzer response, then record the response and the corresponding O_3 concentration.

4.6.6 Plot the O_3 analyzer responses versus the corresponding O_3 concentrations and draw the O_3 analyzer's calibration curve or calculate the appropriate response factor.

4.6.7 *Option 1:* The various O_3 concentrations required in step 4.6.5 may be obtained by dilution of the O_3 concentration generated in 4.6.3. With this option, accurate flow measurements are required. The dynamic calibration system must be modified as shown in Figure 3 to allow for dilution air to be metered in downstream of the O_3 generator. A mixing chamber between the O_3 generator and the output manifold is also required. The flowrate through the O_3 generator (F_0) and the dilution air flowrate (F_D) are measured with a reliable flow or volume standard traceable to NBS. The highest O_3 concentration standard required (80% URL) is assayed according to the procedure in 4.5. Each O_3 concentration generated by dilution is calculated from:

$$[O_3]'_{OUT} = [O_3]_{OUT} \left(\frac{F_0}{F_0 + F_D}\right)$$

where: $[O_3']^0_{OUT}$ = diluted O_3 concentration, ppm; F_0 = flowrate through the O_3 generator, liter/min; F_D = diluent air flowrate, liter/min.

NOTE.—Direct calibration of the O_3 analyzer may also be accomplished by assaying the O_3 concentrations using the procedure in 4.5 while simultaneously measuring the corresponding O_3 analyzer responses as specified in 4.6.

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3. J. P. Lodge, Jr., J. B. Pate, B. E. Ammons, and G. A. Swanson, "The Use of Hypodermic Needles as Critical Orifices in Air Sampling," *J. Air Poll. Control Assoc., 16,* 197 (1966).

4. "Transfer Standards for Calibration of Ambient Air Monitoring Analyzers for Ozone," EPA Publication available from EPA, Department E(MD-77), Research Triangle Park, N.C. 27711.

[6568-01-C]

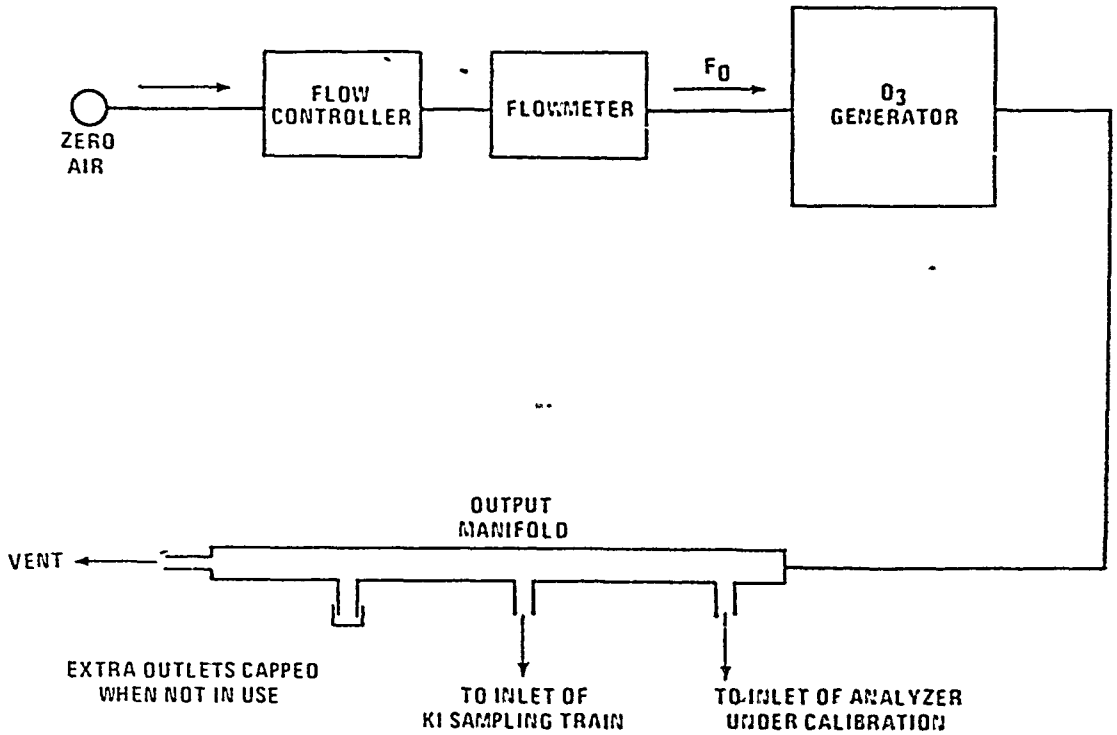

Figure 1 Schematic diagram of a typical BAKI calibration system

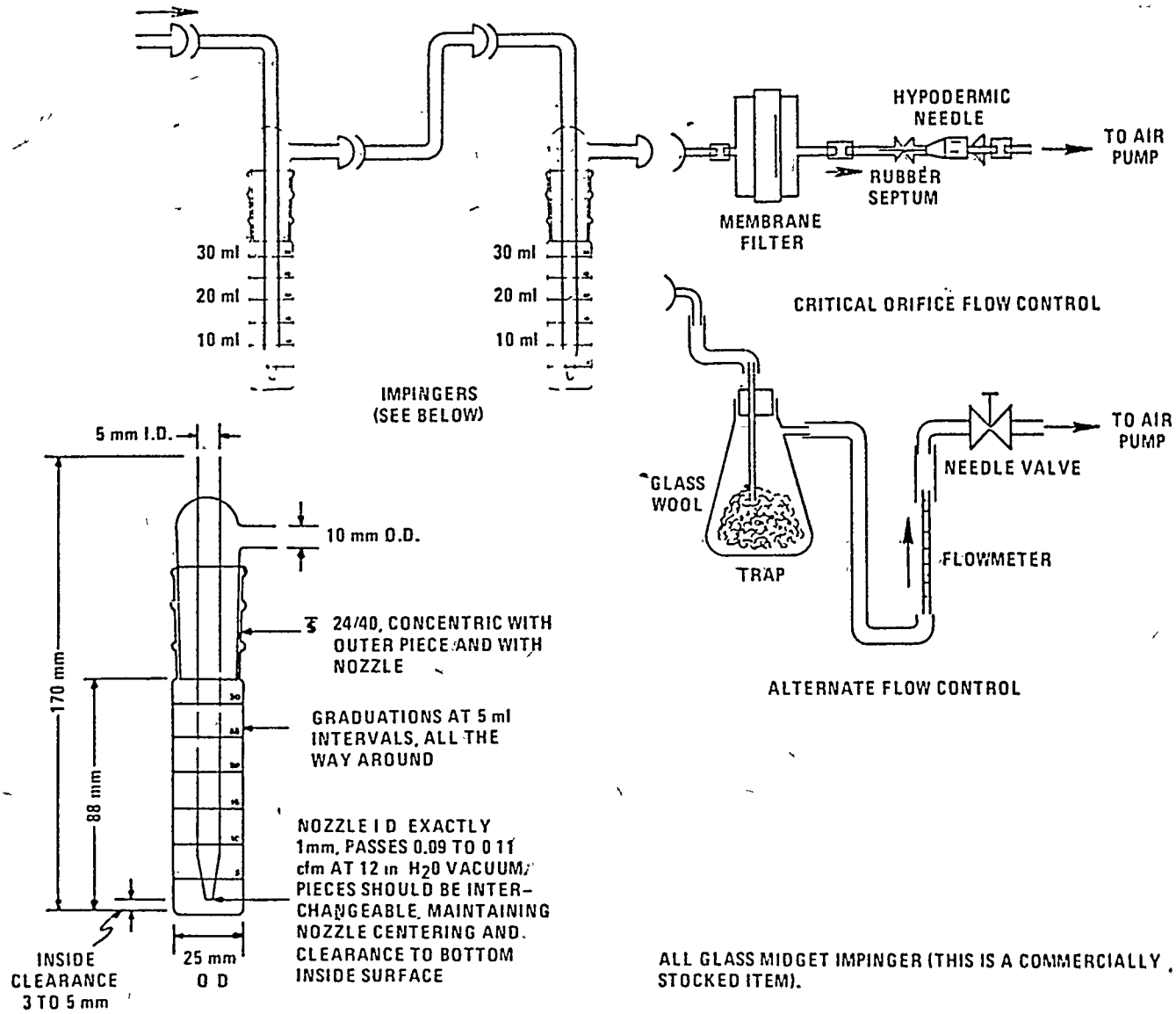

Figure 2 KI sampling train.

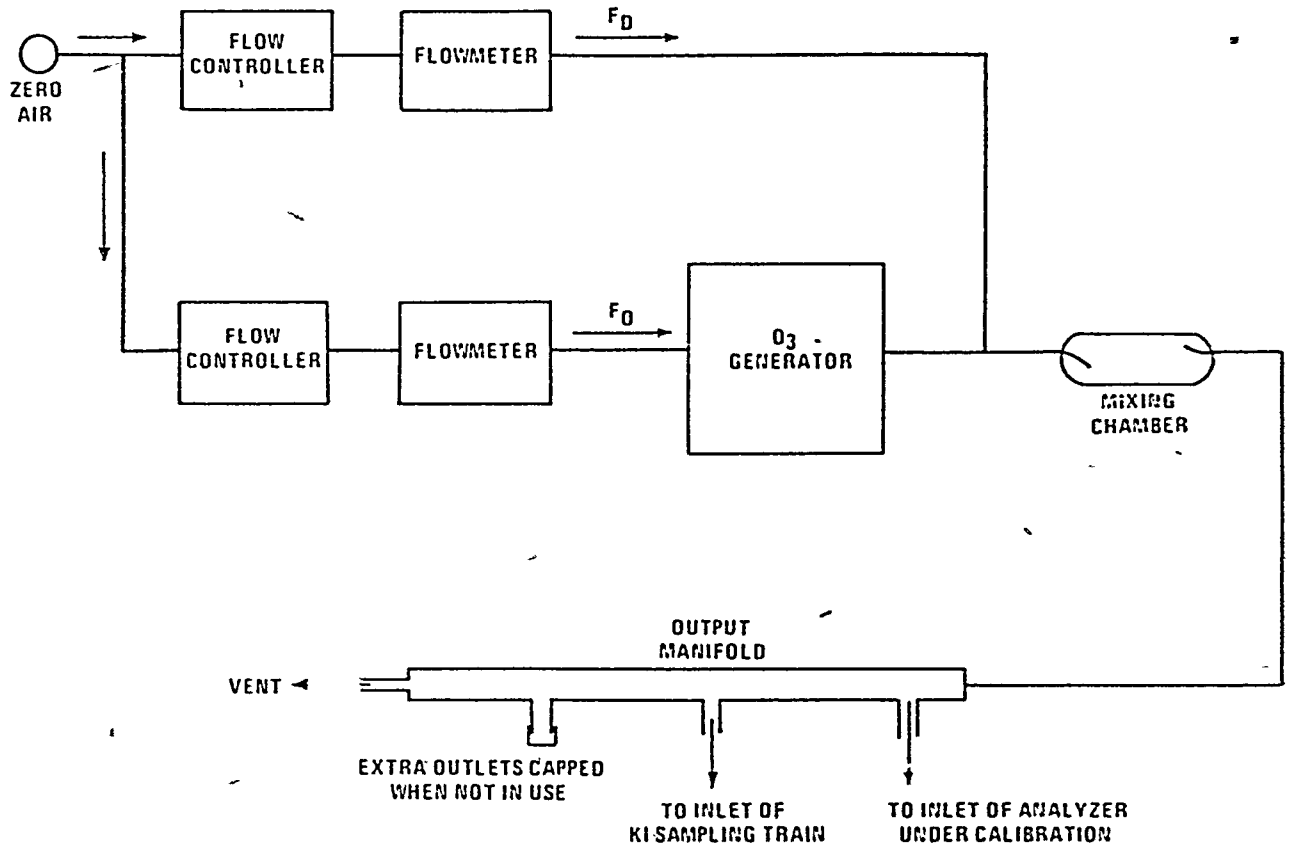

Figure 3 Schematic diagram of a typical BAKI calibration system (Option 1)

[FR Doc. 79-4057 Filed 2-7-79; 8:45 am]

[6560-01-M]

[FRL 1018-4]

PART 51—PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Revisions to Implementation Procedures Related to Photochemical Oxidants (Ozone)

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: In this action, the Administrator revises the procedures for preparation of State Implementation Plans for ozone (formerly photochemical oxidants). Throughout 40 CFR Part 51, the terms "photochemical oxidant(s)," and "oxidant(s)" are changed to "ozone" to be consistent with EPA's redesignation of the photochemical oxidant standard as an ozone standard. The redesignation action is being taken elsewhere in this issue of the FEDERAL REGISTER.

With regard to the development of a control strategy for ozone, Appendix J to 40 CFR Part 51 is being deleted and Section 51.14 is amended, to allow States to use any of four analytical relationships for determining the hydrocarbon reductions necessary to meet the ozone standard. In addition, the control strategy requirements are being amended to require that States consider background ozone concentrations and ozone transport. EPA guidance is available to States in making such considerations.

EFFECTIVE DATE: This rulemaking is effective upon publication because the revision of the national standard to which it relates is effective immediately.

ADDRESSES: U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Control Programs Development Division (MD-15), Research Triangle Park, North Carolina 27711.

FOR FURTHER INFORMATION CONTACT:

Joseph Sableski, Chief, Plans Guidelines Section, at the above address or at 919-541-5437 (commercial) or 629-5437 (FTS).

SUPPLEMENTARY INFORMATION:

1. BACKGROUND

On June 22, 1978, at 43 FR 26985, EPA proposed certain revisions to 40 CFR Part 51 concerning the procedures for preparation of State Implementation Plans for photochemical oxidants. This proposed action was taken simultaneously with related EPA proposals in the same issue of the FEDERAL REGISTER to numerically change the primary photochemical oxidant standard, to redesignate the primary and secondary standards as ozone standards, and to change to standards with a statistical form rather than a deterministic form (43 FR 26962); and to replace the existing calibration procedure for the ozone reference methods (43 FR 26971).

A total of four public hearings were held during July and August to receive comments on all the actions being taken relative to photochemical oxidants (ozone). In addition, written comments were received through October 16. EPA received comments on the proposed revisions to the implementation requirements from 27 commenters, including 12 representatives from industry, 10 from State and local governmental agencies, and 5 from citizens' organizations and private citizens.

2. SUMMARY OF COMMENTS AND RESPONSES

The following discussion summarizes the comments received on the proposal to amend 40 CFR Part 51. In some cases, similar comments are considered together in order to prepare a common response where appropriate. Where an interested person wishes to identify individual comments, a summary of all comments received, including those comments pertaining to the other related actions, and EPA's responses is available for public inspection in Docket No. OAQPS-78-8 on file in EPA's Central Docket Section, Room 2903-B, 401 M Street, S.W., Washington, D.C. 20460.

2.1 CONTROL STRATEGY

Two regulatory changes are being made with regard to the development of control strategies for ozone. First, Appendix J is being replaced by four analytical techniques. States must use one of the four techniques to determine the amount of hydrocarbon reductions necessary to demonstrate attainment of the national ozone standard. The four techniques include: (1) Photochemical dispersion models, (2) Empirical Kinetics Modeling Approach (EKMA), (3) Empirical and Statistical Models, and (4) Proportional Rollback. EPA received several comments related to these analytical techniques. These comments and EPA's responses are presented in this section.

The second change provides that States must consider background ozone concentrations and ozone transported into an area in the development of their control strategies. Previously, States were allowed to assume that there were no background ozone concentrations. The consideration of ozone background and transport may significantly affect the calculated control requirements under certain circumstances; in some cases, however, the net impact on control requirements is relatively insignificant. A discussion of these effects and procedures for taking background and transport into account is provided in the EPA document entitled *Uses, Limitations and Technical Basis of Procedures for Quantifying Relationships Between Photochemical Oxidants and Precursors* (EPA-450/2-77-021a). EPA did not receive any comments expressing opposition to this particular change; however, a number of comments were made concerning the contribution of both natural background and ozone transport to ambient ozone concentrations. Comments concerning transport are handled in this section. Some of the comments concerning natural background levels are discussed in the preamble to the 40 CFR Part 50 notice promulgating the new ozone standard which appears elsewhere in this issue of the FEDERAL REGISTER. Other comments on natural background are contained in the docket (No. OAQPS-78-8) containing information used by EPA in revising the ozone standard.

Several commenters criticized the analytical techniques proposed to replace Appendix J, citing various shortcomings of the techniques. Some commenters pointed to the failure of the EKMA and rollback techniques to account for temporal and spatial distributions of sources in the design of control strategies and pointed out that, since control of industrial sources will be extremely costly, the most effective models should be used in strategy development. One commenter indicated that the level of control necessary to achieve the standard could not be predicted with a satisfactory level of confidence since the various techniques produced different results. EPA acknowledges the fact that the various techniques do produce different results since different assumptions and different data bases are required for each specific model. Also, EPA agrees that control strategies should be based on the most effective models. However, effectiveness is in part determined by the cost of gathering input data and running a model. If simple models, such as rollback, indicate the need for extensive controls, EPA feels it may not be necessary to expend additional time and resources to gather the information needed to run a more sophisticated model which would reach the same general conclusion. A sophisticated model, i.e., a photochemical dispersion model, would appear to be most warranted in cases where there is

some doubt whether extensive controls are needed to attain the standard. EPA requires that States attempting to demonstrate attainment and maintenance of the revised ozone standard by 1982 without adopting reasonably available control technology (RACT) regulations for large hydrocarbon sources must employ photochemical dispersion modeling. The use of other less rigorous analytical techniques are only acceptable in areas where RACT measures are also scheduled for implementation. Where States are unable to demonstrate attainment by 1982, EPA believes any of the models are useful for indicating the magnitude of the ozone problem and for identifying the need for major control programs to be implemented over the next several years. As these control programs are implemented and the State moves closer to attainment, it is likely that sufficient information will be acquired to use dispersion models to adjust the control strategy. Additionally, it should be noted that the city-specific version of EKMA can account, to a limited extent, for temporal and spatial distribution of sources.(*1*)

Another commenter stated that the annual emission inventory may not be readily adaptable to the models and to refine the inventory into hourly segments may be very costly, time-consuming, and inaccurate. In response, EPA points out that of the techniques specified, only photochemical dispersion models require a detailed emission inventory to arrive at their predictions (with the exception of the more sophisticated city-specific version of EKMA which can consider emission data). The other techniques primarily utilize ambient air quality data. At the same time, EPA recognizes the importance of an accurate emission inventory in translating the requirements forecast by these simple models into actual control programs. For example, suppose EKMA predicts that a 70 percent control requirement is needed to meet the standard. If the emission inventory only includes 50 percent of the emissions, a 70 percent reduction in the inventory would only result in a 35 percent reduction in actual emissions. Photochemical dispersion models, on the other hand, do require explicit information concerning hourly emissions. It would obviously be impractical to make hourly measurements for every source. However, hourly rates can be estimated by superimposing observed diurnal emission patterns on annual average emissions. Such patterns have been observed in several cities so that it would be possible to utilize annual emissions data.

Several persons commented that there is an inadequate understanding of the relationship between hydrocarbons and ozone, and that controlling hydrocarbon emissions may or may not be effective in reducing maximum ozone concentrations. This particular issue was addressed in a recent published report for the Manufacturing Chemists Association (MCA)(*2*) which noted a lack of any clear downward trend in Houston's ozone levels despite control measures to reduce hydrocarbons. This report concluded that existing ambient air quality data do not necessarily support the hypothesis that reducing hydrocarbon emissions reduces ambient ozone levels. At least two difficulties exist which prevent straightforward interpretation of the study's findings. First, the period of record was relatively short (two to three years of data) and no attempt has been made to normalize the trends for meteorological differences. It is generally believed by EPA that at least a five year period of record may be needed to discern a trend in air quality attributable to changes in emissions. A recent review of ozone trend data conducted for EPA in areas having long periods of records suggests that periods as long as eight years may be required. (*3*) Thus, while efforts are underway within EPA to develop procedures for "normalizing" trends for differing meteorology during short periods of record, at the present time trend analyses are useful in only a limited number of areas. The second difficulty in using the conclusions drawn from the study is that it appears as though some of the controls may have been initiated prior to any substantial air quality measurement programs.

EPA believes that convincing evidence exists to say that reducing hydrocarbons will reduce ambient concentrations of ozone. This position rests primarily upon experimental and theoretical studies (*4–15*) which have clearly established a physical cause-effect relationship between organic pollutants and ozone in the presence of oxides of nitrogen. Smog chamber studies have shown that maximum ozone concentrations are particularly sensitive to hydrocarbon controls when the ratio of non-methane hydrocarbons (NMHC) to nitrogen oxides (NO_x) is lower than 15–20:1. In fact, the lower the ratio the more effective the hydrocarbon strategy is likely to be. Examination of available NMHC and NO_x data suggests that most U.S. cities experience ratios in the order of 6–12:1. Also, there is a limited number of areas having ambient air quality data and emission estimates over sufficiently long periods of record that tends to confirm the theory of smog formation.(*3, 16–19*)

Two commenters indicated that a consequence of relaxing the standard could be the change of some urban areas from nonattainment to attainment status, thus, permitting greater hydrocarbon emissions than allowed by their former status. In one case the commenter argued that prior to revising the standard EPA should ascertain that existing downwind violations would not be further aggravated. The other commenter opposed the revision because, when coupled with current EPA control strategy policy, more of the burden of control would be shifted to the States where ozone is measured and away from States where emissions originate. EPA does not believe that consideration of such arguments is appropriate in setting the national primary ambient air quality standard. The Clean Air Act requires that primary standards be based solely upon effects on public health. However, the consequences indicated by the commenters are appropriate for consideration in the formulation of policy and guidance to assist States in developing a control strategy to meet the standards. EPA does not believe that either concern is warranted for areas that could be classified as attainment based on the new ozone standard. Two basic reasons exist for this EPA position: first, the potential increase in the transported levels of ozone, which may occur as a result of the greater emissions permitted by the new standard, will be offset by the equally increased allowable level of ozone in the downwind areas. Second, it should be noted that future levels of ozone being transported from attainment areas will tend to be reduced as a result of the Federal Motor Vehicle Control Program which requires reductions in the emissions of hydrocarbons and nitrogen oxides from new motor vehicles, and control requirements applicable to new stationary sources which will, in some instances, replace existing sources having fewer, less effective controls.

EPA is concerned, however, that the transport of ozone may be a problem when it originates in areas for which insufficient monitoring data preclude classifying the area as either attainment or nonattainment. EPA is now taking steps to identify areas which are currently unclassified but which have high potential for exceeding the national ozone standard. Within such areas, States will be urged to require controls on existing large stationary sources. If controls are not subsequently adopted, the States will be required to monitor for ozone, whereupon, the area in question will be classified nonattainment if violations are identified. These areas would then be subject to the requirements to control hydrocarbon emissions from existing stationary sources as in other nonattainment areas. EPA believes that the present policy focuses the limited re-

sources of air pollution control agencies and industry on the areas (i.e., nonattainment areas) where the controls will be most effective.

One commenter suggested that the chemical diethylhydroxylamine (DEHA) be dispersed in the atmosphere to scavenge free radicals as an effective means of controlling ambient concentrations of photochemical oxidants. The use of various free radical scavenger compounds has been suggested in the past as a means of reducing pollutant concentrations; however, no compound has yet been demonstrated to be completely acceptable. Before this approach to controlling air pollution can be seriously considered, comprehensive studies must show not only that the chemical employed is effective in laboratory studies, but also that the results can be extrapolated to actual ambient atmospheres. Such concerns as how, when and where to introduce the chemical to the atmosphere constitute problems whose solutions can be extremely difficult to derive. Futhermore, thorough consideration must be given to the potential hazards of exposing a population to a smog-inhibiting chemical or to any of its reaction products. One of the earliest suggestions for using DEHA came as a result of its ability to inhibit conversion of NO to NO_2. Consequently, various tests of DEHA's smog-inhibiting ability have been performed over the past several years. Recently, irradiation of mixtures of NO_x, HC and DEHA was carried out in a large smog chamber at EPA's Research Triangle Park, North Carolina, facility. Test results indicated that while the initial effect of adding DEHA is an immediate suppression of ozone formation, consumption of the chemical ultimately causes increased formation of ozone and ozone producing chemicals. The studies pointed to possible adverse impacts on rural areas downwind from the urban center as well. Further problems raised by the studies included, among others, the danger of exceeding the odor threshold of DEHA at certain "effective" atmospheric doses, and population exposure to an unknown NO_x product being formed by the DEHA reactions. (*20*) Obviously, EPA cannot at this time accept or encourage the use of DEHA as an effective control strategy for ozone. Instead, EPA believes that direct control of precursor emissions will result in greater and more certain improvements in air quality.

Several commenters claimed that the ozone problem is an urban problem and EPA requirements for control strategies should concentrate on the urban area while paying special attention to the present levels of NO_x and the NMHC/NO_x ratio. EPA agrees that the ozone attainment problem is primarily an urban problem. Consequently, the most stringent requirements are imposed in the urbanized nonattainment areas with a population greater than 200,000. Low NMHC/NO_x ratios primarily occur in the urbanized areas thus the required controls would be effective in controlling ozone levels. However, EPA does not feel it is appropriate to completely ignore hydrocarbon emissions outside the urbanized nonattainment areas because these emissions may contribute to the overall ozone nonattainment problem, particularly during adverse meteorological conditions. EPA therefore believes it is justified in requiring that large hydrocarbon sources (more than 100 ton/year potential emissions) in rural nonattainment areas implement reasonably available control techniques (RACT) to reduce their organic emissions.

One commenter claimed that EPA failed to issue timely guidance on control techniques as required by the Clean Air Act and as needed by States in revising their implementation plans. The commenter's argument is based on Section 108(b)(1) of the Clean Air Act which requires control technique information to be issued simultaneously with the issuance of health and welfare related air quality criteria. EPA did issue the control technique information required by the Act in a document entitled "Control Techniques for Volatile Organic Emissions from Stationary Sources" (EPA-450/2-78-022, May, 1978). However, this was not the information which EPA intended States to use to develop and enforce regulations for implementation plans. In addition to the document described above, EPA has published a series of Control Technique Guidelines (CTGs) which define reasonably available control technology (RACT) for stationary sources of hydrocarbons. These CTGs are specifically designed to assist States and local agencies in the development of air pollution control regulations for volatile organic emissions. The ozone SIPs due on January 1, 1979 are to reflect the application of RACT to the stationary sources for which EPA has published CTGs by January 1978. Additional CTGs are planned for future publication such that States will be required to adopt and submit additional RACT regulations on an annual basis beginning in January 1980, for those CTGs that have been published by January of the preceding year.

One commenter inquired as to why the proposal did not retain the original statement contained in Section 51.14(c)(4) which allowed States to assume that the hydrocarbon emission reductions necessary to attain the ozone standard would also be adequate to attain the national hydrocarbon standard. EPA's response is that this statement was unintentionally omitted from the June 22 proposal, and this omission is being corrected in today's action. Previously, statements concerning the attainment of the ozone standard and the hydrocarbon standard were both contained in Section 51.14(c)(4). To take the actions described herein, EPA is deleting (and reserving) paragraph (c)(4) of Section 51.14 and establishing three new paragraphs (c)(7), (c)(8), and (c)(9). Paragraph (c)(7) is to be used to set forth the four analytical techniques for determining the amount of hydrocarbon reduction necessary to demonstrate attainment of the ozone standard; paragraph (c)(8) describes specific considerations to be made in developing the ozone control strategy; and paragraph (c)(9) addresses attainment of the hydrocarbon standard.

2.2 SUBMITTAL OF SIP REVISIONS

Several industrial and governmental agency spokesmen expressed the opinion that EPA should grant States extensions of up to nine months to correct their SIPs to be consistent with the revision of the ozone standard. EPA's response to this request is provided in detail in the preamble to the revision of the ozone standard appearing elsewhere in today's FEDERAL REGISTER. In summary, States are still expected to submit their plan revisions to EPA on January 1, 1979, as required by the Clean Air Act. These plans will most likely be based upon the old standard of 0.08 p.p.m. However, once submitted, any State is free to make the additional revisions necessary to account for the revised standard, if they so desire. Thus, the time schedule for submitting the latter revisions is to be determined by each State.

3. OTHER CHANGES FROM PROPOSAL

In reviewing the June 22 proposed rule, EPA has determined that two changes from the proposal are necessary even though no comments addressing these particular matters were received. With regard to the first change, EPA originally proposed to change the terms "photochemical oxidants" and "oxidants" to "ozone" in 40 CFR Parts 51 and 52 to be consistent with the proposed redesignation of the photochemical oxidant standard to an ozone standard. EPA has decided not to proceed with the proposed nomenclature changes in Part 52 at this time. The reason for this decision is that in numerous places throughout Part 52 the terms "photochemical oxidants" and "oxidants" are used either as part of the title of a State Implementation Plan or to denote use of the terms within the plan itself. EPA therefore, feels that it would be proper to wait until States made the appropriate no-

menclature changes in their plans prior to enacting any changes to Part 52.

The second change concerns EPA's proposal to allow States to use photochemical *grid* models as one of four analytical techniques for determining the needed hydrocarbon emission reductions. The intended terminology for such models should have been photochemical *dispersion* models. There are two major types of dispersion models—grid (or Eulerian) and Lagrangian. EPA intends to allow either type model to be used where appropriate. Thus, the more inclusive terminology (i.e., photochemical dispersion models) will appear in Section 51.14(c)(7)(i).

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Dated: January 26, 1979.

DOUGLAS M. COSTLE,
Administrator.

The *Code of Federal Regulations*, Title 40, Chapter I, Part 51, is amended as follows:

1. Wherever the terms "photochemical oxidant(s)" or "oxidant(s)" appear in Part 51, they are changed to read "ozone."

2. Appendix J is deleted and reserved.

3. Section 51.14(c) is amended by deleting and reserving paragraph (4) and by adding new paragraphs (7), (8) and (9) as follows:

§ 51.14 Control strategy: Carbon monoxide, hydrocarbons, ozone, and nitrogen dioxide.

* * * * *

(c) * * *

(4) [Reserved]

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(7) In selecting an appropriate model to determine the amount of hydrocarbon reductions necessary to demonstrate attainment of the ozone standard, one of the following techniques must be applied:

(i) Photochemical dispersion models—These models are based on the most accurate available physical and chemical principles underlying the formation of ozone.

(ii) Empirical Kinetics Modeling Approach (EKMA)—This model represents a compromise between rigorous treatment of chemical and physical principles underlying ozone formation and dispersion and the extensive data requirement that would be necessitated by such an approach.

(iii) Empirical and statistical models—These models reflect observed relationships between ozone and other variables.

(iv) Proportional rollback—This model assumes a linear relationship between hydrocarbon emissions and ambient concentrations of ozone.

(8) In developing an ozone control strategy for a particular area, background ozone concentrations and ozone transported into an area must be considered. States may assume that the ozone standard will be attained in upwind areas.

(9) The degree of total hydrocarbon emission reduction necessary for attainment of the national standard for ozone will also be adequate for attainment of the national standard for hydrocarbons.

AUTHORITY: Sections 110 and 301(a), Clean Air Act, as amended (42 U.S.C. 7410, 7601).

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